

NHRIs' engagement in EU action to promote and protect rule of law, human rights and democracy: taking stock and looking ahead

Policy Paper

ENNHRI Leadership Webinars

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Introduction

Developments over the past year have marked an intensification of the EU's action to better promote and protect the rule of law, human rights and democracy across the spectrum of the EU's internal and external policy spheres. European NHRIs, through ENNHRI, have contributed to this process and underlined the importance of the mutually reinforcing connection between these fundamental values.

As reflected in ENNHRI's [Regional Action Plan on Promoting and Protecting Human Rights Defenders and Democratic Space](#), European NHRIs have recognised that engaging with the EU in its efforts to uphold these values inside and outside its borders is an integral part of their [mandate](#) to promote and protect human rights. Such engagement is seen as a way to ensure a more comprehensive and informed assessment by the EU of existing challenges relating to rule of law, human rights and democracy at national and regional level. This has in turn the potential to help policy makers identify the most appropriate responses, reinforcing the impact of NHRIs' recommendations at national level and prompting timely interventions from EU institutions and bodies as needed.

NHRIs' engagement in EU action in this area has also led to a greater [recognition](#) of NHRIs as a key component of the institutional architecture that serves to realise the rule of law, human rights and democracy in each state. Such a recognition is key to drive progress towards the [establishment](#) and strengthening of fully independent and effective NHRIs across the region.

Acting as a bridge between its member institutions and the EU, ENNHRI has engaged with EU policy makers to advise them on the unique potential of NHRIs both as contributors to and beneficiaries of EU action to promote and protect the rule of law, human rights and democracy both within and beyond the EU. At the same time, it has mobilised to support and facilitate collective reflections by its member institutions on opportunities and modalities for a strategic engagement in this area, through a common and coherent approach, based on cooperation, capacity building through the exchange of information and practices, and individual NHRI actions in-country.

This Policy Paper provides an overview of recent EU policy developments, a preliminary review of NHRIs' role, input and impacts so far, and shares considerations on opportunities ahead. It was prepared to support ENNHRI Leadership Webinars on 9 and 10 November 2020, where NHRI leaders and EU policy makers discussed how to take their strategic engagement forward. The document has been updated, based on conclusions of the

Leadership Webinars, in advance of the ENNHRI Annual Conference “Building Better Together for Human Rights, Democracy and Rule of Law in Europe – Recognising the Role of National Human Rights Institutions” (2 December 2020).

EU internal and external action are addressed in turn to duly reflect their specificities. They are then brought together to explore synergies in the spirit of solidarity and coherence, which characterises NHRIs’ regional cooperation. Suggested actions are outlined to provide food for thought at the different levels of EU policy makers and, of ENNHRI and individual NHRIs.

Upholding respect for rule of law, human rights and democracy in EU member states

Faced with the urgency to strengthen responses to challenges to the rule of law, human rights and democracy within the EU, EU institutions and bodies have been seeking a more strategic and comprehensive approach to these issues. This section considers the key initiatives taken forward in the past year by the different EU actors.

European Commission's complementary initiatives

The European Commission ('Commission') has initiated a number of complementary and closely interlinked policy initiatives, led by the Directorate-General for Justice.

Among those, the newly established [Rule of Law Review Cycle](#), which the Commission announced in its July 2019 [Communication](#), includes an annual report on the rule of law situation in all the EU Member States. The Commission's qualitative assessment, which will each year focus on selected rule of law areas, is intended to assist in the early detection of emerging rule of law problems, and to feed into other existing mechanisms and policy processes. These include:

- technical dialogue with Member States, both at the level of individual EU countries, through the [Rule of Law Framework](#), and within an EU-wide network of national rule of law contact points; and
- enforcement action, which may concretise in infringement proceedings and/or the activation of the mechanisms set out in Article 7 of the EU Treaty.

The Commission has encouraged Member States to hold national debates on the rule of law reports both at the level of governments and before national parliaments. The Commission has invited the Council and the European Parliament to use the reports for their further engagement on rule of law issues and as a basis for dedicated inter-institutional follow up.

NHRIs play a key role in steering debate at national level, in raising awareness on the reports and in contributing to the implementation of the necessary measures to address identified concerns. Continuous cooperation between the Commission and NHRIs is important also in view of the preparation of future rule of law reports.

Highlighting the unique role of NHRIs as both contributors and beneficiaries of EU rule of law monitoring, and building on NHRIs' collective reflections on how to take forward a strategic engagement based on a united approach, ENNHRI made a submission to the Commission's first annual Rule of Law Review Cycle. The initial Rule of Law Report published by the Commission (30 September 2020) reflects its recognition of NHRIs' role and input in this process. It expressly recognizes that NHRIs "play an important role as rule of law safeguard and can provide an independent check on the system in a rule of law crisis". It also identifies the work of NHRIs as an indicator of the rule of law and stresses that "checks and balances rely on ... effective independent authorities such as ombudsperson institutions or national human rights. It includes, in all country chapters, considerations regarding the establishment and accreditation status of NHRIs as indicators related to the institutional systems of checks and balances. Information and sources referenced in country chapters also show that NHRIs' input on national developments was overall valued and considered by the Commission for the purpose of the country assessments.

The Commission has also consulted all EU NHRIs and ENNHRI for the development of a revised Strategy on the effective implementation of the EU Charter of Fundamental Rights. The revised Strategy, which the Commission will publish in December 2020, outlines the Commission's vision on how to improve the implementation and awareness of the Charter at both the national and EU levels. Early indications suggest that the new Charter Strategy will place more emphasis on the national level, compared to the first Strategy, which focused mostly on EU policy making. The role of NHRIs in implementing the Charter is highlighted in the Council Conclusions 2019 according to which NHRIs "play a crucial role in the protection and promotion of fundamental rights and ensuring compliance with the Charter". The new Charter Strategy is expected to include a new approach to the European Commission's annual reports on the EU Charter, which should give more prominence to the Charter's implementation at national level and could thus offer another opportunity for NHRI engagement and input.

In its [submission](#) to the European Commission, ENNHRI has suggested to place national implementation at the core of the revised Strategy, making six key recommendations:

- To favour joined-up approaches involving all national actors in the Charter's enforcement chain as a means to increase Member States' commitment and ownership of the Charter;
- To further recognise, build strategic cooperation with and support NHRIs as national guardians of the Charter and fundamental rights, in line with their [unique legal mandate](#);
- To make the Charter more operational by carrying out EU monitoring leading to country-specific findings, and increasing support for national actors addressing implementation challenges;
- To showcase the Charter's added value within and in synergy with the wider human rights frameworks, including through focus on key and emerging challenges, such as [COVID-19](#);
- To interconnect the Charter Strategy with EU policies and tools on rule of law and democracy;
- To provide better access to information on EU fundamental rights policy and law-making for national human rights defenders and their representative organisations, such as ENNHRI.

Democracy

The forthcoming [European Democracy Action Plan](#) (EDAP) will propose EU measures aimed at enhancing citizens' right to participate in the democratic system across the EU, through informed decision-making, free from unlawful interference. Particular focus is put on electoral integrity, media freedom, media pluralism and disinformation. The Commission is expected to publish the EDAP in early December 2020.

ENNHRI [contributed](#) to the public consultation on the EDAP, where it underlined the importance to ensure its complementarity with other policy initiatives and to recognise and support the role of NHRIs in ensuring democratic checks and balances and civic participation in democratic systems by:

- putting measures in place to guarantee a safe and enabling environment for NHRIs to operate independently and effectively, especially in the context of shrinking democratic space;
- providing further financial support to ENNHRI's role to sustain and deepen NHRIs' cross-border cooperation and partnership with the EU towards safeguarding democracy in Europe.

Monitoring and reporting on the situation of rule of law, human rights and democracy in the EU Member States is also part of the [EU's commitment](#) to support progress on the Sustainable Development Goals (SDGs), which include, under [SDG 16](#), promoting the rule of law, protecting fundamental freedoms and strengthening the institutional framework relevant to democracy and respect for human rights. The cross-sectoral initiative is led by the Commission's Secretariat General, which also benefits from the support and advice of a dedicated [multi-stakeholder platform](#).

ENNHRI has intensively engaged to achieve the full integration of binding international human rights standards within the SDGs and to value NHRIs' role in the SDGs Agenda. This includes:

- facilitating NHRIs' cooperation in this area;
- build NHRIs' awareness and capacity to contribute to SDGs implementation. This concretised, for example, in a [Guide](#) and a [webinar](#) for NHRIs on addressing poverty through a human rights-based approach;
- efforts to facilitate European NHRIs engagement with regional SDG processes. ENNHRI has among others [contributed](#) to the intergovernmental Regional Forum on Sustainable Development for the UNECE Region.

COVID-19

The Commission is also carrying out an ongoing [monitoring](#) of the application of emergency measures adopted by EU Member States as part of their response to the COVID-19 pandemic as regards their impact on rule of law, democracy and fundamental rights, until emergency measures are phased out. While no concrete follow-up action has been taken so far, the information collected has visibly informed the Commission's key policy initiatives in this area.

ENNHRI has provided an [overview](#) of NHRIs' responses to the challenges to rule of law, human rights and democracy related to the pandemic outbreak. ENNHRI has highlighted the importance of considering these challenges as a cross-cutting focus as part of the EU's upcoming initiatives in this area.

ENNHRI advocated for all human rights to guide the implementation of the national and EU responses to the pandemic in a network-wide [statement](#). In another [declaration](#), ENNHRI emphasized the need for regional measures, such as the EU recovery fund, to safeguard and contribute to the full realisation of economic and social rights. In its [submission](#) to the European Commission's first annual rule of law monitoring cycle, ENNHRI included information on the impact of national responses to the COVID-19 outbreak on the status of rule of law and human rights.

ENNHRI has also carried out different activities to support its members during the pandemic, such as through providing a shared database and virtual space for [exchange](#) of good practices, new Guidance on monitoring [migrants'](#) human rights at borders, and a [webinar](#) on monitoring closed institutions for persons with disabilities, in the COVID-19 context, as well as [blog posts](#) on how NHRIs are addressing the challenges faced. ENNHRI has also helped build NHRI capacity in this regard, through contributing to a [Guidance](#) on emergency measures, in cooperation with ODIHR, and providing [training](#) on fostering effective communication and a constructive narrative on COVID-19 and human rights within its network. Highlighting the role of NHRIs in regard of the COVID-19, the importance of consulting NHRIs when adopting restrictive measures must be kept in mind.

Looking ahead

- ENNHRI has already planned to make its joint submission to the Commission's annual Rule of Law Reports a regular exercise, subject to sufficient resources. NHRIs could take this into account in the context of their regular human rights monitoring and reporting to create efficiencies in reporting.
- The Commission should formalise NHRIs' role in the Rule of Law Review Cycle, to facilitate their meaningful contribution to the different stages of the process (preparation, including definition of the monitoring scope; qualitative assessment, through involvement in country visits and/or bilateral discussions; follow-up, including exploring opportunities to inform bilateral and multilateral technical dialogues). This could be achieved through the conclusion of a memorandum of understanding with ENNHRI, whose implementation should be supported by adequate resources.
- NHRIs should enhance their role in national follow up to the Commission's Rule of Law Reports, insofar as their mandate, resources and capacity allow. This may include the broad spectrum of NHRI functions, including advice to government, dialogue with the national Parliament, strategic litigation, cooperation with civil society, triggering or otherwise engaging in national debates on country chapters, or exploring opportunities to cooperate with national contact points. Sharing best practices among NHRIs would also enhance NHRIs' role in national follow up. The Commission should use cooperation channels with national actors, including dialogues at technical and political level, to support NHRIs in their efforts. Particular attention should be paid to the follow-up of NHRI recommendations as a benchmark to measure progress on rule of law and human rights at national level.
- The Commission should secure a coherent recognition of NHRIs' role in the forthcoming EDAP, the revised Strategy on the EU Charter and SDGs' progress monitoring, laying a basis for their meaningful involvement in the implementation of these policy initiatives.
- The Commission should strengthen the EU's recognition of NHRIs and of the international standards set by the UN Paris Principles, by reaffirming and embedding those standards as part of its efforts to constitute an area of freedom

security and justice where fundamental rights as enshrined in the EU Charter are fully respected, in accordance with Article 67 TFEU and Article 6 TEU. This could in particular be reflected in a Commission communication and/or in a Recommendation to the Member States adopted on the basis of Article 292 TFEU.

- The Commission should further clarify, in consultation with ENNHRI, possible safeguards for NHRIs (and other human rights defenders) to prevent reprisals for their work, including their cooperation with the Commission, and to react in support of NHRIs if their compliance with the Paris Principles comes under threat.

European Parliament's engagement to deepen scrutiny and increase consistency

The European Parliament has been making intense use of its own-initiative powers to draw attention to challenges facing the rule of law, human rights and democracy in the Member States and to actively contribute to discussions on how to strengthen the EU's toolbox to better promote and protect these values within the EU's borders.

Key input to these efforts is provided by the Committee on Civil Liberties, Justice and Home Affairs (LIBE). Besides regularly (annually or biennially) drafting reports on the situation of fundamental rights in the EU, LIBE has set up since 2018 a dedicated rule of law working group, whose mandate was expanded in the new legislative term to become the [Democracy, Rule of Law and Fundamental Rights Monitoring Group](#) (DRFMG). The monitoring group has facilitated the adoption of important Parliament resolutions drawing attention to emerging challenges and urging the other EU institutions to take action to address them. Among the group's major initiatives, it is worth to mention the most recent country resolutions on [Poland](#), [Hungary](#) and [Bulgaria](#), as well as the [resolution on the COVID-19 pandemic and its consequences](#), which addressed among others the impact on rule of law, human rights and democracy of measures taken by EU countries in response to the outbreak. Following the FRA [report](#) 'Strong and effective national human rights institutions – challenges, promising practices and opportunities', the monitoring group organised a meeting on 12 November which included a discussion on the national situation in Poland. Particular focus was paid on the NHRI's situation and the independence of the judiciary.

LIBE has also advocated since 2016 for enhanced coordination and cooperation between EU institutions on these issues. These efforts have recently led to the adoption of a Parliament [resolution](#) on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights. The resolution calls for a more comprehensive monitoring of the respect of the whole range of EU values enshrined in Article 2 of the EU Treaty, to be accompanied by country-specific recommendations and swift follow-up action by the EU institutions, based on an Inter-Institutional Agreement. The Commission and the Council are now expected to engage on and start concrete discussions on this proposal.

LIBE also makes use of the European Parliament's [channels of cooperation](#) with national parliaments to discuss issues related to the rule of law, human rights and democracy in the EU. In this context, it [invited](#) representatives of national parliaments to the interparliamentary committee [meeting](#) on "The first Annual Rule of Law Report by the Commission and the role of national Parliaments" held on 10 November. The meeting acted as a forum for members of national parliaments to share their views and experience on the role of national parliaments in the context of the EU efforts to protect and enforce the EU values, against the background of the Commission's Rule of Law report, the DRFMG monitoring of the impact of COVID-19 measures on rule of law, human rights and democracy in the EU and the future discussions on a new EU Mechanism on Democracy, the Rule of Law and Fundamental Rights.

NHRIs play a key role in connecting EU-level rule of law discussions to the national level. NHRIs have the potential to bring EU-level discussions and developments to the attention of domestic actors and maximise impacts of EU efforts using their promotion and protection roles. At the same time, NHRIs' role in feeding EU discussions with the national perspectives is beneficial to the EU's assessment of existing concerns and the follow up needed, and must therefore be valued. In this regard, opportunities for cooperation between ENNHRI / NHRIs and the European Parliament and Commission with a view to triggering national debates, including before national parliaments, are key and should be further explored. National debates can also be inspired by the exchange of good practices and mutual learning on NHRIs' experiences across the Member States.

Following up on ENNHRI's recommendations, the Parliament's proposal for an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights envisages a possible role for NHRIs from providing input to facilitating implementation and monitoring of recommendations. It also acknowledges that NHRIs in compliance with the UN Paris Principles can serve as indicator of respect for democracy, rule of law and fundamental rights in EU Member States.

Looking ahead

- The European Parliament should strengthen the EU's recognition of NHRIs and of the international standards set by the UN Paris Principles, by reaffirming and embedding those standards in a Resolution on NHRIs. Such a Resolution could encourage EU Member States to establish and strengthen NHRIs domestically as well as promote and support the existence of independent and effective NHRIs in third countries as part of the EU's cooperation with third countries.
- In line with the European Parliament's proposal, ENNHRI and NHRIs should be recognised as privileged partners in the context of a future EU Mechanism on Democracy, Rule of Law and Fundamental Rights, with modalities to be defined in close consultation with ENNHRI and NHRIs.
- The European Parliament should consider NHRIs' annual fundamental rights reports before national parliaments and ENNHRI's report on rule of law for its own work, including the European Parliament's annual fundamental rights resolution and its work with national parliaments.
- LIBE should regularly involve ENNHRI and NHRIs in their interparliamentary cooperation initiatives on rule of law, human rights and democracy and facilitate the interaction between NHRIs and Members of the European Parliament.
- LIBE DRFMG should regularly engage with ENNHRI and individual NHRIs for the purpose of its monitoring functions. ENNHRI could facilitate outreach and cooperation if resources and capacity allow.
- The European Parliament and LIBE DRFMG should consider closer engagement with ENNHRI and individual NHRIs to support their work in compliance with the Paris Principles. Effective cooperation of the Parliament with NHRIs should be encouraged, including follow-up of NHRI recommendations and annual reports and consultation of NHRIs in relevant law-making processes should be enhanced. Support when NHRIs are facing threats in a context of wider fundamental rights and rule of law challenges at national level should be reinforced.

The Council as a forum for technical and political dialogue between EU governments

Gathering representatives of EU governments, the Council is the natural forum for technical and political dialogue between Member States on issues related to the rule of law, human rights and democracy in the EU.

Technical dialogue is pursued primarily through the [Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons](#) (FREMP), which meets regularly to facilitate exchange of views between Member States' officials with the aim of reaching common positions on key legislative and policy initiatives. The drafting and negotiation of annual Council Conclusions on fundamental rights and rule of law are among FREMP's regular activities.

Opportunities for political dialogue are offered by the Council in its ministerial configurations. In particular, rule of law issues are generally addressed within the [General Affairs Council](#) (GAC), mainly made up of the European affairs ministers. The annual rule of law dialogue addressing pan-European challenges will now be accompanied, on the initiative of the current German Presidency of the Council, by a new [rule of law peer review mechanism](#): a bi-yearly country-specific discussion, focussing each time on five country chapters of the latest Rule of law report adopted by the European Commission. The [first peer review dialogue](#) took place on 17 November and concerned, following the protocol order, Belgium, Bulgaria, Czech Republic, Denmark and Estonia.

ENNHRI regularly engages with FREMP and with the rotating Presidencies of the Council in order to inform the work of the Council by conveying NHRIs' views on issues related to rule of law, human rights and democracy of EU and national relevance.

Looking ahead

- GAC should ensure that progress on the establishment and strengthening of NHRIs is systematically addressed as part of the annual rule of law dialogue and the peer review mechanism. To that effect, NHRIs should, where appropriate, be invited to intervene in the debate.

- FREMP should routinely engage in an exchange of views with ENNHRI when drafting and discussing Council conclusions relevant to rule of law, human rights and democracy, to make sure that NHRIs' perspectives are duly taken into account.
- NHRIs should explore opportunities to establish regular cooperation with FREMP national representatives and officials involved in preparations to GAC meetings.

Anchoring EU funding to the promotion and protection of rule of law, human rights and democracy

Reflections on anchoring EU funding to the objective of better promoting and protecting rule of law, human rights and democracy have been ongoing in the context of the negotiations of the next EU multi-annual financial framework (MFF). Discussions have revolved around three core aspects.

The first concerns the idea of making the granting of EU funds conditional upon the respect for the rule of law. The Council and the Parliament have struck a provisional agreement for [regulation](#) on a general regime of conditionality for the protection of the Union budget on 5 November. The Regulation establishes the rules necessary for the protection of the Union budget in the case of breaches of the principles of the rule of law in the Member States, to be understood having regard to the other and principles enshrined in Article 2 TEU, such as freedom, democracy, equality, and respect for human rights including the rights of minorities.

However, despite a provisional agreement, the Regulation is still opposed by some Member States, which declared their reservation to the approval of the future Union budget if the Regulation is adopted in its current form. The second aspect is related to considering respect for human rights as enshrined in the EU Charter as an 'enabling condition' for the access to and disbursement of EU structural funds by Member States. The new framework provided by the [revised Common Provisions Regulation](#), as proposed by the Commission, would replace and expand previously existing rules on 'ex-ante conditionality' and would allow for a strengthened and closer involvement of NHRIs including in the preparation of national implementation programmes and through participation in monitoring committees.

The third aspect relates to the establishment of funding priorities, and the allocation of adequate resources, to actors contributing to the promotion and protection of rule of law, human rights and democracy at national level, under the future Justice, Rights and Values Programme.

ENNHRI has engaged with the Commission in order to inform its reflections on how to best value NHRIs' role in helping Member States to fulfil the new enabling condition on the EU Charter, while ensuring that NHRIs are adequately supported and that the envisaged process is sustainable for NHRIs. Given its role to support regional cooperation and exchange, and facilitate engagement between NHRIs and the EU, ENNHRI has also called for greater resources to support this work. Finally, ENNHRI has advised the Commission on how to best channel financial support to national actors engaged on rule of law, human rights and democracy issues, including NHRIs, to enable them to better fulfil their promotion and protection role.

Looking ahead

- Once the proposal on rule of law conditionality becomes law, the Commission should engage in a discussion with ENNHRI and NHRIs on how to best value NHRIs' contribution to the qualitative assessment of the existence of a breach of the principles of the rule of law , considering NHRIs' mandate, capacity, resources as well as potential risks.
- Once the proposal on rule of law conditionality becomes law, the Commission should engage in a discussion with ENNHRI and NHRIs on how to ensure that end beneficiaries benefit from alternative distribution channels in the context of the application of the rule of law conditionality mechanism.
- ENNHRI should facilitate NHRIs' reflections on how to best make use of the opportunity to contribute to the monitoring of the respect of the EU Charter enabling condition, considering NHRIs' mandate, capacity, resources as well as potential risks.
- Once the proposal for the Justice, Rights and Values Programme becomes law, the Commission should define a funding strategy to enable ENNHRI to further build capacity, enhance cooperation and exchange and support NHRIs in their role of promoting and protecting a culture of rule of law, human rights and democracy at regional and national level.

The key supporting role of the EU Agency for Fundamental Rights (FRA)

FRA is the independent centre of reference and excellence on human rights in the EU. The Agency works with stakeholders from the local to international level, sharing evidence-based insights and expert advice with policy- and decision-makers. Among its many projects contributing to the EU's efforts to promote and protect rule of law, human rights and democracy in the EU, FRA has set up an online gateway, called [Fundamental Rights Information System](#) (EFRIS), bringing together data and information from existing human rights databases, and enabling viewing and analysis of relevant assessments of rule of law and human rights in the EU.

FRA is closely engaged in helping to strengthen national human rights protection systems and cooperates with NHRIs and ENNHRI on a regular basis. In a [recent study](#), FRA has explored the relevant developments, challenges and ways to maximise impact of NHRIs across the EU as well as the Republic of North Macedonia, Serbia and the UK. Based on the study's findings, FRA's opinions include suggestions on how to enhance NHRIs' role at EU level by further drawing on them when monitoring the implementation of human rights commitments and more regularly engaging with them on issues such as the rule of law or use of the EU Charter.

ENNHRI has closely engaged with FRA to inform their study and is committed to following up on its findings both in terms of further facilitating exchanges of practices and information between NHRIs and in terms of advising EU and national policy makers on how to best value NHRIs' potential.

ENNHRI and FRA enjoy a long-standing relationship and, over time, have cooperated in different areas of work. For instance, FRA and ENNHRI have co-organised several trainings for NHRIs on the EU Charter of Fundamental Rights, most recently at the [NHRI Academy 2020](#). They have worked closely in the field of asylum and migration and, especially, on the [human rights of migrants at borders](#) and on [Frontex's new fundamental rights monitors](#). ENNHRI has also actively engaged with FRA in the context of [the EU's CRPD Monitoring Mechanism](#), [older persons' human rights](#) and on communicating human rights.

Looking ahead

- FRA should strongly support the independent and formalised participatory role of NHRIs and ENNHRI in relevant EU processes. The support of FRA to protect the independence of NHRIs is vital. As the FRA report on NHRIs suggests, support of the EU for Paris Principle compliant NHRIs should be strengthened.
- FRA should consider including in the EFRIS database updated information on the establishment and accreditation of NHRIs in the EU, as well as NHRIs' reports on the human rights situation. This could facilitate the EU's support for NHRIs in compliance with the Paris Principles.
- FRA should support and join ENNHRI in offering capacity building activities to advise NHRIs on how to maximise synergies between their work at national level and relevant EU policy initiatives. These could be envisaged on a bilateral or regional basis.
- FRA should support and join ENNHRI in helping NHRIs to establish or reinforce their national networks of cooperation with governmental and non-governmental actors (including members of parliaments, the judiciary, other independent institutions, civil society organisations and think tanks) with a view to advising on and promoting the effective implementation of measures needed to address challenges to the rule of law, human rights and democracy identified in each country by EU monitoring mechanisms.
- FRA should consider involving ENNHRI and NHRIs on the issue of the 'independent monitoring mechanism for fundamental rights' at borders in all EU MSs, whose establishment is provided in the Commission's proposal for a new Pact on Migration and Asylum.

Promoting rule of law, human rights and democracy in third countries as part of the EU's external action

The protection and promotion of democracy, human rights and rule of law is a common requirement for all EU action both at home and abroad. The EU has been strengthening its efforts to further operationalise incentives and criteria related to the promotion and protection of rule of law, human rights and democracy as well as respect for fundamental freedoms as key cross-cutting policy objectives in the EU's enlargement and neighbourhood policy as well as in its external action. This section outlines the core instruments supporting these efforts.

A strategic vision for rule of law, human rights and democracy across external action

Support to independent NHRIs in line with the UN Paris Principles is stressed as a priority within the overarching objective of promoting a global system for human rights and democracy as part of the EU external human rights policy for the next 5 years. This is underlined in the European Commission's and High Representative's [joint communication](#) on the EU Human Rights and Democracy Action Plan 2020–2024 which was [adopted](#) by the Council on 18 November. In the Action Plan, the EU commits itself to support and regularly engage with NHRIs, including in the context of its regular human rights dialogues with third countries and regional organisations. The involvement of NHRIs in human rights dialogues is of relevance since national actors have detailed knowledge of the situation on the ground.

Furthermore, the Action Plan also commits the EU to support regional NHRI networks to facilitate peer exchange. As the only European network bringing together all NHRIs from across the region, including NHRIs from within the EU, this support for ENNHRI could help ensure the spread of EU values and assist in internal / external coherence in EU policy. In addition to the direct references to strengthened partnership with NHRIs, the Action Plan also includes NHRIs in its references to support for and cooperation with human rights defenders, which includes NHRIs. When under threat, NHRIs and other HRDs can receive support through [protectdefenders.eu](#) and the EU Human Rights Defenders mechanism.

The EU Human Rights and Democracy Action Plan 2020–2024 includes five lines of action which are: protecting and empowering individuals; building resilient, inclusive and democratic societies; promoting global systems on human rights and democracy; new

technologies, harnessing opportunities and addressing challenges; and delivering by working together.

NHRIs play a key role in implementing the Action Plan: they are not only involved through direct actions on NHRIs, but once NHRIs are independent and strong, they can work with the EU for the fulfilment of all other actions. They boost local ownership, while reinforcing multilateral processes. Their establishment, compliance with the Paris Principles and enabling environment provide indicators for SDGs and rule of law, and their work to promote and protect human rights assists in the fulfilment of actions across EU external policy on Human Rights and Democracy.

Each country shall develop a concretized country strategy, a specific paper for implementation. Through their expertise on the human rights situation in-country, NHRIs are crucial actors to contribute to the development and implementation of country strategies. EU Delegations will consult NHRIs on the country strategy, and engage with NHRIs and other stakeholders in ensuring that the selected priorities are taken forward.

In its [submission](#) on the forthcoming EU Action Plan for Human Rights and Democracy, ENNHRI has underlined the importance of including NHRIs as key partners in the implementation of the Action Plan. It also highlighted the importance of continued support from the EU for NHRIs working in challenging contexts. ENNHRI has also prepared, in cooperation with the European External Action service (EEAS), a [guide](#) for engaging with NHRIs, for use by EU Delegations and Brussels-based EU officials. A second training on NHRIs for EUD human rights focal points and HQ staff will be provided by ENNHRI in November 2020.

Looking ahead

- The EU should secure a coherent recognition of NHRIs in compliance with the Paris Principles as indicators of progress on rule of law, human rights and democracy. This could be linked to the financial and political support provided for the establishment and strengthening of independent and effective NHRIs in third countries.
- The EU should provide opportunities to NHRIs and ENNHRI to participate, as appropriate, in initiatives on human rights, rule of law and governance, and in technical bilateral and multilateral dialogues, and could report on success stories in the annual report on human rights and democracy.
- NHRIs should proactively get involved in national follow-up to EU recommendations, insofar as their mandate, resources and capacity allow. This may include targeted dialogue with parliaments and regular cooperation with governmental actors. EUDs should collaborate with NHRIs in their efforts.
- The EEAS together with the EU DELs could establish stronger and more structured opportunities for cooperation with NHRIs from third countries, and consider the adoption of Guidelines on NHRIs.
- ENNHRI could consider to provide further guidance to EEAS and the Commission (DG NEAR, DG DEVCO and DG ECHO) on NHRIs, including through staff training and information sharing, and potentially guidance for NHRIs in third states on engaging with the EU.
- The EU should consider further support to ENNHRI for regional and cross-regional cooperation between NHRIs, and between NHRIs and the EU, to provide expert information about and from NHRIs, and also to promote exchange of practices, capacity- and institution building, peer support and solidarity between NHRIs.
- The EU should consider further political, technical and financial support and cooperation with NHRIs, in line with the EU Action Plan for Human Rights and Democracy and ENNHRI's [Guide](#) for engaging with NHRIs in external action.

- For the independence and effectiveness of NHRIs it is key that EU Delegations stress the importance of the accreditation process and implementation of SCA recommendations to national parliaments and/or governments.
- The EU, including its Special Representative for Human Rights, should provide political support through the high-level engagement to NHRIs that come under threat, or experience external challenges to their independence and effective functioning in various third countries. EU DELs could also issue public statements and/or raise concerns with the Government/Parliament behind closed doors, to show support and indicate the standards states should follow.

Supporting and monitoring progress as part of the enlargement negotiations

For enlargement countries (candidates: Albania, North Macedonia, Montenegro, Serbia and Turkey; and potential candidates: Bosnia and Herzegovina and Kosovo¹), the existence of stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities is the first criterion for accession to the EU (so called 'Copenhagen criteria'). As such, strengthening the national framework for the promotion and protection of these values is a key cross-cutting policy objective within EU's efforts to promote structural reforms, realised, among others, through the [instrument for Pre-accession Assistance](#) and the [Stabilisation and Association Process](#) (the latter being relevant to Albania, Bosnia and Herzegovina, Kosovo*, Montenegro, North Macedonia and Serbia).

Key benchmarks are firmly [embedded](#) in accession negotiations. The European Commission [issues](#) annual Communications on the EU Enlargement policy where it gives an overview of progress made and sets out guidelines on reform priorities. In the course of 2020, the European Commission has revised the enlargement methodology which now includes the promotion of and respect for democracy, rule of law and fundamental rights not only as a political benchmark for accession, but also as a "fundamental" precondition to any form of enlargement. Sufficient reforms related to the rule of law and human rights must be achieved in order to open a negotiation process.

¹ *This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence*

Also, the proposal for a regulation on establishing the Instrument for Pre-accession Assistance (IPA III) underlines a fundamentals first approach, where more reforms are paired up with more funding. In cases of backslide, on the other hand, there are proposed measures that could lead to partial suspension of negotiations or reduction of financial assistance. Although NHRIs, and their reporting to DG NEAR through ENNHRI, is included in national reports, the lack of consistency shows a need to raise the awareness within the EU of the mandate of NHRIs, beyond that of Ombuds-institutions or Equality bodies, and encompassing a broad mandate on rule of law, democracy and fundamental rights. ENNHRI will provide training for relevant staff from EEAS, EU Delegations and the European Commission in November 2020.

ENNHRI has coordinated a joint NHRIs' [submission](#) feeding into the European Commission's Enlargement Package 2020. This was complemented by the additional information collected in the ENNHRI [regional report](#) compiling NHRIs' submissions on the state of rule of law in each country. The [2020 Enlargement Package](#) adopted by the Commission shows that the independence and effectiveness of NHRIs, and the government's responsiveness to their recommendations, is regarded as an indicator to measure progress on the human rights protection systems and on the good functioning of democratic institutions.

Looking ahead

- The Commission should more consistently recognise and include the existence and functioning of an NHRI in compliance with the Paris Principles as an indicator for respect of democracy, rule of law and fundamental rights in its policies and reports concerning enlargement countries.
- Working with NHRIs could urge state authorities to ensure a higher level of implementation of NHRIs' recommendations. The state authorities' follow-up of NHRI recommendations should be included as a standalone benchmark for national action plans to meet accession "fundamentals" and for Chapter 23 negotiations.
- NHRIs' joint submission to the Commission's annual Enlargement Package should be turned into a regular exercise, subject to the allocation of sufficient resources

enabling ENNHRI to further build NHRIs' capacity, plan for and coordinate the reporting process. Such additional support can be considered as part of the conclusion of a (framework) partnership with ENNHRI under the Neighborhood, Development and International Cooperation Instrument.

- NHRIs should proactively engage in national follow up to the Commission's recommendations, insofar as their mandate, resources and capacity allow. This may include targeted dialogue with parliaments and regular cooperation with governmental actors involved in the accession process. The Commission/EUDs should facilitate NHRIs' engagement with national actors, including by ensuring their involvement in country visits and/or bilateral discussions and the follow-up.

Key tools offered by the Eastern Partnership

As part of the [European Neighbourhood Policy](#) (ENP), the Eastern Partnership (EaP) offers a structured framework for cooperation with eastern neighbouring countries including Armenia, Azerbaijan, Georgia, Moldova and Ukraine. EaP countries' relations with the EU are grounded in bilateral agreements, including Association Agreements, and regional cooperation initiatives, financed through the European Neighbourhood Instrument.

Efforts to support partner countries in advancing on rule of law, human rights and democracy are firmly anchored among the priorities set for the [Eastern Partnership policy beyond 2020](#). Progress is driven through bilateral dialogues and funding incentives. A dedicated thematic expert panel offers opportunities for technical dialogue on rule of law issues within the [framework](#) supporting EaP multilateral dialogues. At the recent online EaP Summit, states expressed commitment to human rights and rule of law; the European Commission in preparation of the next in-person summit is developing a new set of tangible deliverables building on the current agenda, with the aim to put the recommendations of the [recent European Commission Communication](#) into practice. Continued engagement with the EaP countries remains a key priority for the EU. In this Communication, the European Commission mentions five broad policy objectives of the future Eastern Partnership, including amongst others accountable institutions, the rule of law, and security as well as resilient, fair and inclusive societies. The same level of priority is given to the different rule of law reforms.

The progress in complying with the objectives is reflected in funding and financial support; where there is more progress there is more funding and vice versa

The ENNHRI [regional report](#) compiling NHRIs' submissions on the state of rule of law in Europe includes contributions on all EaP countries where ENNHRI has a member. ENNHRI has also co-hosted Eastern Partnership Ombuds [events](#) at the European Parliament, and included DG NEAR in its work on the role of [NHRIs in situations of conflict and post-conflict](#).

Looking ahead

- The Commission should formalise NHRIs' role in monitoring and reporting the tangible deliverables of the EaP, to facilitate their meaningful contribution to the different stages of the process (preparation, including definition of guiding questions; qualitative assessment, through involvement in country visits and/or bilateral discussions; follow-up, including exploring opportunities to inform technical dialogues).
- Additional support to ENNHRI should be considered to further build NHRIs' capacity, coordinate their reporting and facilitate further regional cooperation, including with Brussels-based actors. Such additional support can be considered as part of the conclusion of a (framework) partnership with ENNHRI under the Neighborhood, Development and International Cooperation Instrument.
- Additional support to NHRIs should be considered (possibly through specific project funding) to reinforce their capacity to address pre- and post-crisis needs with specific attention to: confidence-building, mediation, dialogue and reconciliation measures between NHRIs; empowering NHRI practices that promote prevention and human rights-based post-conflict recovery; as well as promoting an enabling environment for NHRIs and their compliance with the UN Paris Principles.

The EU's collective engagement in the European Parliament and the Council

The [Committee on Foreign Affairs](#) (AFET) and its subcommittee on human rights (DROI) are the driving force behind the European Parliament's engagement on rule of law, human rights and democracy in third countries. Thematic and geographic issues are mainly addressed through hearings, monitoring initiatives and resolutions, while the instrument of interparliamentary cooperation seems to remain rather unexplored in this context. DROI scrutinises the implementation of EU human rights policy, its impact and contribution to effectively promoting respect for human rights, rule of law and democracy in partner countries. Facilitation by EU actors in order to enhance cooperation between NHRIs and EU Parliament as well as other actors is crucial for having an effectively functioning rule of law network. From the point of view of the independence and effectiveness of NHRIs, EU Delegations emphasising the importance of the accreditation process and of implementing SCA recommendations to national parliaments is crucial.

From the Member States' side, the [Working Party on Human rights](#) (COHOM) deals with human rights aspects of the external relations of the EU. It helps identify strategic priorities and promotes and oversees the implementation of EU policy in the field of human rights and democracy.

The DROI Committee regularly meets with NHRI representatives during missions to third countries and invites them as well as the Secretariat as speakers. In preparation of the [Human Rights Week in 2018](#) ENNHRI worked closely with DROI Secretariat, who consulted ENNHRI on their own-initiative reports such as corruption and human rights. ENNHRI was invited in 2014 to speak at [COHOM on engagement with NHRIs](#) in the EU external policies and in 2017 on the role of NHRIs in the implementation of the [EU Action Plan on Human Rights and Democracy 2015–2019](#). At the 2019 [joint meeting of COHOM and FREMP](#) ENNHRI advocated for coherent EU requirements to establish and strengthen NHRIs in compliance with the UN Paris Principles.

Looking ahead

- The European Parliament should strengthen the EU's recognition of NHRIs and of the international standards set by the UN Paris Principles, by reaffirming and embedding those standards in a Resolution on NHRIs. Such a Resolution could encourage EU Member States to establish and strengthen NHRIs domestically as well as promote and support the existence of independent and effective NHRIs in third countries as part of the EU's cooperation with third countries, and encourage the European Commission and the EEAS to support these efforts.
- AFET and DROI should regularly engage with European NHRIs for the purpose of their monitoring functions on enlargement and eastern neighboring countries. ENNHRI could facilitate outreach and cooperation if resources and capacity allow.
- COHOM should routinely engage in an exchange of views with ENNHRI when addressing rule of law, human rights and democracy in enlargement and eastern neighboring countries, to make sure that NHRIs' perspectives are duly taken into account.

Opportunities to increase coherence and strengthen impacts

The scope and impacts of the initiatives, and related opportunities for further engagement, considered in this paper differ depending on the powers of the actor involved and on the tools offered by the concerned policy process. Yet, a closer analysis shows that there is room for enhanced synergies and cross-fertilisation. The following aspects could be explored in this context:

- A more coherent and formal EU's recognition of NHRIs' role to boost support for independent and effective NHRIs across the region: the recognition by the EU of NHRIs both as relevant indicators to assess the national and regional situation on rule of law, human rights and democracy and as key partners feeding the EU's assessment and follow-up could be made more consistent and structured in both the internal and external dimension. This could be built on to prompt further progress on the establishment and strengthening of independent and effective NHRIs across the whole region.
 - NHRIs should be taken into account as serious interlocutors in all relevant processes. Their unique role as human rights defenders between the state and civil society and at the same time as institutions defending other human rights defenders is significant. As stated by the EU Special Representative for Human Rights, "National Human Rights Institution will not only have the official information from the Government but also the perspective of the civil society in that country".
 - The recognition of NHRIs at EU level links to the national level; the greater the role of the NHRIs at EU level, the more it encourages States to strengthen and establish NHRIs at national level. On the other hand, collaboration with the EU and the recognition of NHRIs at national level strengthens their status at EU level.
- Efforts to level up progress across the spectrum of EU internal and external action: for example, the idea of valuing debates before national parliaments as a space to discuss EU's findings and follow-up, which the Commission promotes as part of its Rule of Law Review Cycle, could equally be explored in the context of external action. In the same vein, the Commission could build on the external

action experience to establish a protection mechanism for human rights defenders in the EU.

- Increased synergies with the work of other regional players: strengthened cooperation could be pursued between the EU and other regional players such as the Council of Europe (including the Committee of Ministers, PACE, the Venice Commission and GRECO), OSCE ODIHR and the UN Office of the High Commissioner on Human Rights (OHCHR) to deepen engagement with NHRIs and to promote a conducive environment for NHRIs and other human rights defenders in the region.

In light of increasing coherence and strengthening impacts, the importance of cooperation between NHRIs both within EU as well as outside of EU must be taken into account. By engaging in the exchange of knowledge and best practices NHRIs learn from each other and can strengthen their role. As only regional NHRI network bringing together NHRIs from EU Member States and third countries, ENNHRI is in a unique position to facilitate NHRI exchange that spreads EU values within and outside the EU, which strengthens coherent implementation of human rights, democracy and rule of law in Europe and bridges the EU with NHRIs from across the wider Europe region.

Looking ahead

- Based on a strengthened recognition of NHRIs' role in the rule of law, human rights and democracy architecture in EU internal and external action, the EU should explore how to best use available tools to support independent and effective NHRIs across the whole region. These may include a Recommendation addressed to EU Member States and the consistent reference to the establishment and strengthening of NHRIs in dialogues or negotiations with third countries.
- Recurrent joint reporting by NHRIs could promote coherence and synergies of the EU's efforts to monitor and drive progress on rule of law, human rights and democracy within and outside the EU.
- NHRIs should further consider making strategic use of EU processes for effecting change at national level, and how their national action (including before parliaments and governments) can be further leveraged by EU processes.
- The Commission and the EEAS should work together to consolidate a comprehensive EU strategy to provide protection and support to human rights defenders, including NHRIs, under threat within and outside the EU.
- The EU should explore further opportunities for closer cooperation with the Council of Europe and OHCHR on how to best value NHRIs' role and input in regional initiatives on rule of law, human rights and democracy, including in the context of initiatives for the support and protection of human rights defenders.

