

How the EU can safeguard its 'fundamental values': two ideas

Written by Israel Butler, 24 June 2013

This paper outlines two initiatives that could be taken up by the EU institutions to improve compliance with fundamental rights, democracy and the rule of law by EU Member States. These measures would not require the introduction of new legislation or amendment of the EU treaties. Rather, they could be put into effect within a short time-frame through informal changes in internal policy by the institutions and inter-institutional agreements.

Country monitoring

In a [communication](#) of 2003, the Commission stated that Article 7 of the Treaty on European Union implied the need for a 'regular monitoring' mechanism. This would 'make it possible to detect... the risk of breaches of the EU's fundamental values. For this purpose, the Commission established a [network of independent experts on fundamental rights](#) which reported on rights implementation (including areas outside the scope of EU competence) by Member States on a country-by-country basis. The Commission could revive this network, which was discontinued after the establishment of the [EU Agency for Fundamental Rights](#).

The network could synthesise the country reports and recommendations produced by [Council of Europe](#) and [United Nations](#) human rights monitoring mechanisms, and the comparative reports of the Fundamental Rights Agency. This would avoid duplicating existing monitoring activities. The country synthesis reports could serve as the basis for Commission recommendations. The Member State under examination would be invited to explain how it intends to implement these recommendations during a joint meeting of the Commission, the Council's Working Party on Fundamental Rights, Citizens Rights and Free Movement of Persons, and the European Parliament's Committee on Civil Liberties, Justice and Home Affairs.

A fundamental rights litigation strategy

Democracy, fundamental rights and the rule of law are key to the proper implementation of the internal market and the area of freedom, security and justice. The reverse is also true. The Commission could develop a catalogue of existing EU legislation that indirectly protects the EU's fundamental values, and prioritise infringement proceedings where these rules are violated. Three examples follow:

- ▶ EU competition rules on [state aid](#) could be used to combat discriminatory advertising practices in the media market. Some governments in the EU actively interfere with media pluralism by systematically placing [advertising with politically friendly media](#) companies. This distorts free competition in the media market, since those media outlets that are systematically excluded, have difficulty surviving. These rules could be used to protect freedom of expression and effective democratic participation.
- ▶ EU public procurement rules could prevent governments from awarding [lucrative public contracts](#) to business allies. Where EU structural funds are in play, the Commission will also be able to demand repayment and block future funds. These rules could be used to protect democracy by ensuring that governments act in the interests of voters, rather than owners of private companies.
- ▶ The general principles of EU law oblige Member States to ensure that individuals have access to effective national judicial procedures to enforce their rights under EU law. Where the independence of national courts is compromised a Member State will not be able to guarantee that the judiciary can deliver effective remedies. This rule could be used to protect the independence of national courts.