

## **Position Paper on the European Commission’s Annual Rule of Law Reports**

12 May 2023

The European Commission’s [rule of law reporting cycle](#) presents an annual opportunity to document the impact of improvements in, or infringements of, academic freedom and institutional autonomy on the rule of law across the European Union.<sup>1</sup> However, to date, the Commission’s reports have yet to fully articulate academic freedom, institutional autonomy and protection of scholars, as prerequisites, or enabling conditions for the rule of law. This is a missed opportunity to account for their role in maintaining the rule of law within the Union. Academic freedom allows the creation, preservation, and transmission of evidence-based knowledge, and nurtures critical thinking, open discourse, and the free exchange of ideas; all of which are essential to a society capable of holding public authorities and other powerful forces to account.<sup>2</sup> In fact when assessing how autocratization unfolds, the V-Dem Institute determined that alongside the targeting of media and civil society, academic freedoms are typically repressed first.<sup>3</sup> Therefore highlighting the links between academic freedom and the rule of law can only improve the quality of future rule of law reporting. If the rule of law reporting cycle is intended to be a “a preventive tool”, aimed at improving the rule of law situation across the Union by “preventing challenges from emerging or deteriorating”,<sup>4</sup> then it should explicitly account for the role academic freedom plays in maintaining the rule of law within the Union.

### **Following an assessment of the previous three rule of law reporting cycles, and in advance of the adoption of a fourth rule of law report, SAR Europe makes the following recommendations:**

1. Scholars are watchdogs too. The European Union and its Member States must explicitly account for scholars and academic freedom in the rule of law monitoring work. SAR Europe supports the European Parliament resolution of 19 May 2022 on the Commission’s 2021 Rule of Law Report which calls for the inclusion of all aspects of freedom of expression in the reporting cycle, including academic freedom.<sup>5</sup>
2. Institutional Autonomy: The European Union and its Member States must explicitly consider in their rule of law reporting any measures enacted to support or impede the institutional autonomy of higher education institutions.
3. Shrinking Civic Space: The European Union and its Member States must recognise higher education institutions as civic spaces, and work to significantly enhance their inclusion within the rule of law consultation process.
4. Support coordination and synergies between new monitoring efforts: The European Union and its Member States should incorporate into rule of law reporting any relevant data collected through existing monitoring mechanisms on academic freedom and institution autonomy and contribute to the expansion of such mechanisms.

**Scholars are watchdogs too. The EU and its Member States must explicitly account for scholars and academic freedom in the rule of law monitoring work. SAR Europe supports the European Parliament resolution of 19 May 2022 on the Commission’s 2021 Rule of Law Report which calls for the inclusion of all aspects of freedom of expression in the reporting cycle, including academic freedom.** The European Commission’s rule of law reports limit reporting to four key areas: justice systems, the anti-corruption framework, media pluralism and freedom, and other institutional issues linked to checks and balances. Often referred to as “watchdogs of democracy” independent journalists and a free media are considered essential to hold institutions to account. However, good journalism depends on access to reliable data and trustworthy knowledge, which is oftentimes produced by scholars and higher education institutions. Academic research can form the evidence base or inspiration for news articles and media reports, and scholars often appear as expert guests in current affairs programmes and news broadcasts. Similarly, scholars appear as expert witnesses in legal cases, they analyse judgments, publish case reviews and commentary, and author legal briefs. Scholars are often key contributors to

#### **SCHOLARS AT RISK**

411 Lafayette Street 3<sup>rd</sup> Floor  
New York, NY 10003, USA  
[www.scholarsatrisk.org](http://www.scholarsatrisk.org)

**EMAIL:** [scholarsatrisk@nyu.edu](mailto:scholarsatrisk@nyu.edu)  
**TEL:** +1 212-998-4427  
  [@scholarsatrisk](https://twitter.com/scholarsatrisk)

#### **SAR EUROPE**

c/o MUSSI, Maynooth University  
Maynooth, Co. Kildare, Ireland  
[www.maynoothuniversity.ie/sar-europe](http://www.maynoothuniversity.ie/sar-europe)

**EMAIL:** [sareurope@mu.ie](mailto:sareurope@mu.ie)  
**TEL:** +353 1 7086177  
 [@sar\\_europe](https://twitter.com/@sar_europe)

the development of new laws, standards, and policy positions adopted by governments. It is essential that the policies and laws enacted by governments are scrutinised and assessed by experts in their field. Scholars should not be subject to political or State pressure that would serve to control or unduly influence the development and dissemination of knowledge – to determine what should and should not be taught, researched, or published.

**Institutional Autonomy: The EU and its Member States must explicitly consider in their rule of law reporting any measures enacted to support or impede the institutional autonomy of higher education institutions.** The previous rule of law reports explicitly recognise civil society organisations and independent authorities such as equality bodies, the Ombudsperson and National Human Rights Institutions as “indispensable elements” in the system of checks and balances of any healthy democracy, with attempts to restrict their operating space viewed as possible threats to the rule of law. Missing from this analysis is explicit reference to higher education institutions or research organisations. The [University Autonomy in Europe Scorecard](#), developed by the European University Association, provides a useful reference point in this regard, and allows for concrete benchmarking of national regulatory frameworks. Institutional autonomy is intended to shield higher education institutions from undue state interference, so that scholars can fully and freely carry out their work. In discussing the Commission’s 2021 Rule of Law report, the European Parliament resolution of 19 May 2022 underlined “that media freedom is closely related to artistic and academic freedom” and that “the independence of education systems is under threat when the autonomous organisational structure of its institutions is not guaranteed”.<sup>6</sup> It is essential that the role of such institutions in the system of checks and balances is considered within the reporting cycle. This will ensure that any measures enacted to support or impede their work are routinely brought to the attention of the Commission.

**Shrinking Civic Space: The EU and its Member States must recognise higher education institutions as civic spaces, and work to significantly enhance their inclusion within the rule of law consultation process.** The higher education sector is an important civic actor. A vibrant civil society requires a knowledge sector that is free of unjustified interference and able to train students in independent analysis, critical thinking, and peaceful discourse. Student leadership is fostered within this space, with campuses historically acting as focal points for collective action.<sup>7</sup> Moreover, universities have always taken in exiles, offering sanctuary and purpose to scholars and students under threat in their own countries. Thousands of at-risk researchers and students from Ukraine, Afghanistan, Syria, Turkey, Iran and elsewhere have been welcomed by higher education institutions across Europe. Human rights defenders often operate from within this space.<sup>8</sup> Numerous human rights centres and legal clinics hosted at universities regularly collaborate with civil society organisations on human rights and civic missions, providing vital resources and expertise. However, in reviewing the public list of stakeholders contributing to the previous rule of law reporting cycles, there are relatively few contributions by higher education institutions, student unions, academic unions, and professional academic networks. For the Commission to truly gauge the degree to which there is an “enabling framework for civil society” amongst the Member States, then it must acknowledge the immense role that the higher education sector plays as a civic space, and work to significantly enhance the inclusion of the higher education sector within the rule of law consultation process.

**Support coordination and synergies between new monitoring efforts: The EU and its Member States should incorporate into rule of law reporting any relevant data collected through existing monitoring mechanisms on academic freedom and institution autonomy, and contribute to the expansion of such mechanisms:** In addition to data gathered by [SAR’s Academic Freedom Monitoring Project](#), the [Academic Freedom Index](#) (AFI) and the [European University Association’s Autonomy Scorecard](#), new efforts are underway by the European Research Area, the European Higher Education Area, the European Parliament and others, to measure, monitor and report on academic freedom and related values.<sup>9</sup> Those involved in developing the European Commission’s annual reporting on the rule of law should contribute expertise to these emerging efforts within EU institutions; and such efforts and measurements should be systematically integrated into rule of law reporting. Similar to the way past

reports drew on data from both the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists and the Mapping Media Freedom Platform to account for freedom of expression, future reports should explicitly integrate data from the AFI, the Autonomy Scorecard, SAR's Academic Freedom Monitoring Project, and future monitoring mechanisms into the reporting cycle.

**About Scholars at Risk Europe:** Scholars at Risk Europe is the European office of the global Scholars at Risk network. Scholars at Risk was founded in 2000 and is an international network of over 650 higher education institutions in 43 countries working to protect threatened scholars and to promote academic freedom. SAR's European office, hosted by Maynooth University, Ireland, supports and coordinates the activities of 13 Scholars at Risk sections and 11 partner networks across Europe to strengthen our collective voice at the European level and contribute to informed policymaking for the greater protection of scholars and increased respect for academic freedom worldwide. SAR Europe coordinates Inspireurope+ an EU-funded, multi-partner initiative to support researchers at risk, as well as MSCA4Ukraine, an EU-funded fellowship scheme for displaced researchers from Ukraine. SAR Europe also works to expand, coordinate, and support advocacy in Europe to promote academic freedom, including convening the European Coordinating Committee for Academic Freedom Advocacy. SAR Europe has Observer Status with the Council of Europe Steering Committee for Education (CDEDU), and is a member of the Coalition Against SLAPPs in Europe (CASE) and the Human Rights and Democracy Network (HRDN). For additional resources on academic freedom please consult our website. SAR Europe is ready to help with follow-up to these recommendations, as appropriate. Please contact Denise Roche, Advocacy Manager, at [denise.roche@mu.ie](mailto:denise.roche@mu.ie) with any questions.

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<sup>1</sup> The EU Charter of Fundamental Rights states that '[t]he arts and scientific research shall be free of constraint. Academic freedom shall be respected' (Article 13). On March 29, 2023, the importance of academic freedom as an essential tool for the defence of other human rights was recognised when 74 countries at the United Nations Human Rights Council, led by France and South Africa, issued a historic Joint Statement in support of Academic Freedom, available here: <https://urlz.fr/lb0f>. The statement was signed by all Member States of the EU.

<sup>2</sup> For a detailed account of academic freedom within the EU see the European Parliament STOA Report, '*State of play of academic freedom in the EU Member States: Overview of de facto trends and developments*', (March, 2023), available here: [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/740231/EPRS\\_STU\(2023\)740231\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/740231/EPRS_STU(2023)740231_EN.pdf)

<sup>3</sup> V-Dem Institute, '*Autocratization Turns Viral: Democracy Report 2021*', pg. 22. Available here.

<sup>4</sup> Communication From The Commission to the European Parliament, The Council, The European Economic And Social Committee and the Committee Of The Regions 2022 Rule Of Law Report; The rule of law situation in The European Union, para. 3.3. Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1658828718680&uri=CELEX%3A52022DC0500>

<sup>5</sup> European Parliament resolution of 19 May 2022 on the Commission's 2021 Rule of Law Report ([2021/2180\(INI\)](#)).

<sup>6</sup> Ibid. para 27.

<sup>7</sup> SAIH, '*Under Attack: Understanding the Repression of Student Activism*', (March 2023), available here: <https://saih.no/english/article/2023/3/attacks-on-student-activism-is-an-indicator-of-democratic-backsliding>

<sup>8</sup> Robert Quinn & Jesse Levine (2014) Intellectual-HRDs and claims for academic freedom under human rights law, The International Journal of Human Rights, 18:7-8, 898-920, DOI: 10.1080/13642987.2014.976203

<sup>9</sup> The European Research Area is committed to developing a European monitoring report on the freedom of scientific research as per Action 6 of the ERA Policy Agenda 2022-2024. The European Parliament launched a Forum for Academic Freedom which aims to produce an independent annual report about the state of academic freedom in the EU. The Bologna Follow Up Group are committed to developing a framework for the enhancement of the fundamental values of the European Higher Education Area, which explicitly includes academic freedom and institutional autonomy.