



Policy recommendations from the SoLaR Network to the European Commission

As members of the European Research Network on Soft Law (SoLaR), we have studied the domestic impact(s) of EU soft law during the years 2016–2019 under the auspices of the Jean Monnet Network, co-funded by the Commission. The participating universities have been the University of Helsinki, Maastricht University, King's College London, Freie Universität Berlin, Aix-Marseille Université, and Graduate School of Government and European Studies in Kranj.

Our research has shown us that soft law plays an important role in the everyday life of public administration at all levels of government. National judges and national administrations across European capitals find soft law useful and informative. However, there are issues that impede the national administrations and judges from using soft law in intended and optimal ways. **The following points would need to be addressed at the EU level.**

1. Improve accessibility of soft law. One of the most general concerns raised by domestic courts and authorities is the difficulty of finding relevant soft law measures. All non-binding rules, adopted by the European Commission (alone or in collaboration with others), should be publicly available on a dedicated Commission website. These rules should be easily searchable in a database or repository using one or more policy areas, year of adoption, and key words as search criteria.

2. Provide translations of key guidance and encourage national dissemination and implementation of soft law. If one wishes to ensure that EU soft law has a domestic impact, translations of at least most important soft law measures should be provided. This concerns in particular interpretative guidance, intended to explain the terms of underlying binding secondary law. National dissemination and implementation should be encouraged and supported. Our research shows that national 'implementing' guidance that adapts EU soft law guidance to domestic circumstances increases the relevance and potential impact of EU soft law nationally.

3. Adopt guidelines for the adoption of non-binding rules. Soft law comes in a multiplicity of forms and from a multiplicity of sources. There are no rules on how soft law is prepared, and practices differ between institutions involved in soft law making and between policy areas. Domestic actors are concerned about the impact of EU soft law on democratic legitimacy and transparency. From the Member States' point of view, EU soft law often lacks a clear chain of accountability and raises questions on the possibilities for realising democratic accountability. The use of soft law – especially

if it is used instead of legislation – can undermine the role of national legislators. Clear procedural rules on how EU soft law is adopted would help alleviate some of these concerns.

These guidelines should establish the basic procedural requirements of soft law making and give guidance on the format of the soft law document.

Procedural requirements

- Public consultation
- Involvement of civil society and other interested parties
- Transparency of the process (including record keeping and documentation requirements)

Format

- References to EU and national laws, related regulations and relevant policies
- Purpose of the document
- Process of adoption
- Responsibilities and authorities for implementing the policy (e.g. comply or explain requirements)
- Contact information for questions and resources available for assistance

4. Engage in a dialogue with Member States. The definition of soft law is understood in different ways in different Member States, and the way in which national actors use soft law is influenced by their national legal and political cultures. We elaborate on these differences in the edited collection *EU Soft Law in the Member States. Theoretical Findings and Empirical Evidence*, forthcoming with Hart Publishing in 2020. We believe that an awareness of the differences in national conceptions of soft law will help you regulate in a way that is perceived both legitimate and efficient by national actors.

