

## **Association of Corporate Counsel (ACC) Position on the European Democracy Shield Initiative**

The Association of Corporate Counsel (ACC) welcomes the opportunity to respond to the European Commission's Call for Evidence regarding the European Democracy Shield initiative.

ACC's members are legal professionals working within diverse organizations across the European Union, who possess specialized expertise in implementing regulatory frameworks and ensuring organizational compliance. In-house counsel serve at the intersection between legal requirements and business operations, translating complex regulatory obligations into actionable organizational policies and procedures and helping their organizations to strike the appropriate balance between fulfilling regulatory obligations, operating effectively and innovating responsibly.

For the European Democracy Shield initiative to achieve its objectives, ACC recommends including in-house counsel and their contributions to the rule of law more comprehensively than in the existing legislation. In particular, ACC deems it vital for the European Democracy Shield to make use of in-house counsel and their significant contributions to the rule of law to develop a Democracy Shield that is implemented across all civil-society organizations, and in particular:

- Develop clear legal frameworks and avoid overlaps to ensure legal certainty
- Promote organizational compliance programs that contribute to strengthening democratic systems
- Remove obstacles in cross-border cooperation, notably the lack of LPP for in-house counsel across the EU

The comments below expand on these points.

### **1. Clear Legal Frameworks**

Clear and consistent legal frameworks are essential. They should avoid overlaps with existing regulation and ensure legal certainty. ACC therefore recommends, as a first step, to undertake a comprehensive mapping of existing legal obligations before introducing new requirements, ensuring that the Democracy Shield builds upon and complements existing frameworks rather than creating parallel or contradictory structures. This approach should include consultation with legal practitioners, such as ACC's members, who have experience implementing these frameworks in various organizational contexts.

This is important because numerous existing regulatory frameworks already touch on areas relevant to the Democracy Shield initiative, such as the Digital Services Act and Digital Markets Act, which address online content moderation and platform accountability; the General Data Protection Regulation, which governs personal data processing and rights; the Network and Information Security Directive (NIS2), which addresses cybersecurity requirements; national electoral and political advertising laws across member states; media regulations concerning pluralism and transparency; or anti-money laundering provisions that may relate to political funding.

It is also important to ensure legal certainty. When new requirements conflict with or duplicate existing obligations, organizations face increased compliance costs, legal uncertainty, and potential liability regardless of which conflicting obligation they choose to prioritize. This undermines both compliance efficacy and organizational efficiency. Moreover, organizations require transparent, understandable, and predictable legal frameworks to fulfil their obligations efficiently. Legal certainty enables proactive compliance rather than reactive approaches.

Last but not least, to ensure effectiveness while avoiding unintended consequences, legislative initiatives in the context of the Democracy Shield must strike an appropriate balance. In-house counsel, with their deep understanding of both regulatory requirements and business operations, can offer valuable perspectives on creating rules that are protective and achievable without stifling innovation.

## **2. Corporate Compliance Programs**

To date, the EU's rule of law discourse has overlooked robust corporate compliance programs. However, these programs represent a significant opportunity to advance the aims of the European Democracy Shield and are an element ACC recommends strengthening significantly, either through guidelines that encourage organizations to create or enhance compliance programs.

Compliance programs generally have two purposes. First, they seek to educate employees, management, board members, and closely related third parties such as vendors or customers, about the legal and ethical obligations with which the company must comply and the organization's compliance culture.

Second, they provide a simple process for members of the organization to report compliance concerns. In both instances, these programs are intended to encourage employees, management, and directors to learn about compliance obligations and feel comfortable in coming forward to report potential concerns.

Typical components of an organization's compliance program include training tailored for different stakeholders (employees, management, board directors); information and resources that are always available, such as through an electronic portal; contact information and whistleblower hotline information and metrics providing aggregate information on the number of concerns raised and resolved. These programs are highly sophisticated, focusing on providing proactive employee education, on-the-job compliance support, validation and remediation protocols, and ways to efficiently and effectively align across departments to achieve the company's compliance goals.

In particular, they can contribute to preventing non-compliance and illegal behaviour. Compliance programs allow the company to better understand their legal obligations and work to identify concerns before they become legal problems. When properly designed, these programs create organizational awareness and establish systematic processes for monitoring, reporting, and addressing problems. For instance, they can include risk assessment methodologies that identify vulnerabilities before they can be exploited; early warning systems that detect unusual patterns or activities; or regular monitoring and auditing that ensure continuous adherence to standards. In-house counsel generally recommend

periodic testing and evaluation to assess program effectiveness and entertain documentation systems that create accountability and traceability. Educational components of such programs help raise awareness among employees at all levels.

Moreover, compliance programs create documentation trails and accountability mechanisms that are essential for effective implementation, for example through written policies and procedures that establish clear standards, training records that demonstrate employee awareness and preparation, risk assessment documentation that shows proactive issue identification, or incident response records that detail organizational actions when concerns arise. Regular reporting to leadership ensures management visibility and accountability. Audit trails enable verification of compliance activities, and continuous improvement documentation helps monitor program evolution.

Compliance programs designed and implemented by in-house counsel contribute substantially to the rule of law and administration of justice. Training and resources can prevent issues from arising in the first place. Whistleblower and other vehicles for reporting concerns allow for concerns to be quickly investigated and in some cases resolved before they become legal matters. And when legal matters are identified through these processes, in-house lawyers can provide the adjudicator with accurate information to more efficiently consider the case.

In a nutshell, legal compliance is fostered by setting up an environment where free, open, trusted, and candid discussions between in-house lawyers and their business clients can occur, whilst, on the contrary, the lack of acknowledging LPP for in-house lawyers has a chilling effect on corporate compliance efforts.

In-house counsel are instrumental in designing and implementing compliance programs and should be considered as central in any guidance in the context of the Democracy Shield. Even where this function is directed by another department, in-house lawyers are generally engaged in these programs. In-house counsel can even integrate democratic resilience considerations into existing compliance structures, creating significant efficiency and effectiveness benefits. For example, GDPR compliance programs already address data usage concerns, anti-money laundering programs examine funding sources, and media/communications policies govern content standards. By extending these existing frameworks to encompass democracy-related threats, organizations can implement new requirements more effectively and with less disruption.

As an important side note on this topic, a lack of LPP for in-house counsel at the EU level diminishes the positive contributions in-house counsel bring to legal and ethical compliance. The lack of LPP has a chilling effect on corporate compliance efforts. Without accessible, confidential legal advice from in-house counsel, companies are less likely to identify violations or self-report to authorities. This undermines the effectiveness of corporate compliance programs and the ability to maintain a culture of compliance.

ACC recommends placing particular consideration on the implementation of compliance programs across legislative initiatives, from guidance to mandatory requirements, to deliver on the Democracy Shield's goals. ACC furthermore recommends developing a roadmap to LPP for in-house counsel across the EU in order to ensure the success of those programs within all European-based organizations.

### 3. Cross-Border Cooperation

The transnational nature of democratic threats necessitates effective cross-border cooperation: Organizations increasingly operate across borders through multinational structures, international supply chains, and global customer relationships. Democratic threats similarly transcend national boundaries.

These cross-border realities create specific challenges, such as navigating different and sometimes conflicting legal requirements, determining which jurisdiction's laws apply in specific situations, managing variable reporting obligations across countries, or coordinating responses when incidents affect multiple jurisdictions. Sharing information effectively while complying with data protection laws poses a particular challenge especially for smaller companies, but also for larger multinational organizations. Addressing threats that exploit jurisdictional differences is difficult, and businesses generally struggle with implementing consistent policies across different regulatory environments.

The varying LPP rules across EU member states further complicate cross-border threat assessment and response. There is no certainty about whether legal communications of in-house lawyers which are made in a Member State that recognises LPP are protected in a Member State that does not. For instance, if an in-house counsel who is fully qualified in Spain (which recognizes LPP) provides advice on EU competition law to corporate affiliates in France (where in-house counsel do not enjoy LPP protection), there is significant uncertainty regarding whether such communications remain privileged. When in-house counsel in one jurisdiction lack privilege protections that their counterparts enjoy in another, it creates significant barriers to candid internal communications about potential threats – which ultimately also impedes the proper functioning of the Single Market. This is particularly problematic for multinational organizations attempting to implement consistent compliance approaches and share critical information between legal teams in different countries.

Regulatory frameworks must acknowledge these realities and facilitate appropriate information sharing and cooperative action. ACC recommends developing clear guidance on jurisdictional questions, establishing mechanisms for cross-border coordination, and creating regulatory contact points for multi-jurisdictional issues.

ACC recommends the following actions to facilitate more effective coordination:

- Harmonized recognition of in-house counsel privilege across the EU
- Clear rules for determining applicable privilege protections in cross-border cases
- Safe-harbour mechanisms for information shared with authorities in good faith
- Special provisions for privilege in matters relating to democratic threats
- Guidelines for preserving privilege in cross-border compliance efforts

Resolving these privilege inconsistencies would significantly enhance the ability of in-house counsel to contribute to cross-border efforts to protect democratic processes.

### 4. Conclusions

In-house counsel play a vital role in promoting the efficiency and effectiveness of democratic processes in Europe, and their contributions to strengthening the democratic resilience of

civil society should be included as an important pillar of the future European Democracy Shield.

Compliance programs are a particularly important element of how in-house counsel contribute already to their organization's adherence to the rule of law. This element should be considered in future legislative initiatives in the context of the European Democracy Shield.

In-house counsel whose communications are privileged are best positioned to ensure the use of robust corporate governance practices. When in-house counsel can investigate concerns in an environment that encourages employees to share information freely, they can more quickly and efficiently assess the situation. These practices promote transparency, accountability, and legal compliance. The European Democracy Shield should therefore also serve to create a roadmap to establishing LPP for in-house counsel across the EU.