

Summer School on Human Rights 2020

“Monitoring the rule of law in times of Covid-19 – The enhanced rule of law mechanism as a more promising approach to a value-based Europe?”

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Member of Cabinet of EU Commissioner Didier Reynders

Ladies and gentlemen, it is a pleasure for me, as a member of the cabinet of Justice Commissioner Reynders, to be with you today. I am looking forward to discuss with you the Commission’s work to uphold the rule of law in the European Union, and in particular our new instrument, the comprehensive Rule of Law Mechanism.

- The rule of law is one of the fundamental values of the EU, enshrined in Article 2 of the Treaty on European Union.
- What makes the rule of law so important is that it **guarantees the respect for all other values**, including democracy and fundamental rights.
- Respect for the rule of law is also crucial for applying EU law effectively across the 27 Member States. Without it, there can be **no mutual trust**, between Member States, between judicial authorities, and between citizens.
- The **first annual Rule of Law Report** is one of the **major initiatives** of the Commission’s Work Programme for 2020. It is part of the comprehensive **European Rule of Law Mechanism** announced in the Political Guidelines of President von der Leyen, and it will cover all Member States with objective annual reporting by the European Commission.
- The Commission already has a so-called ‘**rule of law toolbox**’: In this toolbox, there are reactive instruments, namely the Art. 7 TEU procedure, infringement proceedings, and the European Semester ... The Commission also provides quantitative analysis, such as the Justice Scoreboard. But what we felt was still missing is a preventive tool for a **better understanding of the situation of the rule of law** in the whole EU, for **detecting and remedying** rule of law **issues at an early stage**.
Such a preventive tool could help to **deepen dialogue and broaden awareness of rule of law issues**.
- This is what the new comprehensive **European Rule of Law Mechanism** is all about. And as Justice Commissioner, Didier Reynders **leads the Commission’s work on this file**.
- As part of this new mechanism, he is coordinating the Commission’s work on the first **annual rule of law report**, which will cover all 27 Member States.
- Our services are monitoring significant developments, both positive and negative, in **four areas**:
 1. The justice systems;
 2. The anti-corruption framework;
 3. Certain issues related to media pluralism;
 4. And other institutional issues related to checks and balances.

- Finally and where relevant, the report will also reflect recent developments with regard to emergency measures adopted during the Covid-19 pandemic.
- So far, we have received written input from all EU Member States and from over 200 stakeholders.
- I know that the German Institute for Human Rights and the Conference of European Churches have also provided valuable inputs.
- As a next step, the services have in recent weeks been conducting ‘virtual’ **country visits** in each Member State. We had more than 300 meetings with national authorities and stakeholders which were cooperative, open and informative.
- Thanks to all the input received, we are making good progress. We are currently in the process of drafting the country chapters, so that we are on track to publish the report in September, as planned.
- Once the report has been adopted by the College, it will then serve as a basis for the German Presidency to kick-start a genuine **political debate** on the rule of law between the Member States in the Council.
- This political debate also needs to take place in the European Parliament, and in the Member States, notably in national parliaments, and with civil society. I can assure you that the Commissioner is very committed to creating a “**rule of law culture**” in the EU.
- To achieve this, we need first and foremost to spark a genuine debate around the report with civil society. And for that, we count on the support of stakeholders like the CEC, the EKD and the German Institute for Human Rights.
- Therefore, I appreciate it very much that today, you are giving us this forum to discuss about the rule of law and I hope that you will continue to do so on the basis of our Rule of Law report this autumn. You can really help communicate to the public the importance of the rule of law in our everyday lives.

[other tools - response]

- At the same time, the Rule of Law Mechanism is not meant to replace, but rather to **complement this ‘rule of law’ toolbox** that I mentioned briefly in the beginning. Let me give you a short outlook on where we stand with the Commission’s **responses to violations of the rule of law**.
- I will start with **infringement proceedings**.
- Where the independence of the justice system of a Member State has come under threat, the Commission can bring infringement proceedings against this State to the European Court of Justice.
- For instance, to protect judicial independence in Poland, the Commission has seized the Court of Justice a number of times, and each time with success.
- We are currently assessing whether the Polish government has properly implemented the interim order of the Court of 8 April 2020, where Poland was asked to immediately suspend the application of national provisions on the powers of the Disciplinary Chamber.

- Moreover, as regards the new Polish law on the judiciary - the so-called '**muzzle law**' - the College decided on 29 April 2020 to open a new infringement procedure and send a letter of formal notice to Poland. We are currently analysing the reply of Polish authorities.
- Another one of our instruments is the procedure set out in **Article 7** of the Treaty on European Union.
- This procedure can be triggered where there is a **clear risk of a serious breach** by a Member State of the values referred to in Article 2 of the Treaty on European Union, values which include the rule of law.
- It can lead to the most serious sanction the EU can impose on a Member State — the suspension of its voting rights in the Council.
- The launch of this procedure, first against Poland and then against Hungary, is an unprecedented step in the history of the Union.
- And the Article 7 procedures should continue, as long as the situation points to serious and systemic threats to the rule of law in these Member States.
- A **last reactive instrument** of our toolbox is **not yet operational**.
- This is a Commission proposal for a mechanism to **protect the EU budget** in case of breaches of the rule of law in a Member State.
- It is currently being examined by the European Parliament and the Council.
- If this proposal is adopted, it **could make a very important contribution to protecting the rule of law** in the EU.
- In this respect, and also for the Art. 7 procedures, the Commission counts on the support of the German Presidency for advancing on these issues.

[Conclusion]

I would like to conclude by emphasising that the Commission remains committed to use **all the tools at its disposal** to uphold the rule of law in our Union. And I am looking forward to further discussing this with you.