

EUROPEAN COMMISSION



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“Democracy and the rule of law – keeping up the pressure”

Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort

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SPEECH/XX



- Introduction

- First of all, I would like to express my gratitude to the Austrian Bar Association for having organised this conference and for having invited me to speak to you today.
- The title of today's conference is well chosen. Democracy and the rule of law have been facing more and more challenges in Europe in recent years.
- We have to be clear : there can be no compromise when it comes to defending our common values. They unite us from north to south, from east to west.

- The importance of the rule of law in Europe

- Democracy and the rule of law are among the values on which our Union is founded, as stated in Article 2 of the Treaty on European Union. Together these values constitute our "European way of life".
- Today, I would like to concentrate on the rule of law.
- The rule of law is fundamental because it guarantees the protection of all other values, including democracy and respect for fundamental rights.
- Respect for the rule of law is crucial for the effective application of EU law and for mutual trust, between Member States and between judicial authorities.
- Europe needs the rule of law. Rule of law is indispensable for a functioning area of freedom, security and justice and for a functioning internal market.
- It is good for consumers, the creation of jobs and the health of the economy as a whole.
- And, of course, it is essential for lawyers to be able to carry out their work properly.
- But the concerns over the Rule of Law which we have seen emerge in some Member States have underlined that it cannot be taken for granted in the EU.
- In July 2019 the Commission adopted a Communication setting out concrete actions to strengthen the Union's capacity to promote and uphold the rule of law. The Commission further developed its "rule of law toolbox" to provide a variety of responses to different kinds of challenges.
- These responses can be categorised according to three objectives: promoting a rule of law culture, preventing rule of law problems from emerging or deepening, and providing an effective response when a significant problem has been identified.

- Promotion

- Promotion is about building knowledge of the requirements of EU law and European rule of law standards, and building a common rule of law culture among the public.
- The Commission has therefore committed to make full use of funding possibilities to empower stakeholders – including civil society – to promote the rule of law.
- Lawyers have an essential role to play here as you can help communicate to the public the importance of the rule of law in our everyday lives.
- Initiatives such as the videos produced by the International Bar Association are a great example of how we can raise awareness for the importance of the rule of law.
- We need more such initiatives which reach the hearts and minds of our citizens across the Union.

- Prevention

- Secondly, prevention is about detecting rule of law risks at an early stage.
- I will therefore lead and coordinate the Commission's work on the new European Rule of Law Mechanism. It will allow the Commission to deepen its monitoring of the rule of law situation in all Member States, identify risks, develop possible solutions, and target support early on.
- Monitoring will naturally be more intense in Member States where particular risks – notably a risk of regression – have been identified.
- But let me stress that the Mechanism will cover all Member States – and I will not hesitate to act to defend the EU's fundamental values, irrespective of where a challenge occurs.
- To support this process, the Commission will prepare an annual Rule of Law Report and further develop the EU Justice Scoreboard.
- The annual report will outline significant developments – both positive and negative – in all Member States and at EU level, including the case law of the European Court of Justice.
- The monitoring will be based on a variety of sources, including input from Member States and from stakeholders. We will have, in the spring, an open consultation inviting all stakeholders to provide relevant information.
- Lawyers, and networks of lawyers, can provide an important contribution to this work, being in a unique position to detect emerging challenges to the rule of law at an early stage.
- I know the Austrian Bar has some experience with such work from preparing their own biannual report on the state of the rule of law – we look forward to the new edition of this report.
- The independence of lawyers and their capacity to carry out their functions free from undue pressure are important components of the Rule of Law.
- This will therefore be included in the new Rule of Law Report and I will not hesitate to use all the instruments at my disposal to act in cases where the independence of lawyers comes under threat.
- Let me stress that the added value of the Report is that it should serve to inform the dialogue with – and within – the European Parliament and the Council, as well as the discussions at national level.
- I am looking forward to working with EU and national institutions to have a meaningful dialogue, which contributes to upholding the rule of law in our Union.
- Finally, let me be clear in that this new preventive mechanism will not replace the response measures which I will address now as a third category of instruments.

- Response

- We have to effectively respond to problems where they do exist.
- This includes the Commission's ability, as the Guardian of the Treaties, to launch infringement proceedings to ensure judicial independence – probably one of the most important recent legal developments in the EU.
- National courts are "EU courts". They ensure that our citizens can fully enjoy their rights under EU law. Every Member State must therefore ensure that its courts meet the requirements of effective judicial protection.
- The European Court of Justice firmly recalled that an essential requirement of effective judicial protection is judicial independence. The Court of Justice did

not hesitate to apply this concept in a number of landmark rulings. And it ordered, where this was necessary, interim relief, suspending national legislation.

- In its Communication of last July, which I mentioned before, the Commission announced that, on the basis of the developing case law of the Court of Justice, the Commission will pursue a strategic approach to infringement proceedings.
- As part of this approach, we are now analysing in detail the new law on the judiciary in Poland for its compliance with EU law.
- I know how closely you are following this. I am grateful to the Council of Bars and Law Societies of Europe, the national bar associations, judicial networks and their members who are in constant dialogue with me through numerous meetings and letters.
- My position on recent developments in Poland has been clear from the beginning. I stated it last week in the European Parliament and will repeat it here today: I am seriously concerned by the new law on the judiciary in Poland.
- This includes the new law's compatibility with the requirements of judicial independence and the right to refer questions to the European Court of Justice.
- As Commissioner for Justice, I can assure you that the Commission will fulfil its responsibility as the guardian of the Treaties and take all necessary measures to ensure the respect of EU law.
- This being said, I remain in parallel ready to engage in a constructive dialogue with the Polish authorities to resolve the issues at hand.
- Moreover, the EU's possibilities to keep up the pressure on rule of law go beyond infringement proceedings. Let me refer to two other instruments.
- First, the deterioration of the rule of law in Poland led the Commission to initiate the procedure under Article 7 of the Treaty on European Union in December 2017.
- In September 2018, the European Parliament decided to do the same for Hungary.
- These were unprecedented steps in the history of our Union. The full consequences of the procedure under Article 7 TEU can be very significant - a Member State's voting rights in the Council can be suspended.
- The very fact that these procedures are ongoing creates political attention and contributes to continued dialogue, helping to avoid further deterioration of the situation.
- And, more generally, to put our fundamental values on the top of the agenda of the Council.
- The Article 7 procedures should continue as long as the situation points to serious systemic threats to the rule of law in Poland or in Hungary.
- Second, the rule of law is essential for ensuring that EU funding is spent in accordance with the rules. This is why the Commission proposed, in May 2018, a Regulation on the protection of the Union budget in the event of general deficiencies as regards the rule of law in the Member States.
- The new rules proposed by the Commission would be key to reinforcing the protection of the Union's financial interests.
- The aim is not to punish Member States but to protect the EU budget.
- The reasoning is simple: To protect the financial interests of the EU, we need, in each Member State, independent justice systems, effective investigation and prosecution services and an effective functioning of public authorities implementing the Union budget.

- If these functions are endangered by a generalised rule of law deficiency, the Union would be empowered to suspend, reduce or restrict access to EU funding in a proportionate manner.
- The proposal is currently being examined by the European Parliament and the Council.
- Given the need to ensure that it would be realistic and effective to trigger such a measure in practice, the Commission proposed the use of reversed qualified majority by the Council.
- I am therefore concerned about recent ideas to opt instead for qualified majority voting by the Council. I would strongly advise against this. We would risk creating political impasses.

- Conclusion

- To conclude, I can assure you that I will keep up the pressure when it comes to upholding the rule of law. And I count on you to do the same.
- I value the contribution of lawyers to this effort very highly and look forward to continuing our very good cooperation with all of you.
- I wish you a good conference.