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FUTURE OF JUSTICE: STRENGTHENING THE RULE OF LAW

Independence, quality and efficiency of national justice systems and the importance of a fair trial

Protecting citizens and freedoms is the first priority of the new strategic Agenda for the Union 2019-2024, adopted by the June European Council. According to the Agenda, the EU will defend the fundamental rights and freedoms of its citizens, as recognised in the Treaties, and protect them against existing and emerging threats. Common values underpinning our democratic and societal models are the foundation of European freedom, security and prosperity. The rule of law, with its crucial role in all our democracies, is a key guarantor that these values are well protected; it must be fully respected by all Member States and the EU.

A strong common value base makes it possible for the EU to reach its goals and ensure the rights of citizens and businesses. It is only by acting together and defending our common values that the EU can tackle the major challenges of our time while promoting the well-being and prosperity of its citizens.

The rule of law is the core foundation of the European Union; it is one of the common values of the Union and as such is enshrined in the Article 2 of the Treaty on European Union (TEU). The EU Treaties require effective judicial protection as a concrete expression of the value of the rule of law (Article 19(1) TEU), as underlined by the Court of Justice of the European Union in its recent case-law. One of the key elements of the rule of law is that all public powers always act within the constraints set out by law, under the control of independent and impartial courts. In the EU, an independent judiciary is the *conditio sine qua non* for the effective functioning of the common, borderless area of justice based on mutual trust and mutual recognition. The Court of Justice has confirmed that national courts act as EU courts when applying EU law. It is thus national courts in the first place that ensure that the rights and obligations provided under EU law are enforced effectively.

For several years, strengthening the rule of law has regularly been on the agenda of the General Affairs Council, and the development of EU rule-of-law tools will be further promoted during the Finnish Presidency in this context. It is now time for EU Justice Ministers also to discuss ways to develop the EU's justice tools, as well as to enhance the sharing of best practices to promote the rule of law and prevent problems in this field.

The Justice and Home Affairs Council has already recognised the particular importance of the rule of law for judicial cooperation in the EU. In the conclusions

of December 2018 on *Promoting mutual recognition by enhancing mutual trust* the Council affirms that the principle of mutual recognition is founded on mutual trust developed through the shared values of the Member States, so that each authority has confidence that the other authorities apply an equivalent standard of protection of rights across their criminal systems. In addition, the Council emphasised that the right to a fair trial, including, inter alia, the requirement of judicial independence, is of cardinal importance for the effective protection of fundamental rights. It guarantees the protection of all individual rights deriving from EU and national law and the safeguarding of the Member States' common values as set out in Article 2 TEU, in particular the rule of law.

The Court of Justice has repeatedly underlined the importance of an independent judiciary for effective enforcement of EU law. Rulings of the EU court may have direct implications for national justice systems.¹ As the Justice Ministers play a particular role in this regard at national level, their role is valuable for strengthening the rule of law in the EU. Taking into account and respecting the existing legal framework, regular thematic discussions among Justice Ministers on developments at EU and national levels, as well as in the case-law of the Court of Justice of the EU, would provide added value in addition to the existing mechanisms.

The rule of law, justice and sustainable development

Access to justice and the rule of law are also part of the Sustainable Development Goals. SDG 16.3 aims specifically at promoting the rule of law at national and international levels and ensuring equal access to justice for all. Implementing the United Nations 2030 Agenda on Sustainable Development will be one of the core tasks of the Union in the years ahead. In its conclusions of April 2019, the Council emphasises that it is in the EU's interest to continue to play a leading role in implementing the 2030 Agenda in a coherent, comprehensive, and effective manner². When monitoring SDG 16 in an EU context, the starting point of Eurostat is that well-functioning justice systems are an important structural condition on which EU Member States base their sustainable growth and social stability policies³. On the basis of the EU Justice Scoreboard, the EU has been encouraging Member States to improve the effectiveness of their national justice systems in the context of the European Semester, the EU's annual cycle of economic policy coordination. Also according to the OECD, effective access to justice is also a crucial determinant of inclusive growth, citizens' well-being and sound public administration.

The focus chapter of the annual report of the EU Fundamental Rights Agency (FRA) for 2019 focuses on implementing the Sustainable Development Goals (SDG). It

¹ See e.g. joined Cases C-508/18 and C-82/19 PPU on the concept of "issuing judicial authority" in the European arrest warrant; the Court stated that that concept "must be interpreted as not including public prosecutors' offices of a Member State which are exposed to the risk of being subject, directly or indirectly, to directions or instructions in a specific case from the executive, such as a Minister for Justice, in connection with the adoption of a decision to issue a European arrest warrant".

²<https://www.consilium.europa.eu/en/press/press-releases/2019/04/09/sustainable-development-council-adopts-conclusions/>

³https://ec.europa.eu/eurostat/statistics-explained/index.php?title=SDG_16_-_Peace,_justice_and_strong_institutions#Peace.2C_justice_and_strong_institutions_in_the_EU:_overview_and_key_trends

explores the interrelationship between human rights and the SDGs in the EU context.⁴

EU TOOLS SUPPORTING A COMMON JUDICIAL CULTURE

In the field of justice, a wide variety of tools – legislative, financial and operational – have been developed to support a common judicial culture that is based on common values of the European Union.

Judicial training and networks

In 2011, the importance of judicial training in creation of European judicial culture was already being emphasised.⁵ The training of national judges, prosecutors, court staff and other legal practitioners enhances mutual trust between Member States, practitioners and citizens. Judicial training is a key element in promoting knowledge of the standards and norms stemming from the EU's primary and secondary law and case-law. The evaluation of the 2011 European Judicial Training Strategy confirmed the priority of the topic of rule of law for any further political document regarding judicial training, not least for countries wanting to come closer to European values, such as the Western Balkan countries. Judicial training is an important tool for generating a common understanding of the intrinsic values of the rule of law among justice practitioners and for creating a space for shared reflection and sharing of best practices on these values. Judicial training also improves practitioners' knowledge of judicial systems across Europe and thus helps to build mutual trust and application of the principle of mutual recognition.

The European Judicial Training Network (EJTN) is an important platform and promoter for training in the EU, and its work promotes a common legal and judicial European culture. In 2018, more than 6 700 legal practitioners participated in training offered by the EJTN. The EJTN has already promoted the rule of law in its recent work and will publish the EJTN Rule of Law Practitioner's Manual and the EJTN Rule of Law Training Guide by the end of this year. In addition to the EJTN, there are other key players in the field of judicial training, such as the Academy of European Law, supporting the application and implementation of European law. During a working lunch organised by the Romanian Presidency at the June JHA Council, ministers underlined the importance of judicial training at EU and national levels.

The European networks of criminal justice and civil and commercial matters bring together representatives of all Member States' judicial and administrative authorities. The networks provide useful platforms for exchange of best practices and views at practitioners' level.

EU funding

The EU Multiannual Financial Framework for the years 2021-2027 will have an important role to play in supporting the development of a European Area of Justice

⁴ <https://fra.europa.eu/en/publication/2019/frr-2019-focus-sdgs-eu>

⁵ COM(2011) 551 final.

based on the rule of law and mutual trust and ensure people can enjoy their rights. A new Justice, Rights and Values Fund will be created to this end. As part of this new Fund, the Justice Programme will facilitate and support judicial cooperation and promote the rule of law, for instance by supporting efforts to improve the effectiveness of national justice systems. It will also support and promote judicial training, with a view to fostering a common legal, judicial and rule-of-law culture. Moreover, the programme will facilitate effective access to justice for all, as well as effective redress.

EU Justice Scoreboard on the independence, quality and efficiency of national justice systems

Since 2013, the annual EU Justice Scoreboard has looked at a range of indicators to assess the independence, quality and efficiency of national justice systems, building on the long-term experience and data of the Council of Europe CEPEJ Commission. This comparative tool is complemented by country-specific assessments in the framework of the European Semester, presented in the Country Reports, which make possible a deeper analysis based on the national legal and institutional context.

The latest Justice Scoreboard was published in April 2019, showing on the one hand improvements with regard to the efficiency of justice systems and the quality of justice and on the other hand a continuing need to protect judicial independence⁶. In addition, the Commission has already announced its intention to reflect the use of European Semester and the EU Justice Scoreboard, and their further development.⁷

The seventh edition of the EU Justice Scoreboard continues to develop the indicators and deepens its focus on judicial independence as a key factor for upholding the rule of law in Member States. The Presidency considers the EU Justice Scoreboard a useful tool for providing comparable information that can support national projects aiming at improving the justice systems.

In this era of rapid technological developments, the justice systems of the Member States face common challenges, such as the use of artificial intelligence in judicial systems and their environment, that call for joint reflections as well as cooperation between the EU and the Council of Europe.

Fair trial and EU acquis on the procedural rights of suspects and accused persons

According to the Commission, every year 9 million people are involved in criminal proceedings in Europe. Offering a fair trial for all is an important expression of the rule of law and the main task of the courts. This task has a particular dimension in the context of the European Area of Freedom, Security and Justice. As long as the protection of the procedural rights of suspects and accused persons varied

⁶ https://ec.europa.eu/info/publications/2019-eu-justice-scoreboard-factsheets_en

⁷ (COM2019)163 final.

significantly between Member States, there may have been obstacles to achieving the mutual trust needed between EU Member States. Removing those obstacles has been one of the main tasks of the EU legislators in the field of justice over the past decade, in order to ensure that all Member States uphold a common minimum level of procedural rights, and that those rights can be enforced through EU law. The Lisbon Treaty allows action at EU level on the rights of individuals in criminal procedure in Article 82(2)(b) TFEU.

In 2009, the Council adopted a roadmap for the development of a set of common European minimum standards for the procedural rights of suspects and accused persons. Step by step, the roadmap has now been implemented. Today, procedural rights are guaranteed by six directives: on the right to interpretation and translation (2010), on the right to information (2012), on the right of access to a lawyer and the right to communicate upon deprivation of liberty (2013), on strengthening certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings (2016); on special safeguards for children suspected or accused in criminal proceedings (2016), and on the right to provisional legal aid (2016).

Questions:

In light of the above, Ministers are kindly invited to debate the following questions:

- *How could Justice Ministers best contribute to the strengthening of the rule of law in the EU in the field of justice affairs? Would ministers, given the importance of mutual trust in the area of EU cooperation in criminal and civil law matters, agree to discuss the rule of law at the JHA Council at regular intervals?*
- *What would be the main issues for regular rule-of-law debates in the JHA Council? Could they include e.g. recent case-law from the European Court of Justice relating to the field of justice affairs (e.g. relating to the EAW, the independence of the judiciary, prison conditions), corruption, sharing best practices on judicial reforms?*
- *In the field of justice, which EU tools do you consider to be most effective for supporting a common European judicial culture? Should the tools (in the area of justice) be further developed and if so, how?*
- *What are the best practices your Member State would wish to share with the other Ministers as regards the rule of law in the field of justice affairs?*