

ETUC comments on Commission Communication on “Further strengthening the Rule of Law within the Union. State of Play and possible next steps” (COM(2019) 163 final)

On 3 April 2019, the European Commission launched its Communication on “Further strengthening the Rule of Law within the Union. State of Play and possible next steps” (COM(2019) 163 final)¹. It thereby invited the European Parliament, the European Council, the Council and the public at large to reflect on how strengthening the enforcement of the rule of law can make an essential contribution to the future of the European Union.

Whereas the ETUC in general welcomes the Commission Communication on “Further strengthening the Rule of Law within the Union. State of Play and possible next steps”, it identifies some weaknesses and deficit in both the approach, content and proposed avenues of this Communication.

As already expressed in the joint European social partners’ statement, ETUC remains fully committed to defending the common European rules and values and to speaking up for their protection across the continent through an enhanced dialogue in particular with social partners.

ETUC remains also willing to participate in appropriate social partners’ consultations regarding the Communication and looks forward to be associated and/or involved in any concrete actions stemming from this Communication whereby it can support the European institutions in their efforts to strengthen the rule of law across Europe.

More importantly the ETUC insists that the concept of the rule of law in the EU must include the protection and enforcement of fundamental social rights as they are enshrined in the relevant UN, ILO and Council of Europe treaties and conventions, as well as the EU Charter of Fundamental Rights and the European Pillar of Social Rights, including among others the freedom of association and collective bargaining, the right to strike and industrial action, and bipartite and tripartite social dialogue practices. Furthermore, the full involvement of the European and national level social partners is a must for successful operation of the rule of law in the EU.

In addition to the joint European social partners’ statement of 8 May 2019², the ETUC would like to provide the following further views and comments.

1. General comments

The Communication is a further step by the European Commission in addressing the challenges faced by and strengthening the rule of law in the EU. The rule of law is a cornerstone of any democratic society to ensure political, social and economic stability. The ETUC has a deep concern

¹ [Commission Communication on “Further strengthening the Rule of Law within the Union. State of Play and possible next steps”](#), COM(2019) 163 final, Brussels, 3.4.2019.

² Available at : <https://www.etuc.org/en/document/european-social-partners-statement-rule-law>; see also annex 1.

of the limitations that certain member states have placed on the press and media, to right of association and the independency of the judicial systems. The absence of remedies to address the limitations to the right of association is also a matter of concern in some EU Countries.

The ETUC is fully convinced that the Rule of Law is an unalienable part of democracy. Departure from the concept can only be seen with extreme concern by the trade union movement. Right of association, right to collective bargaining, autonomy of social partners can only thrive in full-fledged democracies. Social partners have a direct interest that the rule of law is fully enforced. Trade union and social rights are and would be continued to be dramatically undermined in countries where governments do not abide by the international fundamental rights obligations they signed up to as well as their national constitutional provisions that protect the autonomy of and independence of social partners.

The Treaty assigns to the EU the power to take steps in cases of infringement of fundamental values on which the EU is built. The ETUC encourages the EU to work for the respect of the rule of law in all member states and asks for a full involvement of social partners to reinforce the EU actions.

The fight to protect and preserve the rule of law is our common fight. But to be fought together, this fight needs a broader definition of the concept of rule of law and wider scope of action than stipulated in the Communication. All values in article 2 of the Treaty are important but are too often violated or undermined in member states and need to be addressed in our common fight to defend the rule of law. For ETUC, promoting and ensuring the rule of law in the EU also and foremost includes the protection, implementation and enforcement of fundamental social rights as they are enshrined in the relevant UN treaties (in particular the International Covenant on Economic, Social and Cultural Rights), ILO Conventions, Council of Europe treaties (in particular the European Convention of Human Rights, the Revised European Social Charter and the European Code of Social Security) as well as the EU Charter of Fundamental Rights and the European Pillar of Social Rights.

The EU should rely on Treaty instruments aimed at ensuring a full compliance and enforcement of the EU acquis. The acquis strictly includes primary and secondary law of the EU, including the Court of Justice of the EU (CJEU) rulings and agreements signed by European social partners at EU and national level.

The EU has instruments to intervene to address situations that directly or indirectly infringe EU fundamental values. The application of article 7 of the Treaty relates to the condition of freedom and dignity of people. It means that values at stake cannot be subject to economic considerations.

Coordination of economic and social policies of the EU, that are in the scope of the European Semester, can be a vehicle to detect situations of danger and identify remedies. It can mostly be considered a preventive arm that helps signalling out situations that could potentially lead to infringement of fundamental values and set up conditions for removing such situations. However, the European Semester, operating within an intergovernmental dimension, has proven to be a weak bulwark against the violation of fundamental values. Country reports and country specific recommendations have at times addressed the socio-economic effects of the weakening of the rule of law in some member states. However, this has not produced a swift correction as the gravity of the situation would have required. Hence, in our view the EU Semester is not the most suitable policy tool to address the challenges highlighted in the Communication nor to be effective in imposing the respect of the rule of law throughout the EU.

In a joint effort to ensure a full enforcement of the rule of law in Europe, the ETUC would start from improving the EU approach to the concept of Rule of law.

2. Criticism of the EU definition of the rule of law

For ETUC, the Communication provides for a rather **thin concept of the rule of law** which it sees in terms of legal regularity and predictability rather than a broader conception of the rule of law that would in addition stress the role of human rights, including social rights, and democratic values, as

being essential parts of the European legal model. The rule of law is a legal foundation of the State intended as a unitary system of legal, social and political features strongly interwoven aimed to reach social political and economic ends. The Communication focusses only on a particular part of Article 2 TEU thereby overlooking other important rights and principles therein, like human dignity, equality and democracy³.

Secondly, also the “**Human Rights**” dimension is in the Communication also approached **too narrowly** as first, it ignores the concept of indivisibility of human rights entailing both civil, political, social, economic and cultural rights, secondly it focusses on only a few -albeit very important – civil and political rights and, thirdly, it completely overlooks and even ignores the fundamental social and workers’ rights and the role they play in a “rule of law society”. In fact, not one reference is made in the Communication to fundamental social rights treaties and instruments such as the UN Covenant on Economic, Social and Cultural Rights, ILO Conventions, Council of Europe treaties (in particular, the Revised European Social Charter and the European Code of Social Security) as well as the EU Charter of Fundamental Rights and the European Pillar of Social Rights. The ETUC deeply regrets this unbalanced approach in respect to social rights in general and workers’ rights in particular, especially given the role social policy in general can play in relation to fighting inequalities both in law and practice.

The **social rights dimension** is also not referred to in some specific sections, for instance in the section where the Communication looks at effective judicial protection by independent courts, including the Court of Justice of the European Union, and the clear need and value added of the enforcement of social rights via such courts (p. 4). This is surprising as one of the CJEU cases to which reference is made, concerns the protection of remuneration in the national public administration (in particular courts) in Portugal which were severally cut due to (budgetary) austerity measures.⁴

Last but not least, the ETUC also regrets that the Communication completely overlooks **the role of social partners and social dialogue**. Whereas it refers to and calls upon civil society at several occasions, the Communication contains no reference at all to the social partners and social dialogue. However, not only social partners at both national and European level can and do help to ensure a better quality of legislation, they also have a longstanding role in setting, applying and enforcing fundamental social rights, particularly through social dialogue and collective bargaining. Therefore, the ETUC calls upon the Commission to restore this deficit in the Communication by fully recognising that social partners’ role and ensure that the social partners at both European and national level are involved and/or associated to any future concrete actions implementing this Communication.

3. Specific comments

“Other mechanisms and frameworks”

In section “3. Other mechanisms and frameworks” (p. 4-6), the Communications highlights a number of mechanisms and frameworks that can help address rule of law issues.

In first instance, reference is made to the **European Semester**.

Whereas the European Semester might have indeed helped “to develop country-knowledge relating to the rule of law in Member states, the ETUC does, unlike the Commission, not see the European Semester as an appropriate instance of the rule of law and that structural adjustment reform policies promote legal order. There is clear evidence that in the past structural reforms as proposed via the

³ Article 2 TEU reads “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”

⁴ Case C-64/16, [Associação Sindical dos Juizes Portugueses](#).

Country specific recommendations (CSRs) have harmed democratic values by imposing policies of austerity on member states. Furthermore, some of the CSRs have led to a detrimental dismantling not only of fundamental social rights, but also the actors and structures responsible for applying and enforcing these rights (e.g. social partners, but for instance also via the budgetary cuts applied in different countries to labour/social inspection services, courts, etc.). It proves that under the current rules the EU Semester is not a bulwark against violations of the rule of law perpetrated at national level.

It is true that within the European Semester process, the rule of law is already matter of discussion between the ETUC and the European Commission and that thanks to the early-stage consultations with the EU Commission it was/is possible to identify concrete case of systemic violation of the rule of law principle (see e.g. the ETUC Proposals for the CSRs 2019 relating to the rule of law in Hungary, Slovakia (corruption), Spain (non-respect of labour laws), Romania (violation of workers' rights). Also, the Country reports of the European Commission do focus on several aspects of the rule of law, as requested by the ETUC. However, these mainly concern corruption, transparency in public administration, tax evasion, efficiency of the judicial systems in terms of 'business interests, e.g. legal uncertainty, long trial periods, frequent changes of law which are considered a too high burden for enterprises and hamper investment. At the same time there are no recommendations that insist on making justice more accessible for employment cases nor do they address systemic violations of labour law and collective agreements. Trade union denouncements of these have not led to effective remedies, hence demonstrating that the EU Semester, under the current rules can only have very limited effects in restoring a situation of full respect of the rule of law

For ETUC, dialogue between social partners, Commission and member states in the European Semester can be key to spread awareness of the importance and fundamentals of the rule of law and trigger preventive measures. But to do so, the involvement of social partners in the semester (individually or under the form of social dialogue), should be immediately improved and made a systemic mandatory part of the Semester. A "European rule" for the involvement of social partners in the semester is a long-standing demand of the ETUC that could be reinforced by a similar request from the employer side.

Secondly, as argued above the **European Pillar of Social Rights (EPSR)** must be included as a part of the rule of law framework in the EU. The EPSR was proclaimed by the EU Commission and Member States on 17th November 2017 for the purpose of the protection and promotion of social rights that already exist in other parts of the acquis of the EU. Even if the EPSR cannot by itself address the EU's most fundamental social and democratic problems, it does help rebalance the EU's output by reviving the use of the Treaty's Social Title. The inclusion of the EPSR in the EU's rule of law framework strengthens the social aspect of the Social Market Economy stipulation of the Treaty.

The Communication refers to the importance of the EU Charter of Fundamental Rights but neglects to refer to the EPSR which includes a number of principles that go significantly beyond the EU Charter, even where the two overlap. Moreover, while the European Semester includes already recommendations on the rule of law, the CSRs have recently started to take into account the rights and principles of the EPSR and is being used as one of the instruments for the implementation of the EPSR, which in turn demands the EPSR to be used as one of the mechanism for helping to address rule of law issues in Member States.

In addition to the European Semester and the EPSR, the ETUC considers that in this section some other relevant mechanisms and frameworks are not mentioned whereas they should be.

Firstly, the **UN 2030 Agenda and Sustainable Development Goals (SDGs)** There are many common objectives in the Treaty on European Union and the SDGs. For example, Goal 16 on Promoting peaceful and inclusive societies for sustainable development, providing access to justice for all and building effective, accountable and inclusive institutions at all levels. For ETUC it is clear that the governance needed to manage such a complex model of development, like the one proposed in the UN2030 Agenda, as well as the implementation of the SDGs can be best (or only) achieved by democratic institutions. The Communication correctly explains how much democratic institutions are linked to the rule of law principle. Raising awareness and investing in education and

research on SDGs is a responsibility of public authorities and of mainstream organisations, such as trade unions. The trade union movement is keen to envisage a world in which democracy, good governance and the rule of law are essential for sustainable development. ETUC considers that the implementation of SDGs needs: open governance; transparent and accountable institutions; and a monitoring system that guides policy-making, checks progress and makes institutions and stakeholders accountable. And here also, social dialogue is key for the implementation of SDG 16 and EU should be a model of best practice for the world, embodying the Quadripartite Declaration on a New Start for Social Dialogue in Europe in the UN2030 Agenda. SDGs can reinforce workers' rights, including information and consultation rights, strengthen collective bargaining and support the creation of stronger legal frameworks for balanced, autonomous and free negotiations.

Secondly, this section would also merit at least references to the **European Labour Authority (ELA)** and its envisaged monitoring/enforcement roles as well as to the valuable work of the **EU Fundamental Rights Agency (FRA)** in the area of respecting the rule of law via different actions (e.g. opinions, studies and awareness raising and promotional programmes).

Possible actions for the future

The ETUC asks that where potential or proven cases of violation of the rule of law in a member state are detected, they should be addressed with the instruments of which the TEU provides. In particular setting up a close dialogue with social partners and other civil society organisations of the target country could help a transparent and fully informed collection of information and shape the report that the Commission compiles for the Council. Social partners should be able to shed light on situations that potentially harm the respect of the rule of law and advance proposals for remedies.

The EU actions should always be directed at ensuring that the citizens of the country concerned have easy access to independent flows of information that facilitate the meaningful evaluation of the situation at stake. Promoting structured dialogue with social partners and civil society organisations could place stronger pressure on governments, introduce transparency and access to correct information so that citizens could be fully informed and involved in the discussion.

The strategy for implementing SDGs should develop an overarching plan of action for monitoring the respect for the rule of law. It should include regular reporting by member states to the European Commission and the development of qualitative and quantitative indicators that can flag up a potential risk of or prove violations of the rule of law in a member state. This can provide an additional tool to the EU to intervene for the protection of European citizens that are exposed to the negative behaviour of governments that do not abide by that principle.

Section V of the Communication on “possible avenues for the future” provides suggestions to ensure effective enforcement of the rule of law in the EU along three main pillars: promotion, prevention and an effective common response.

The ETUC welcomes here in particular the reference to the relationship of the EU with the Council of Europe in the promotion of the rule of law and agrees that the EU should look at how best to promote the Council of Europe's work on common rule of law standards. As for possible avenues for enhanced cooperation and cooperation between the EU and the Council of Europe, ETUC would like to draw the Commissions' attention to a very recent Resolution of the Council of Europe's Parliamentary Assembly (PACE) on “Establishment of a European Union mechanism on democracy, the rule of law and fundamental rights” of April 2019⁵ and which provides numerous concrete avenues on how to concretise the political commitment of both EU and Council of Europe in making more effective use of existing standards and procedures to uphold and enforce human rights, the rule of law and democracy in Europe. The ETUC would like to stress in particular paragraphs 18, 19 and 21 of the Resolution whereby the PACE calls upon the EU to:

⁵ PACE Resolution 2273 (2019) on [“Establishment of a European Union mechanism on democracy, the rule of law and fundamental rights”](#), Strasbourg, 9 April 2019.

18. Therefore, with a view to developing the European Union's participation in the Council of Europe's monitoring bodies, the Assembly calls on the European Union to:

18.1. **resume the negotiation process of accession to the European Convention on Human Rights** in order to ensure the convergence of human rights standards all over Europe;

18.2. **accede to the Criminal Law Convention on Corruption** (ETS No. 173) and speed up the negotiations on its participation in GRECO, with a view to contributing to more co-ordinated anti-graft policies in Europe.

19. Furthermore, with a view to the **accession of the European Union to the European Social Charter** (revised) (ETS No. 163) that has been repeatedly called for by the European Parliament, the Assembly calls on the European Union to increase the convergence of European Union law with the European Social Charter and calls on the member States to introduce an accession clause into the European Social Charter to allow for accession by the European Union.

20. The Assembly considers that, as a pan-European forum for interparliamentary dialogue whose adopted texts provide guidance to national governments and parliaments on the standards to be promoted in Europe, it could be the privileged place for **regular interaction between the European Union institutions and the national parliamentary delegations** which sit in the Assembly. Thus, it stands ready to **hold an annual parliamentary debate on the rule of law**, which would provide a timely opportunity to bring European decision-makers and monitoring bodies closer to national parliaments.

Annex 1:

European Social Partner's Statement on the Rule of Law

08.05.2019



On 3 April 2019, the European Commission launched its Communication on “Further strengthening the Rule of Law within the Union. *State of Play and possible next steps*” (COM(2019) 163 final). It thereby invited the European Parliament, the European Council, the Council and the public at large to reflect on how strengthening the enforcement of the rule of law can make an essential contribution to the future of the European Union.

The European Social Partners fully agree that our democracies must be safeguarded and call on EU leaders to include the upholding of the rule of law in the Strategic Agenda 2019-2024. They also stress their full commitment to supporting the rule of law as one of the foundations on which the European project and the democratic values it stands for are built.

The Rule of Law is essential for the proper functioning of the European Union, its institutions, its Single Market, labour market and society. It is an important guarantee for European citizens, employers and workers. The attractiveness of Europe as one of the best places to live, work and do business is highly dependent on a coherent and reliable application and enforcement of our common set of rules and values.

Member States joined the Union sharing the same commitment to the principles of liberty, democracy and respect for human rights, fundamental freedoms and for the rule of law. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail. A sustainable Europe must improve the means of all public powers for reporting, monitoring and being accountable. This is necessary to win people's support.

The rule of law also requires effective, independent and impartial institutions (e.g. courts, inspection services and bodies) and mechanisms of redress so that these rights are justiciable and their legal protection can be ensured. The longstanding role of social partners in setting, applying and enforcing these rights, particularly through social dialogue and collective bargaining, should be fully recognised.

The European Social Partners therefore fully agree that the rule of law must be respected, better explained, promoted and applied across Europe. We remain fully committed to defending our common European rules and values and to speaking up for their protection across the continent through an enhanced dialogue with social partners and civil society at large.

We are willing to participate in appropriate social partners' consultations regarding the Communication and to support the European institutions in their efforts to strengthen the rule of law across Europe.