



Fundamental rights, the rule of law and the post-COVID-19 recovery

09.03.2021 | 10:00 – 12:00 | VIRTUAL PUBLIC HEARING

Summary

- **Opening**

The hearing was introduced by **Cristian Pîrvulescu**, president of the EESC Fundamental Rights and Rule of Law (FRRL) Group. He explained that the purpose of this hearing was to build on the debate launched in [a first public hearing on the impact of COVID-19 on fundamental rights and the rule of law](#) held on 10 December 2020. This second hearing would focus on the instruments for recovery, namely, the Recovery and Resilience Facility (RFF) and the national recovery and resilience plans (NRRPs). The key question at the centre of the discussion would be how the involvement of civil society (including the social partners) could help the various sections of society to defend their rights and contribute to a proper implementation of the recovery plans. The agenda included an introductory panel moderated by Mr Pîrvulescu, and two sessions moderated by the FRRL Group vice-presidents, **Ozlem Yildirim** and **María Helena de Felipe Lehtonen**.

- **Introductory panel**

Presentation of the Council Conclusions on a human rights-based recovery

Margarida Teixeira Araújo, Deputy **Nikolaidis**, Permanent Representation of Portugal to the European Union, presented the [Council Conclusions on a human-rights-based post-COVID-19 recovery](#), adopted on 22 February 2021 by the Foreign Affairs Council. These Council Conclusions recognised that the COVID-19 pandemic and its social and economic consequences were having an impact on human rights, since they were contributing to the deepening of inequalities. The pandemic has had a particular impact on gender equality, the rights of the child, and the rights of persons with disabilities. The Conclusions also touched on economic and social rights, stating that the EU would focus on inclusive policies to mitigate the long-term consequences of the pandemic. They also asserted that social protection, human rights in the world of work and economic interventions should be accessible for all. Ms Teixeira Araújo explained that the Council Conclusions also highlighted the contribution made by Member States as part of the EU's global response to COVID-19, demonstrating EU global leadership, responsibility and solidarity. Finally, the Conclusions affirmed that placing human rights at the core of the socio-economic response to the pandemic would allow for a better and more sustainable recovery.

Presentation of the recovery and resilience plans

Éva Török, Policy Officer, Recovery and Resilience Task Force, SG.RECOVER.B.3, European Commission, presented the [Regulation establishing the Recovery and Resilience Facility](#) (RRF), which entered into force in February 2021. She summarised the key elements for civil society, including the social partners. In addition to strong targets linked to the digital and green transitions, the Regulation also had a strong social dimension, requiring Member States to report on how they would contribute to the implementation of the European Pillar of Social Rights. Additionally, three of the six pillars of the RRF Regulation addressed social issues. The Regulation also required that the national recovery and resilience plans (NRRPs) took into account the European Semester [Country Specific Recommendations](#), which created a link with the rule of law recommendations they entailed. Ms Török also explained that the idea of national ownership associated with the NRRPs meant that Member States were encouraged to organise consultations with stakeholders concerning the design and implementation of the reforms and investments. In line with the RRF Regulation, in its guidance to Member States the European Commission further specified, that Member States need to report on the list of consulted stakeholders, as well as on the process and the outcomes of these consultations, and also to specify whether the social partners had been consulted on specific aspects of the plans.

Presentation of the EESC Resolution on civil society involvement in the recovery and resilience plans

Javier Doz Orrit, president of the EESC Ad hoc group on the European Semester (Group II, Spain), presented the [EESC Resolution on the Involvement of Civil Society in the National Recovery and Resilience Plans](#), adopted on 25 February 2021. In relation to the topic of the hearing, Mr Doz Orrit drew attention to point 1.8 of the Resolution which called for a reinforcement of the participation of CSOs and social partners in the national plans. The Resolution also highlighted the need to uphold human rights, including economic and social rights and the European Pillar of Social Rights, for a full and better recovery. Additionally, Mr Doz Orrit pointed out the importance of the participation of the social partners, which needed to be regularly consulted and informed. Finally, he emphasised that all limitations to fundamental rights – among others, freedom of movement – which had been put in place to protect the right to life and health during the pandemic had to be proportionate and limited in time. To conclude, Mr Doz Orrit underlined the importance of the rule of law conditionality associated with the NextGenerationEU recovery funds.

- **Panel I: Social dialogue: how can the social partners defend their rights in the recovery plans?**

Defending freedom to conduct a business in the recovery phase

Gerhard Huemer, Director for Economic and Fiscal Policy, SMEUnited, shared the experience of small and medium enterprises (SMEs) in dealing with the crisis measures as well as their expectations regarding their involvement in the national recovery and resilience plans. The role of the social partners was essential at the beginning of the crisis, when they worked with governments to design work schemes, including to address key issues related to liquidity and job guarantee schemes. Mr Huemer considered as a good example of SME-public sector cooperation the cooperation that led to guaranteeing a safe and healthy re-opening after lockdowns. Concerning future measures, Mr Huemer considered that cooperation between institutions and business representatives, the social partners and CSOs on the design of support instruments was pivotal. An SMEUnited survey showed a good level of awareness of national recovery plan processes among SMEs. Contacts were ongoing with national

institutions on the drafting of the national plans, which should be deepened. Finally, Mr Huemer considered that the recovery plans should strike a good balance between reforms and investments, and should address the existing skills gap through qualifications and training.

Defending the fundamental rights of workers in the recovery phase

Isabelle Schömann, Confederal Secretary, European Trade Union Confederation (ETUC), pointed out that the pandemic had led to various restrictions of workers' rights, often without the real involvement of workers' representatives. She considered that the Charter of Fundamental Rights of the European Union should be the compass to use when developing and evaluating the national recovery and resilience plans. In a context where artificial intelligence was becoming significant at work, the protection offered by the Charter in the areas of dignity at work, respect of private life, and respect of personal data, was essential, as was the need for strong involvement of the social partners in the design of regulatory measures. According to Ms Schömann, experience showed that recoveries were more sustainable and successful in countries and enterprises where social dialogue was stronger. In that regard, Ms Schömann also called for an improvement of the social dimension of the European Semester. Finally, Ms Schömann underlined the importance of fully implementing the rule of law conditionality mechanism that had been provided for to protect European public money.

- **Panel II: Rule of law and the recovery funds: how to ensure good management, inclusivity and oversight?**

Ensuring appropriate management of recovery funds

Prof. Päivi Leino-Sandberg, Professor of Transnational European Law, University of Helsinki, highlighted the challenges surrounding the creation of a rule of law conditionality mechanism in relation to NextGenerationEU and the Multi-Annual Financial Framework. Although such a mechanism could be considered a step forward, she regretted that its implementation could be a matter of political will rather than a real legal obligation. Prof. Leino-Sandberg saw as a high-risk gamble the difficulties to be expected in relation to EU scrutiny of the implementation of funds in Member States. Challenges in that area related to the tight timeframe and to the fact that the recovery plan would bring the EU into areas mostly in the remit of national competencies, which should normally be scrutinised at national level, including by parliaments. To address this imbalance, Prof. Leino-Sandberg called on civil society to be proactive in looking into national plans, in proposing projects and in scrutinising how funds would be used. She considered that given the fact that national authorities would play a central role in the design and implementation of the reforms and investments, they should be particularly scrutinised to ensure the transparency and effectiveness of the recovery.

Ensuring civil society inclusion and oversight

Karina Carvalho, Executive Director of Transparency International's national chapter in Portugal, emphasised that the unprecedented amount of funds to be distributed and spent in a short timeframe would significantly raise the risk of fraud and corruption. Ms Carvalho therefore considered it important to complement existing control mechanisms with open and participatory oversight ones following the example of the "[Integrity Pacts](#)" ("Civil Control Mechanism for Safeguarding EU Funds"). Such mechanisms would allow authorities across the EU to collaborate with civil society in order to create greater transparency and accountability in public contracting. Ms Carvalho emphasised the

importance of such "Integrity Pacts" in facilitating legally sound and robust contracting procedures, in improving trust by bringing contracting parties closer to beneficiaries, and in improving contracting policies and regulations by providing guidance and suggestions to policy-makers. To facilitate the transparent management of EU recovery funds, Ms Carvalho advocated the mandatory use of a tool such as [ARACHNE](#), the integrated IT tool for data mining and data enrichment developed by the European Commission. Ms Carvalho concluded by pointing to the need for a strong and independent European Public Prosecutor's Office (EPPO), and for the systematic publication of procurement data.

- **Discussion**

Replying to a question on the way EU funds would be released, Ms Török from the European Commission said that there would not be an automatic release of funds but rather a system of pre-funding, on the basis of which Member States would have to demonstrate how they would achieve the set targets. In reply to a question on the involvement of civil society and the social partners, Ms Török explained that Member States were free to choose how they consulted stakeholders but that they were obliged to indicate in their plans how such consultations were carried out.

Ms Carvalho replied to a question on the involvement of CSOs' expertise in the drafting and implementation of the national recovery plans by underlying the importance of empowering them through funding and adequate consultation.

In reply to a question on the involvement of SMEs in the design and implementation of the plans, Mr Huemer indicated that this was indeed made possible thanks to a structured dialogue with the European Commission, and at the level of Member States through the SMEs' national networks.

- **Conclusions**

The public hearing was closed by **María Helena de Felipe Lehtonen**, vice-president of the EESC FRRL Group, who set out a brief summary of the main points put forward by each speaker. She concluded by informing participants that all the activities of the EESC Fundamental Rights and Rule of Law Group gave particular attention to the impact of the pandemic on human rights and the respect of the rule of law.