



Public hearing

The rule of law and its impact on economic growth

8 September 2020 | 14:30-17:30 | EESC | JDE 62 | Rue Belliard 99, 1040 Brussels

Welcome

The hearing was opened by **Stefano Palmieri**, president of the Section for Economic and Monetary Union and Economic and Social Cohesion at the European Economic and Social Committee (EESC), **José Antonio Moreno Díaz**, president of the EESC's Fundamental Rights and Rule of Law Group, and **Karolina Dreszer-Smalec**, president of the study group for the EESC's own-initiative opinion. They all stressed the importance of the rule of law and our common European values. They regretted the pressure these values had come under in recent years, a situation that had deteriorated during the pandemic. The rule of law affected all aspects of democratic life in the EU, including the Single Market, and the European economy.

Setting the stage – Introducing the EESC's own-initiative opinion on The rule of law and its impact on economic growth

Jukka Ahtela, rapporteur for the EESC's own-initiative opinion, summarised the implications of the rule of law for economic growth: productivity relied on investments, investments relied on credibility and trust in legal structures, and legal structures were underpinned by the rule of law. Mr Ahtela underlined the importance of measuring the impact of the rule of law, as the OECD and other organisations had done. Additional study on the impact at European level was still needed. Mr Ahtela considered that the policy implications of the opinion included the EU rule of law toolbox taking economic aspects into account to a greater degree, the need to sanction Member States undermining the EU's credibility by departing from the rule of law, and the need to support civil society more effectively in its monitoring role. He stressed that the lack of the rule of law in one country affected the EU as a whole.

The rule of law as a key to the functioning of the European social market economy

Emmanuel Crabit, Director of the Directorate on Fundamental Rights and Rule of Law, DG JUST, European Commission, praised the continuous efforts made by the EESC on the rule of law, particularly the added value of its focus on the economic aspects. Mr Crabit spoke about the blueprint for action proposed by the EC in its 2019 Communication on the reinforcement of the EU rule of law toolbox. The three objectives pursued by the EC included the promotion of a rule of law culture, prevention, and response. The prevention strand of the blueprint included a new rule of law process relying on a yearly rule of law report, which would highlight developments in all 27 Member States in four areas (justice systems, anti-corruption framework, media pluralism, other institutional issues related to checks and balances). This report would contribute to the European Semester and the EC would further develop the EU Justice Scoreboard. Mr Crabit said that the EC counted on the EESC to play its role in triggering debates at EU level and through its national counterparts on the basis of this report.

János Bertók, Director for Public Governance, OECD, made the point that justice and open societies were at the centre of sustainable growth as they were in a position to confront inequality. This was why Sustainable Development Goal 16 ("peace, justice and strong institutions") and particularly indicator 16.3 on the rule of law were so important. Mr Bertók gave examples of the impact of the lack of rule of law on sustainable growth. For instance, lack of access to justice deepened inequality and affected particularly vulnerable groups. Weak rule of law reinforced policy capture, leading to biased public decisions with consequences for trust, legitimacy, innovation and productivity. On the other hand, a functioning justice system fostered a thriving business climate, because the resolution of disputes and the enforcement of contracts were critical to business operators. Studies had shown that decreasing corruption led to an increase in productivity and more generally that rule of law improvements led to tangible GDP growth gains.

Richard Barrett, member of the Venice Commission in respect of Ireland, considered that the rule of law was at the overlap of private (commercial) law, which provided a structure for business, and public law, which limited state powers. Mr Barrett added that the measurement of the rule of law was challenging because there was no one-size-fits-all solution. National systems could approach the rule of law in different ways, so any assessment needed to be sensitive of local contexts. What mattered was the proper implementation of key principles laid down by the Venice Commission in its rule of law checklist: the principles of legality, legal certainty, prevention of abuse of power, equality before the law, non-discrimination and access to justice.

How can upholding the rule of law contribute to sustainable economic growth in Europe?

Stefan Voigt, Director, Institute of Law and Economics, University of Hamburg and expert for the rapporteur for the EESC's own-initiative opinion, explained that the rule of law was desirable *per se* in addition to contributing to economic growth. He said that the market economy functioned on the basis of decentralised coordination, meaning that operators needed rules that applied to everyone. Growth depended on investment which would not be made unless the rules were perceived as stable, reliable and impartial. By agreeing to the same rules, EU Member States had acquired common credibility: the

value of being a member of the EU. Deviation from the rules created negative externalities for all Member States. Prof. Voigt also pointed out that the generality of rules was the most important substantive aspect of the rule of law. The procedural aspects of the rules were also important, but only if there was a guarantee that the application of law was the same everywhere. He concluded by advocating for an indicator on the compliance of substantive legal provisions with the rule of law, i.e. respecting the principle of the generality of the application of law.

Malthe Munkøe, Senior Adviser, Economics Department, BusinessEurope, started by stressing the importance of the rule of law to his organisation. He argued that stable and effective political institutions were an essential basis for economic growth and explained how economic theory had evolved towards this conclusion. While traditional theories focused on capital and labour input, economists gradually turned to more endogenous aspects like human capital and innovation. Economic theory now focused on how institutions affected incentives and related matters such as transaction costs. The rule of law was important from the economic perspective because it ensured the security of property and enforcement of contracts, checks on governments (to avoid abusive seizures, etc.) and checks on corruption and private capture (corruption prevented a level playing field between companies).

Marco Cilento, Head of Institutional Policy, ETUC, regretted that some Member States were tempted to play a free rider position in the EU, accepting the benefits while avoiding the obligations, like respect for the rule of law. He observed that trade unions mostly focused on Sustainable Goal SDG8 on "Sustainable Economic Growth and Decent Work for All", but that they were aware that attaining this goal was impossible without fulfilling SDG16. Mr Cilento considered that the rule of law and sustainable and economic growth shared the common feature of being cross border, which reinforced the legitimacy of European and international action in this area. In order to have a solid and sustainable single market, the EU needed trust between Member States and reliable independent application of the rules. Without equal application of the law, social rights like the European Social Pillar and others were at risk. He therefore called for a post COVID-19 recovery plan that would consolidate the European social model and prevent *selective implementation* approaches. Since social dialogue reinforced the rule of law, he found it to be essential that Member States take more steps to include the social partners in the European Semester process.

Michiel van Hulten, Executive Director of EU office, Transparency International, said that the hearing was timely given the developments in a number of EU Member States. He regretted that some politicians enriched themselves and their cronies through the EU budget. Such misappropriation of EU public funds undermined public trust, which was the basis for the free market economy. Mr van Hulten explained that some studies estimated the yearly cost of corruption in the EU at up to EUR 120 billion. Corruption generally went hand in hand with undermining the rule of law. He also mentioned a Eurobarometer survey which showed that 71% of companies considered that corruption was widespread in their country. He called for stronger support for the role of civil society in monitoring corruption, giving the example of the collaboration between the EC and Transparency International on the Integrity Pacts project, which were civil control mechanisms for safeguarding EU funds. He considered that the EC rule of law conditionality in the MFF and recovery fund could be critical for signalling to all Europeans that the EU was serious about upholding the rule of law. It might be tempting to be less attentive to the rule

of law when the economy was shrinking, but Mr van Hulten pointed out that taxpayers always ended up paying for corruption. So, he concluded, the rule of law was particularly important during a major economic crisis like now.

Conclusions

Karolina Dreszer-Smalec concluded by supporting the various points made during the hearing on the importance of better supporting the role of civil society in the area of the rule of law. **José Antonio Moreno Díaz** stressed the connection between social dialogue and the rule of law. If a state did not respect the rule of law, this affected social dialogue, which had consequences for equality, which in turn affected the market. Abuses of working conditions led to unfair market conditions. **Jukka Ahtela** concluded by saying that the ECO/511 opinion dovetailed well into the promotion strand of the EC Communication on the rule of law. He considered that the existing tools on the rule of law should be used more efficiently and that more specific indicators should be devised. The interrelated areas of economic growth and the rule of law should concern everyone and not just specialists, and civil society should be supported effectively in that regard.