



EUROPEAN COMMISSION

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Safeguarding the rule of law and solving the "Copenhagen dilemma": Towards a new EU-mechanism

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

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Main Messages

What we are lacking is a better developed set of instruments to fill the gaps between the "soft power" of political persuasion, the role of the Commission as the guardian of the Treaties and the "nuclear option" of Article 7.

President Barroso has called for better instruments, and the Commission has started developing them. We note that the **letter of the four Foreign Ministers** appears to go in a similar direction, and **we welcome this political support.**

We see this **process as more for the medium than the short term.** While not excluding any scope for further action under the current Treaties, we also believe that it would be appropriate to **include this subject matter into future reflection on the Treaty** as well. Because creating an effective new mechanism will require legitimacy and acceptance by all Member States as it would give the Commission a new role that we do not currently have.

The rule of law requires that individual cases are solved under the rules in place at this moment in time. **We must not create new rules for a particular case.** This would go against the very nature of the rule of law.

We [the Commission] will also discuss possible solutions to solve the "Copenhagen dilemma" with the European Parliament. Because the Commission believes that we **will need to have a broad agreement across all institutions on the scope and functioning of such a new mechanism** before we can take this further.

Speech

The European Commission believes that the letter of the four Ministers of Foreign Affairs raises a very important issue: the need for a more effective mechanism to safeguard the EU's fundamental values and in particular the rule of law across the European Union.

I welcome this opportunity to listen to a first exchange of views of Ministers here in the Council. Indeed, we should discuss effective ways to deal with risks for the legal and democratic fabric which underpin membership of the European Union.

As you all know, this is an issue that is very close to the heart and thinking of Commission President Barroso. The President already raised this question last September in his State of the Union address. In this address, President Barroso explicitly called for "a better developed set of instruments" to address threats to our fundamental values, the rule of law and democracy. President Barroso and I believe that we have to be coherent in the European Union: We already set a threshold of standards as a pre-condition for states who want to become members of the Union, the famous "Copenhagen criteria". We do this because we believe that these criteria are essential prerequisites for being part of our Union. However, if we do this, we should recognise that these principles must continue to be respected by all 27 on an on-going basis, including after accession has taken place. When you build a house, you do not just need solid foundations. You need these foundations to be capable of withstanding the normal use of the house. Copenhagen should therefore not be forgotten after accession. Quite the contrary.

The Commission acknowledges that the institutional arrangements at the level of the Union, as they exist at the moment under the present Treaties, have their limitations. Yes, we can, in our role as guardian of the Treaties launch infringement proceedings for violations of EU law – but in most cases, rule of law matters are closer to the national legal system than to EU law, and therefore cannot be addressed by infringement proceedings.

Yes, the Commission, the Parliament and one third of the Member States may trigger Article 7 of the Treaty on European Union – but we all know that this is tantamount to using a "nuclear option". And one should think twice or better even three times before resorting to this instrument.

What we are lacking is a better developed set of instruments to fill the gaps between the "soft power" of political persuasion, the role of the Commission as the guardian of the Treaties and the "nuclear option" of Article 7. This is particularly important for the rule of law, which is an important area for the way in which our citizens perceive the Union.

The Commission is currently working on a number of tools. In March, as you know, the Commission adopted [the EU Justice Scoreboard](#). This Scoreboard is a tool designed as part of the European Semester process to promote effective, independent and high-quality justice systems in Europe. By improving the justice system, we contribute to restoring growth in Europe and to strengthening the structural foundations needed for sustainable growth.

Our reasoning is simple: an efficient and trustworthy justice system will bring an economic benefit. Trusting that the rule of law is fully upheld directly translates into investor confidence. Predictable, timely and enforceable justice decisions all have a key impact in making a country an attractive location for business and investment. The EU Justice Scoreboard aims, in cooperation with the Member States, to provide objective, reliable and comparable data on the functioning of justice systems in the Member States. In the European Semester of 2012, the Commission already issued targeted country specific recommendations to 6 Member States on the efficiency of judicial systems and procedures.

In addition we also have the experience of the Cooperation and Verification Mechanism for Bulgaria and Romania. This mechanism has been instrumental for progress and it remains an appropriate tool to assist reform efforts and to achieve a record of concrete and lasting results.

Last but not least, in certain cases we are already cooperating very closely, and in a complementary way, with the Secretary General of the Council of Europe, Mr Jagland, whose organisation has developed expertise on rule of law matters and national constitutions through its Venice Commission. We have been making use of this cooperation with regard to recent rule of law crises taking due account, of course, of the specific national circumstances of both.

The aim of all these tools is, each in its own manner, to identify shortcomings and allow Member States to address any deficiencies at an early stage.

Dear Ministers,

Preserving and defending the rule of law is fundamental for the Union. This is why it is important that all EU institutions and all Member States engage in a constructive and enhanced dialogue on this matter. President Barroso has called for better instruments, and the Commission has started developing them. We note that the letter of the four Foreign Ministers appears to go in a similar direction, and we welcome this political support.

It will take some time to assess the practical implications and the political potential of the different initiatives. We see this process as more for the medium than the short term. While not excluding any scope for further action under the current Treaties, we also believe that it would be appropriate to include this subject matter into future reflection on the Treaty as well. Because creating an effective new mechanism will require legitimacy and acceptance by all Member States as it would give the Commission a new role that we do not currently have.

A new mechanism will require strong endorsement by all Member States and by national Parliaments.

We should also be clear that we are not confusing current situations in this or that Member State with the possible creation of a new mechanism. Such situations need to be addressed with the tools at our disposal under the present Treaties.

The rule of law requires that individual cases are solved under the rules in place at this moment in time. We must not create new rules for a particular case. This would go against the very nature of the rule of law. At the moment, we thus have to work on the basis of the current Treaties. Should the system of checks and balances required by democratic principles be at stake in any of the Member States and lead to a clear risk of a serious breach of the rule of law, the Commission will of course not hesitate to make use of all instruments at its disposal to remedy any such situation, and we count on your support for this.

Dear Ministers,

President Barroso and I welcome that you are starting your reflections on this matter today, and we are grateful to the four Ministers who have launched this debate in the Council.

Vice-President Sefcovic and I will remain at your disposal for further interaction on this subject on behalf of the Commission particularly in the coming months. We will also discuss possible solutions to solve the "Copenhagen dilemma" with the European Parliament. Because the Commission believes that we will need to have a broad agreement across all institutions on the scope and functioning of such a new mechanism before we can take this further.

I thank you for your ideas, views and opinions on this important subject.