

**Speech of Vice President Jourová at the webinar  
'How can Europe protect the rule of law in times of crisis'  
organised by the Centre for European Reform,  
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Ladies and Gentlemen,

[Introduction]

Thank you for hosting me. I want to thank all the guests that took time to participate in this event. Looking at your diverse experience and expertise in democracy and rule of law, I am looking forward to our debate.

This is a very timely week to discuss these issues for two reasons. First of all, the rule of law is on everyone's mind, because Poland and Hungary refused to support the multi-billion-euro package of the next multiannual budget and Covid recovery fund, due to the rule of law conditionality. Second of all, because on Tuesday, we had an important meeting of the ministers in the General Affairs Council. There, for the first time, a comprehensive revision of the Rule of Law situation in the Member States took place based on our first rule of law report.

And then, we have heard about very worrying developments on the ground, that we will follow very closely.

I will explain the importance of this week in a moment, but first we should pause over what rule of law is and what it means in practice.

[The meaning of the rule of law]

Democracy, rule of law and fundamental rights are the three pillars forming the bedrock of the European Union. This trio constitutes our core values as codified in Article 2 of the Treaty. All three pillars need to operate in perfect harmony, like an opera trio. They cannot exist without one another, even less used against one another. They are the basis for everything else in the EU and they are projected to all other policies, be it green or digital. This is largely what makes the EU unique.

The Economist recently published a column arguing that Europe is often defined by what it is not, rather than what it is.

To some extent it might be true, but Zygmunt Bauman can help us here. He wrote in "Europe: An Unfinished Adventure": "Tell me what your values are and I will tell you what your identity is."

For Europe these core values are really something that defines us in the positive way. Ultimately, we are a group based on respect of those fundamental values. We are not bound by the will of a dictator; we don't have a common army or a common language. We are together because we share these foundations. They allow us to trust each other.

That is why we need to protect them. We need institutions that guarantee the separation of powers; institutions that provide checks and balances and keep each other under control.

Of course today we have clear definitions of what the rule of law is and of the EU's prerogatives in this regard, thanks to the case law from the European Court of Justice and the European Court of Human Rights.

But we must go beyond these legal definitions, and translate them into everyday language, into a shared culture. And, what we mean with rule of law in everyday language is that all public powers always act within the constraints set out by law, in accordance with the values of democracy and fundamental rights, under the control of independent and impartial courts that in turn are themselves subject to the system of checks and balances.

As you see, far from being mere abstract concepts, these values are essential and precious parts of our everyday life and, as such, we must protect them.

Often in life, you get to appreciate the value of something when it is already gone. So, take it from someone who grew up in communist Czechoslovakia without free and fair elections, equality before the law, without independent judges and with media broadcasting the propaganda of the ruling party. In that system, if you disobeyed you could be attacked by the government, by the courts or by the media – or by all of them at the same time. This is how it works when there is no rule of law, no democracy, no fundamental rights.

And this is why the rule of law actually touches upon everyday life of all us, regardless of whether we are running a business or just looking for news.

So, let me spell it out very clearly:

- There will be no mutual trust between the Member States and their institutions without the rule of law; the common governance of the EU will be under threat. Erosion of trust can also create practical problems, like lack of recognition of the European Arrest Warrant, mutual recognition of judgements or common fight against money laundering or terrorism. It can affect the Single Market.
- There will be no efficient regional and cohesion policy without the rule of law, because corruption and fraud will leave their ugly marks.
- There will be no effective neighbourhood policy without the rule of law, because we have to lead by example to attract others.

This is why the stakes are so high.

[The decade of rising voice]

The rule of law has been a growing issue over the last decade, with the Commission becoming more active to address different situations and problems. The last decade forced us to test and then strengthen the tools we have, to assist the Member States but also to try to address the risks.

I understand that our actions will not be applauded by everyone.

But our actions should be judged against the background of the role and the mandate the Commission has been given in the Treaties, which have been drafted and fully accepted by all Member States.

If you consider those factors, and if you remember where we started, the new decade, the 2020s, will look very different from the previous one.

Let's take a brief step back and go through all the instruments used in recent years.

Since 2013, the EU has encouraged Member States to improve the independence, quality and efficiency of their national justice systems, through the annual Economic Semester exercise. It does so through country specific recommendations, including on the independence of the judiciary or on efficiency of proceedings such as regarding insolvency. The EU Justice Scoreboard feeds into this process. It provides a yearly comparative overview of the independence, quality and efficiency of national justice systems.

We also have the Cooperation and Verification Mechanism for Romania and Bulgaria to provide tailored support and help these countries move forward with judicial reforms and the fight against corruption.

In 2014, the European Commission adopted a Framework to strengthen the rule of law in Member States. We applied it for the first time in 2016 as a reaction to the situation in Poland. This led the Commission in 2017 to triggering the article 7 of the Treaty that deals with systemic risks for the rule of law, also for the very first time. And in 2018 the European Parliament initiated such procedure against Hungary.

Article 7 is meant to capture systemic risks and in this sense complement more targeted measures that we address with infringement procedures.

And we have opened many of those infringement procedures when we saw a clear breach of the Treaties. Here we also broke new ground by launching them on issues related to values enshrined in the EU law. We didn't hesitate to refer some of these cases to the European Court of Justice. Its rulings clarified the meaning and scope of our competences when it comes to the rule of law.

Also in the future, we will continue to fulfil our obligations by launching new infringements and turning to the Court in search for justice.

All these measures brought some positive results and helped some countries to introduce positive changes, but were not sufficient to address all the problems as we can see very clearly today. But not all rule of law issues can be addressed in an infringement.

[Stogner toolbox with a role for everyone]

This is why it became essential to enlarge our toolbox to strengthen both the preventive arm, to avoid problems from emerging, and the responsive arm, to tackle problems if they nevertheless appear.

To strengthen the preventive arm we proposed the new comprehensive European Rule of Law Mechanism. In September, we published, for the first time, an assessment of the rule of law situation in all Member States, on the basis of the same methodology.

The report is objective and covers both positive and negative developments in every EU country. We paid extra attention to treat everyone in the same way and apply the same criteria. We consulted widely, including the authorities, to ensure objective treatment and base ourselves on wide array of evidence. And we reported on challenges faced in all Member States.

I am very pleased that the report goes beyond the justice systems, focusing also on anti-corruption frameworks, institutional issues related to checks and balances and media freedom and pluralism.

It is very important to have an overview of these issues, and see the links between them. Not least because separate deficiencies often merge into an undrinkable cocktail, even if the individual ingredients seem to be fine.

Media are another example of this. They are essential to uncover what others want to hide, especially those in power. Unfortunately, we have many reasons to worry. Digitalisation puts the media in difficult economic situation, we are witnessing increased aggression on journalists and increased political pressure on them. Lack of transparency in the ownership structures and often unclear and selective use of publicly funded advertising contribute to blurring lines between the powers that are supposed to be separated. We covered this in the recent Rule of Law report. I want to support media and journalists, but I also want to make sure that we see media freedom and pluralism as an issue essential for the rule of law.

I know that some say, the Rule of Law Report is yet another report, another futile dialogue when what is needed is strong action. But for me, this can be a seismic shift, because the European Commission will not be the only actor that is supposed to take responsibility in vigilance. Rule of law is a shared responsibility, and it can only be upheld if we all assume our part. This is not an issue to be solved by a 'lonesome sheriff'.

This common exercise should, over time, contribute to creation of a consolidated common culture and shared ownership over these issues. We will avoid the political trap of finger pointing at the few and clearly dispel the unfounded accusations of bias.

This new tool is supposed to bring the debate about the rule of law to the Member states, national parliaments, civil society, other EU institutions and hopefully also initiate a more informed public debate.

This year, the pandemic year, will not make it possible for us to fully develop this approach, but I am convinced that we will only succeed if the rule of law and democracy debate will migrate from the debate of experts to dinner-table conversations.

It is too early to say how effective this new mechanism will be, but the first signs are encouraging. Almost all Member States accepted the exercise, even those who had criticisms to some aspects of it.

Bulgaria has already announced it wants to address the shortcomings addressed in the report. It proved useful also in the case of Spain when, after the reaction from the Commission, the government decided to pause the controversial proposal to change the appointment system for the Supreme Council for Magistracy.

The full success of this mechanism lies in the willingness and honesty of the Member States. The more honest we will be with each other, the stronger this mechanism will be.

And while the rule of law will continue to be an overwhelmingly legal dispute, it is important to understand that democracy cannot be written in laws alone; it has to be written in our hearts. Democracy cannot be imposed on us; it is something that has to be owned by us.

This brings me to the last element of our response so hotly debated today, namely the rule of law conditionality to the EU budget and other EU funds.

In the last days, I think many misconceptions appeared in the public debate, so let's clarify some of them. The compromise on the table is not ideological; it's very sober and firmly anchored in law. The definition of the rule of law is codified in article 2 of the proposed regulation. Let's take a look – it refers to Article 2 of the Treaty, but also to concepts such as “principles of legality”; “legal certainty”; “prohibition of arbitrariness of the executive powers”; “effective judicial protection”, “independent and impartial courts” or “equality before the law”.

This is a rather precise definition. All the elements of this definition were not only confirmed by the European Court of Justice, they are also a shared value of the Member States and more generally a cornerstone of the constitutional orders of any democracy.

This proposal is not targeted at specific Member States; on the contrary, it is meant to capture the potential risks wherever they might appear, and deter those, wherever they are, who may want to dismantle the democratic checks and balances.

I think it is the bare minimum to expect that EU funds, ultimately coming from every EU taxpayer, will go where the rule of law is not under threat. Our values are not an addition to the single market, they are not left-wing or right-wing, conservative or progressive – they are fair and shared by all of us.

This week was also the 31st anniversary of the Velvet revolution in Czechoslovakia, so I can't help but think that there is a link here as well. The cost for the people around the world to fight for universal rights and freedoms has been very high around the world. Out of respect to those brave people in countries such as Poland, Hungary, Germany, Portugal, Spain or Italy we can't afford to bury our heads in the sand.

If you ask me about the future, for me two things matters most:

First, we have to act to defend democracy and the rule of law. It is not a one off task. I have no illusion that the problems will continue to appear, because democracy is a process that needs nurturing and in fact, fighting for.

Two – we have to be always respectful of voters and their elected representatives. Our role is to help ensuring that the elections and conditions for a choice are as fair as possible, but never to interfere in the choice itself. In democracy, people are the source of power and legitimacy and our role is to make sure they can continue to make free choices.

## Conclusion

Those of us who lived behind the Iron Curtain, those of us who know the authoritarian playbook of Putin, understand well the process in which you switch off one safety fuse after another, until you reduce the checks and balances completely; until the government and those in power cannot be effectively controlled.

This can happen for instance when the judges in the Constitutional Tribunal or the Supreme Court depend on one party. This can happen when the state-owned companies whose CEOs and boards were appointed by the same party buy the media to silence criticism. Our role is to react when we see such risks. As someone who does not want to see the return of the authoritarian playbook, I will be very vigilant in this regard.

To conclude, allow me one personal reflection. If I had to choose one thing that democracies have and we in an authoritarian regime didn't, I would say this is 'trust'. In democracy, we trust that our neighbour is not spying on us or reports us to the authorities because we criticised those in power; we trust that the state apparatus is not there to control us, but to serve us. The EU is an extraordinary manifestation of this trust. We trust that products made in one country, will be safe in another. We trust so much, we decided to dismantle the internal borders. We trust that the ruling of a court in one country is fair and just for every other Member. This is my biggest motivation to act. To restore and uphold this trust. Because Europe without the trust is not a Union. Democracy without trust is not complete.