



OPINION

European Economic and Social Committee

Rule of law and the recovery fund

Rule of law and the recovery fund
(own-initiative opinion)

SOC/692

Rapporteur: **Christian BÄUMLER**

www.eesc.europa.eu

EN

Plenary Assembly decision	25/03/2021
Legal basis	Rule 32(2) of the Rules of Procedure Own-initiative opinion
Section responsible	Employment, Social Affairs and Citizenship
Adopted in section	16/12/2021
Adopted at plenary	20/01/2022
Plenary session No	566
Outcome of vote (for/against/abstentions)	204/14/18

1. Conclusions and recommendations

- 1.1 The European Economic and Social Committee (EESC) underlines that the European Union is founded on values such as respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.
- 1.2 In the EESC's opinion, adherence to these values, in particular the rule of law, is of fundamental importance for EU citizens and for the survival of the European Union
- 1.3 The EESC is committed to ensuring that the Council of the European Union and the European Commission impose high and dissuasive sanctions in the event of systematic shortcomings with respect to the rule of law that endanger the European Union budget.
- 1.4 For the EESC, it is of paramount importance that the recovery programmes presented by the Member States set out the measures they will take to strengthen the rule of law.
- 1.5 The EESC calls for all programmes supported by the EU budget to be subject to legal requirements on freedom of information and transparency.
- 1.6 The EESC calls for participation in the European Public Prosecutor's Office enhanced cooperation to become a prerequisite for participating in programmes financed by the EU budget.
- 1.7 The EESC calls for the European Anti-Fraud Office (OLAF) to be developed into an agency for the rule of law and administrative efficiency.
- 1.8 The EESC considers that systematic shortcomings with respect to the rule of law in Member States have a detrimental impact on the EU budget, and calls for the burden of proof to be reversed in this respect.
- 1.9 The EESC calls for the EU to protect NGOs promoting human rights and the rule of law from undue influence and to support their funding.
- 1.10 The EESC calls for the European institutions to launch a campaign with civil society entitled "My EU – My Rights" that would initiate an EU-wide dialogue on the importance of the rule of law.

2. General comments

Background of the proposal

- 2.1 The European Union is founded on the values set out in Article 2 TEU. These values include respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. Furthermore, European society is

characterised by pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men¹.

- 2.2 Respect for these values is of fundamental importance for all EU citizens. Against the backdrop of European history, particularly the crimes against humanity committed in the world wars, the European Union has made a promise of protection to ensure peace in Europe and to protect the fundamental rights of all its citizens. It follows that the European Union has a mandate to track and prevent systematic violations of these values.
- 2.3 Moreover, respect for these values, particularly the rule of law, is a prerequisite for the EU's existence in its current form: the European Union can comply with the principle of the rule of law only if all Member States meet the requirements thereof. Only this can ensure that EU policies, including expenditure from the European budget, are implemented correctly in all Member States. Furthermore, cooperation between Member States' judiciaries and administrations is based on the mutual belief that all Member States share common values and apply them in practice. Only on this basis is it possible for Member State administrations and judicial bodies to cooperate across borders and to recognise and implement decisions from another Member State.
- 2.4 Furthermore, the importance of these values, particularly the rule of law, should not be underestimated when it comes to the sustainable economic development of the European Union. Apart from guaranteeing investment certainty and respecting competition rules and other economic regulation, ensuring trust in the legal system as a whole is crucial for private investment and cross-border trade. A sustainable recovery of the European single market from the economic consequences of the COVID-19 pandemic therefore requires, in addition to specific support measures such as the recovery fund, respect for European values and especially the rule of law.
- 2.5 Finally, the principle of the rule of law and the other values referred to in Article 2 TEU are part of the European Union's own sense of identity. The rule of law is an integral part of a democratic and pluralistic society in Europe – one of the founding promises of the Union. However, the importance of the rule of law also extends beyond the EU's borders. The EU's foreign and security policy is strongly based on the values set out in Article 2 TEU and on the principle of the rule of law. In its foreign policy, the European Union is committed to a law and values-based global order. The European Union can continue to credibly do so only if it and all its Member States meet these requirements. The Union's internal cohesion and worldwide appeal are also crucially based on compliance with these values.
- 2.6 The European institutions have consistently emphasised the importance of the values set out in Article 2 TEU, particularly respect for the rule of law, in numerous opinions and legislative acts. Among other possible sanctions, especially the infringement procedure under Article 263 TFEU, Regulation (EU) 2020/2092 now provides for the possibility of imposing financial penalties for systematic breaches of the rule of law. The main purpose of this is to protect the EU budget. It can also contribute more generally to better protection of the rule of law in all

¹ Article 2 TEU.

Member States. The Regulation is also intended to boost the EU's credibility and thus facilitate investment.

- 2.7 The EESC welcomes the introduction of this new regulation. In addition to safeguarding the rule of law and the financial interests of the Union, the Regulation also promotes public acceptance of financial transfers in the European Union and, in particular, of the recovery fund in all Member States. However, it is crucial for the effectiveness of the Regulation that it is implemented in practice and that swift and comprehensive sanctions are imposed for breaches of the rule of law which at the same time put the Union's budget at risk.
- 2.8 In addition to this new monitoring, which focuses in particular on the rule of law in the allocation of funds, the Commission should also continue to fully exercise and, where necessary, step up its general role in monitoring the EU budget. Indeed, any misappropriation of EU funds, even if it is not due to deficiencies in the rule of law, is damaging to European programmes and the image of the EU. In addition, the Commission should also ensure that EU citizens are better aware of which programmes the EU has funded or co-funded on the ground. To this end, the relevant rules on transparency and public information, such as via building project panels and online information, should also be adapted and the EU's involvement more clearly highlighted.

3. **General requests**

- 3.1 The EESC calls for the new Regulation to be applied strictly in all areas relevant to the budget. In order to carry out the monitoring tasks conferred on it by the Regulation and the Treaties, the Commission needs to allocate appropriate human and financial resources and consistently follow up on signs of potential infringements. In doing so, the Commission must apply strictly objective criteria and investigate infringements in the same way in all Member States. In addition, the Commission should also monitor the proper implementation of EU programmes in third countries more closely and, in particular, apply the same criteria to candidate countries as apply to Member States.
- 3.2 In particular, the Commission and the Member States must ensure that no payments are made from the EU budget whose use cannot be fully demonstrated. All beneficiaries of payments from the Union budget, regardless of whether they are public or private entities, must be subject to appropriate transparency rules. Member States and the Commission should keep civil society fully informed about the use of funds and consult them on possible improvements in how funds are used. The planning and implementation of the budget require a transparent procedure and consultations, with the Member States also consulting civil society organisations.
- 3.3 In the event of systematic deficiencies in the rule of law in the Member States, which at the same time put the EU budget at risk, an early and rapid response is required, particularly from the Commission. This is the only way to ensure that shortcomings are detected and corrected at an early stage. In addition, dissuasive penalties must be imposed in the event of infringements: in other areas too, such as competition law enforcement, the Commission imposes significant financial penalties to protect the application of EU law. The fundamental importance of the rule of law and the protection of the Union's budget requires the Commission and the Council to

impose substantial and dissuasive penalties in these areas as well. In the event of a possible reform of the Regulation, this should also be explicitly stated in the text of the Regulation. Furthermore, the EESC urges the Commission and the Council to coordinate closely with the European Parliament, and calls for the Parliament to have the same procedural rights as the Council in the event of a reform.

- 3.4 The EESC believes that systematic shortcomings with respect to the rule of law in a Member State always undermine, or at least seriously jeopardise, the implementation of EU-funded programmes and thus the protection of the EU budget. Therefore, if systematic shortcomings with respect to the rule of law are identified in a Member State, the latter should bear the burden of proving that the implementation of EU-funded programmes and the protection of the EU budget are guaranteed. The EESC calls for this to be clarified in Regulation (EU, Euratom) 2020/2092.
- 3.5 Alongside the options provided for in Regulation (EU) 2020/2092, the Commission, the Council of the European Union and the European Parliament should use all other means of sanction at their disposal in the event of systematic breaches of the rule of law. These especially include the infringement procedure under Article 263 TFEU and the procedure under Article 7 TEU. When applying these procedures, the aforementioned European institutions should also ensure that they are carried out as quickly as possible and that dissuasive penalties are imposed. Especially with regard to application of Regulation (EU) 2020/2092, the Commission should issue guidelines without delay in order to be able to react quickly in the event of breaches of the rule of law. In those guidelines, the Commission should, in particular, lay down the conditions under which it regards a financial penalty as necessary and the financial penalties it considers appropriate. Furthermore, it should also set out the conditions under which it will additionally initiate an infringement procedure under Article 263 TFEU or a procedure under Article 7 TEU.
- 3.6 In addition, the European Commission, the Council of the European Union and the European Parliament should continue to engage in a continuous dialogue on the rule of law with all Member States and clearly identify breaches of the rule of law publicly. The European institutions should cooperate even more with each other to further promote the rule of law and explore other possible ways to protect the rule of law in all Member States.

4. **Specific requests**

- 4.1 With regard to the recovery fund, the EESC finds it regrettable that the decisions of the European Commission assessing Member States' programmes only address the fundamental importance of the rule of law to a limited extent. As explained above, the rule of law is fundamental to the sustainable economic development of the European Union and must therefore be duly taken into account in the framework of the recovery fund. It is therefore not enough for the Commission to base its assessment largely on economic indicators, such as those under the European Semester. As already called for by the EESC, the Commission should also

take more account of the importance of the rule of law for sustainable economic development in the context of the European semester, and include relevant indicators².

- 4.2 In the EESC's view, the programmes submitted by the Member States to date generally include too few initiatives to strengthen the rule of law. The programmes of Italy, Croatia and the Czech Republic, for example, include individual rule of law initiatives, such as measures to combat corruption and increase the efficiency of judicial bodies. Overall, however, and with regard to all Member States, the EESC believes that this is not sufficient to reflect the fundamental importance of the rule of law. It is therefore of paramount importance for the EESC that all Member States set out in their national programmes the measures they will be taking to strengthen the rule of law.
- 4.3 In addition, the EESC calls for further development of the requirements for implementing the EU budget, including Regulation (EU) 2020/2092. In future, all programmes supported by the EU budget should be subject to far-reaching national laws on freedom of information and transparency, in order to provide press bodies, non-governmental organisations and civil society with easy and comprehensive access to information. An exception may be made only if national security interests so require. The European Commission should keep the suitability of these national laws on freedom of information under constant review and, if necessary, make proposals for amendments, while taking account of opinions from the European Parliament and the EESC, for example.
- 4.4 The EESC supports the creation of the European Public Prosecutor's Office as it will play a major role in protecting the EU's financial interests and prosecuting cross-border crimes. The EESC is convinced that the European Public Prosecutor's Office is already having a deterrent effect and will contribute in the long term to a significant improvement in cross-border criminal prosecution. For these reasons, the EESC urges all Member States to take part in the European Public Prosecutor's Office's enhanced cooperation and calls for this to become a prerequisite for participating in EU-funded programmes.
- 4.5 The newly created European Public Prosecutor's Office takes over tasks that OLAF has hitherto performed. The EESC therefore calls for OLAF to be further developed into a European agency for the rule of law and administrative efficiency. This new agency should universally and continuously review the rule of law in the Member States and advise the European Parliament, the Council of the European Union and the European Commission on the application of Regulation (EU) 2020/2092. Furthermore, this new agency should issue general recommendations to enhance the rule of law and administrative efficiency of the Member States and, in this respect, support Member States and their administrations. Where Member States do not follow significant recommendations made by this agency, they should be required to justify this.
- 4.6 Alongside this, the European Commission should also develop further initiatives to strengthen the rule of law and the application of European fundamental rights in all Member States. For

² See also: EESC opinion on *The rule of law and its impact on economic growth*, ECO/511, point 7.1 et seq.; and EESC opinion on the *Communication from the Commission to the European Parliament, the European Council and the Council – Further strengthening the Rule of Law within the Union*, SOC/627, point 4.1 et seq.

example, exchange programmes, including under Erasmus+, should be set up and developed for staff of Member States' judicial bodies, as well as of non-governmental organisations promoting in particular the rule of law and the protection of fundamental and human rights, in order to strengthen and develop a common understanding of the rule of law in Europe. To this end, the European Union should increase the funding for voluntary and cross-border training programmes for these members of the judiciary in the Member States; education programmes for non-governmental organisations promoting the rule of law and the protection of fundamental and human rights should also be supported. The aim should be to promote the European principle of the rule of law, which both takes into account the legal traditions of the Member States and reflects the binding nature of common minimum standards for all Member States.

4.7 In the EESC's view, civil society is particularly important in protecting the rule of law; it therefore also has a commensurate responsibility here. In order to strengthen the rule of law in all Member States, the Commission should therefore, through a new programme, increase its support both for civil society platforms that focus on protecting the rule of law in Member States and for corresponding educational programmes³. Under this programme, the EU should support the funding of non-governmental organisations. Protection against undue influence and other interference with the independence of non-governmental organisations by policy-makers, lobbyists and other agents needs to be safeguarded.

4.8 Finally, the European Commission, the Council of the European Union, the European Parliament and the EESC in particular should do more to raise awareness among all EU citizens of the importance of European values, especially the rule of law. The EU needs a communication strategy that combines the concept of the rule of law with everyday reality. To this end, the above-mentioned European institutions, in cooperation with other civil society actors, should launch a campaign entitled "My EU – My Rights" on the importance of the rule of law, targeting all sections of the population, clearly explaining basic information for all on the topic of the rule of law, and initiating a general EU-wide dialogue on the subject⁴.

Brussels, 20 January 2022

Christa Schweng

The president of the European Economic and Social Committee

* * *

N.B. Appendix overleaf.

³ See also: EESC opinion on the *Communication from the Commission to the European Parliament, the European Council and the Council – Further strengthening the Rule of Law in the Union*, SOC/627, point 3.9 et seq.; and EESC opinion on the *European Democracy Action Plan*, SOC/672, point 6.2.1 et seq.

⁴ See also: EESC opinion on the *Communication from the Commission to the European Parliament, the European Council and the Council – Further strengthening the Rule of Law in the Union*, SOC/627, point 3.19; and EESC opinion on the *European Democracy Action Plan*, SOC/672, point 4.3.2.

APPENDIX to the OPINION
of the
European Economic and Social Committee

The following amendments, which received at least a quarter of the votes cast, were rejected during the discussions (Rule 59(3) of the Rules of Procedure):

AMENDMENT 1

Tabled by:
TEDER Reet

SOC/692

Rule of law and the recovery fund

Point 3.4

Amend as follows:

<i>Section opinion</i>	<i>Amendment</i>
The EESC believes that systematic shortcomings with respect to the rule of law in a Member State always undermine, or at least seriously jeopardise, the implementation of EU-funded programmes and thus the protection of the EU budget. Therefore, if systematic shortcomings with respect to the rule of law are identified in a Member State, the latter should bear the burden of proving that the implementation of EU-funded programmes and the protection of the EU budget are guaranteed . The EESC calls for this to be clarified in Regulation (EU, Euratom) 2020/2092.	The EESC believes that systematic shortcomings with respect to the rule of law in a Member State always undermine, or at least seriously jeopardise, the implementation of EU-funded programmes and thus the protection of the EU budget. Therefore, if systematic shortcomings with respect to the rule of law are identified in a Member State, the latter should be required to cooperate fully in detecting irregularities and addressing shortcomings in order to ensure the lawful implementation of EU-funded programmes and the protection of the EU budget. The EESC recommends that this be clarified in Regulation (EU, Euratom) 2020/2092.

Reason
The rule of law must be guaranteed through legitimate means. The burden of proof in its current form is one of the most important fundamental principles of legality. Changing or reversing the burden of proof would set an extremely dangerous precedent, which would in turn undermine the foundations of the rule of law.

Outcome of the vote:

In favour: 41
Against: 65
Abstentions: 13

AMENDMENT 2

Tabled by:
TEDER Reet

SOC/692

Rule of law and the recovery fund

Point 1.6

Amend as follows:

<i>Section opinion</i>	<i>Amendment</i>
The EESC considers that <i>systematic</i> shortcomings with respect to the rule of law in Member States have a detrimental impact on the EU budget, and calls for <i>the burden of proof to be reversed in this respect</i> .	The EESC considers that shortcomings with respect to the rule of law in Member States have a detrimental impact on the EU budget, and calls, <i>in this respect</i> , for <i>shortcomings to be addressed in a targeted way and for strict compliance with the rule of law when it comes to implementation of EU-funded programmes and protection of the EU budget</i> .

Reason
The rule of law must be guaranteed through legitimate means. The burden of proof in its current form is one of the most important fundamental principles of legality. Changing or reversing the burden of proof would set an extremely dangerous precedent, which would in turn undermine the foundations of the rule of law.

Outcome of the vote:

In favour: 72
Against: 141
Abstentions: 18