



Strengthening Trust, Mobility and Growth within the European Union

The EU Justice Agenda for 2020

A New EU Framework to Strengthen
the Rule of Law



Europe Direct is a service to help you find answers
to your questions about the European Union.

Freephone number (*):
00 800 6 7 8 9 10 11

(*): Certain mobile telephone operators do not allow access to 00 800 numbers or these calls may be billed.

European Commission - Directorate-General for Justice

More information on the European Union is available on the Internet (<http://europa.eu>)

© European Union, 2014

Reproduction is authorised provided the source is acknowledged.

Printed in Belgium

Communication

I. The EU Justice Agenda for 2020

**Strengthening Trust, Mobility
and Growth within the Union**

Table of contents

I. Strengthening Trust, Mobility and Growth within the Union

1. Introduction	1
2. Progress to date : the basis of the European Area of Justice . . .	1
3. The Challenges : Strengthening Trust, Mobility and Growth within the Union	3
4. Addressing the Challenges : Consolidate, Codify, Complement . .	4
4.1 Consolidate	4
4.2 Codify	6
4.3 Complement	6
5. Conclusion	8

II. A New EU Framework to Strengthen the Rule of Law

1. Introduction	11
2. Why the Rule of Law is of fundamental importance for the EU .	12
3. Why a new EU Framework to Strengthen the Rule of Law. .	13
4. How the new EU Rule of Law Framework will work.	14
4.1 What will trigger the new EU Rule of Law Framework .	14
4.2 The new EU Rule of Law Framework as a three stage process	14
5. Conclusion	16
6. Annex I : The Rule of Law as a foundational principle of the Union	17
6. Annex II : Infographic - A rule of law framework for the European Union.	19

1. Introduction

- 1 The Stockholm Programme – An open and secure Europe serving and protecting citizens – OJ C 115 of 4.5.2010.
- 2 Delivering an area of freedom, security and justice for Europe's citizens – Action Plan Implementing the Stockholm Programme – COM(2010) 171 final of 20.4.2010.
- 3 Assises de la Justice – Shaping Justice policies in Europe for the years to come – 21 and 22 November 2013 – Results of proceedings, discussion papers and written contributions are available at: http://ec.europa.eu/justice/events/assises-justice-2013/index_en.htm.
- 4 In a plenary meeting of the European Parliament as well as in a number of meetings in its Committees, in particular, JURI, LIBE, AFCO, DROI.
- 5 In two formal and two informal meetings of the Justice and Home Affairs Council as well as working group level (CATS, FREMP and Civil Matters working groups).
- 6 In the CIVEX Committee.

Over the last 15 years, on the basis of the Treaties of Maastricht, Amsterdam and Nice, the EU has progressively developed a European area of justice and an EU justice policy. Before 2009, action in these fields was marked by an institutional set-up that differed from that for other EU policy areas. In particular, the European Parliament and the Council were not yet on an equal footing, while priorities were mainly set by the European Council, through the adoption of partly very detailed five-year programmes (the Tampere, The Hague and Stockholm programmes).

Today, the EU justice policy has become close to other EU policies, following successive changes to the EU Treaties, in particular the entry into force of the Treaty of Lisbon on 1 December 2009. The European Parliament and the Council have become co-legislators in most areas of judicial cooperation in civil and criminal matters. As of 1 December 2014, a final transitional phase will come to an end. This will lift current limitations to the judicial control by the European Court of Justice and to the Commission's power to launch infringements, as the guardian of the Treaty over the area of judicial cooperation in criminal matters. The Commission will continue to ensure the proper implementation of EU legislation in the justice areas.

As also the European Council's Stockholm Programme¹ and the following Commission action plan² come to term at the end of 2014, the time has come to take stock of the progress made and identify the key challenges ahead and how to address them.

This Communication sets out the political priorities that should be pursued in order to make further progress towards a fully functioning common European area of justice oriented towards trust, mobility and growth by 2020.

In preparing this Communication, the Commission involved a wide range of stakeholders and interested parties, in particular through the *"Assises de la Justice"*³ conference and received a vast number of written contributions. Discussions were also carried out in the European Parliament⁴, the Council⁵ and the Committee of Regions⁶.

The Commission's orientations relating specifically to judicial cooperation in civil and criminal matters are intended to contribute to the strategic guidelines to be defined by the European Council in accordance with Article 68 of the Treaty on the Functioning of the European Union (TFEU); and to the strategic choices which the European Parliament will want to give to the further development of the European area of justice.

2. Progress to date : The basis of the European Area of Justice

The EU has taken action to establish the basis of *"an area of freedom, security and justice without internal frontiers"*. Since the entry into force of the Lisbon Treaty and as a result of close cooperation with the European Parliament and with the Council, substantial progress has been made towards a better functioning common European area of justice.

Enhancing mutual trust

EU justice policy has sought to develop a European area of justice based on mutual recognition

and mutual trust by building bridges between the different justice systems of the Member States. This has required proper legal safeguards to be built in, to make sure that the bridges built between Member States' legal systems are structurally sound. In the area of criminal justice, mutual trust between Member States has been strengthened by progressively establishing, throughout the EU, a set of fair trial rights by means of common, EU-wide, minimum standards to protect persons suspected or accused of a

crime⁷. The standing of victims throughout the criminal procedure has also been improved by providing minimum rights, support, advice and protection for victims and their close relatives.

Justice for Growth: contributing to economic growth

Over the past years, notably under the impression of the financial and sovereign debt crisis and in line with Europe 2020 strategy, EU Justice policy has become also a support for economic recovery, growth and structural reforms⁸. The EU has taken action to progressively build the trust necessary for businesses and consumers to enjoy a single market that truly works like a domestic market. Red tape and costs have been cut: a judgement given in one Member State can now be recognised and enforced in another Member State without intermediary procedures (the formality of ‘exequatur’⁹ has been progressively removed in both civil and commercial proceedings). In the field of data protection, a new pan-European regulation is currently the subject of advanced negotiations between the European Parliament and the Council that will replace the existing 28 national laws that regulate the protection of personal data by a single set of rules. The Consumer Rights Directive, which will be fully effective across all 28 EU Member States in June 2014, will increase consumer protection, while businesses will benefit from a single set of core rules, cutting compliance costs substantially for EU wide traders. As a first step towards an EU “rescue and recovery” culture to help companies and individuals in financial difficulties, the existing European rules on cross-border insolvency are being amended.

Improving the independence, quality and efficiency of national justice systems is part of the economic adjustment programmes and of the European Semester. The EU Justice Scoreboard is assisting Member States and the EU institutions

by providing objective, reliable and comparable data on the effectiveness of the national justice systems.

The EU institutions also took action to better protect the financial interests of the EU and taxpayer’s money against fraud. This work included in particular the Commission’s proposal to establish a European Public Prosecutor’s Office, which seeks to put in place a body to ensure that crimes against the EU budget are effectively investigated and prosecuted so that criminals are brought to court and money is recovered.

Justice for Citizens : Making justice simple for citizens

The EU took action to ensure that citizens can make full use of their right to move, to buy goods and services, and to live in another Member State. Citizens should fully enjoy EU citizenship throughout their life and feel at ease wherever they are in the EU. This was done for example by making it easier for them to handle the legal implications of cross border successions and divorce or by proposing to reduce costly paperwork in the Member States through the abolition of outdated rubber-stamping formalities such as the Apostille or certified translations between Member States.

Protecting Fundamental Rights

As the guardian of the Treaties, the Commission intervened to ensure respect of the EU Charter of Fundamental Rights (the “Charter”), including EU citizens’ rights, and of the rule of law. The legally binding Charter has become a compass for all EU institutions. The Commission also intervened to ensure the respect of specific rights enshrined in EU legislation, in particular right to equality, protection of personal data, and consumer protection. This included action to strengthen gender equality by promoting women in decision-making.

7 There are over 8 million criminal proceedings in the EU every year.

8 A key impulsion for this “justice for growth” was notably given by the Spanish Presidency of the Council in 2010 (Council conclusions on judicial cooperation for the support of economic activity – 23.4.2010) as well as by the Irish Presidency in 2013 - http://eu2013.ie/media/eupresidency/content/documents/EU-Pres_Prog_A4.pdf - page 21.

9 Exequatur, a concept specific to the private international law, refers to the requirement of a court decision authorising the enforcement in that country of a judgment or court settlement given abroad.

3. The challenges : Strengthening Trust, Mobility and Growth within the Union

10 Communication from the Commission – “The EU Justice Scoreboard A tool to promote effective justice and growth” – COM(2013)160 and Communication from the Commission – “The 2014 EU Justice Scoreboard” – COM(2014)155.

11 Communication from the Commission “A new EU Framework to strengthen the Rule of Law” –, COM(2014) 158.

12 There are 13.7 million European citizens residing in a Member State of which they are not a national (up from 12.1 million in 2009 (Eurostat data).

13 Europe is the world’s largest travel market with sales of more than 550 million trips annually, covering also trips outside the EU – source: (data from Eurostat, reflected in SWD(2013) 263 final).

14 The proportion of citizens living in another Member State and registered to vote there was 5,9% in 1994. The figure increased to 11,6% in 2009.

15 Approximately 16 million (13%) of the 122 million marriages in the Union have a cross-border dimension. Of the 2.4 million marriages celebrated in the Union in 2007, 300,000 had a cross-border dimension – source: SEC(2011) 327.

16 In Europe, there are around 16 million international couples, and every year at least 650,000 of them face the question of how to divide up their property when their marriage or partnership comes to an end – source: SEC(2011) 327.

17 An estimated 450,000 European families deal with an international succession each year, valued at more than €120 billion – source: SEC(2009) 410.

18 There are more than 500 million consumers in Europe. Consumer expenditure, amounting to 56% of EU GDP, reflects the enormous power of the consumer to drive forward the European economy – source: EU Consumer Agenda of 2012, COM(2012) 225.

Though tangible progress has been made to date towards a fully common European area of justice, more needs to be done after the end of the transitional period on 1 December 2014.

Trust. Mutual trust is the bedrock upon which EU justice policy should be built. While the EU has laid important foundations for the promotion of mutual trust, it needs to be further strengthened to ensure that citizens, legal practitioners and judges fully trust judicial decisions irrespective of the Member State where they have been taken. EU instruments such as the European arrest warrant or the regulations on conflict of laws issues between Member States require a high level of mutual trust between justice authorities from different Member States. Mutual trust between courts and administrations helps them to recognise and enforce each other’s decisions and facilitates access to justice on equal terms in all Member States. A key requirement for mutual trust is the independence, quality and efficiency of the judicial systems¹⁰ and the respect of the rule of law¹¹. A very important ingredient of trust is that progress in laws is made a reality on the ground. This requires laws already agreed at EU level to be transposed and applied effectively. It requires also effective enforcement tools at national level to ensure better access to justice in all Member States.

Mobility. Europeans are increasingly taking advantage of the rights conferred on them by the EU Treaties. There are currently nearly 14 million EU citizens residing in a Member State of which they are not a national (up from 12.1 million in 2009)¹². EU citizens increasingly travel¹³, study, vote¹⁴, work, benefit from health care, get married¹⁵, have children, buy property, divorce¹⁶ and die¹⁷ in a

Member State other than the one they were born in. Even without leaving home, consumers¹⁸ buy goods and services across borders, including online. Despite progress in the enjoyment of their rights, EU citizens still face some obstacles. They still experience practical and legal difficulties when they try to enjoy the same rights they have at home in another Member State. The EU needs to address these obstacles with determination, while continuing to enable the fight against abuse, particularly at a time when the right to free movement of EU citizens is being challenged by some. The right of EU citizens to move freely and live in any EU country is one of the four fundamental freedoms enshrined in EU law and a cornerstone of EU integration. In addition, the absence of borders in the digital online world is a driver for the EU to address the interplay between substantive laws.

Growth. EU justice policy should continue to support economic recovery, growth and tackling unemployment. Structural reforms need to be pursued so as to ensure that justice systems are capable of delivering swift, reliable and trustworthy justice, which would notably reduce the length of judicial proceedings thereby supporting the effectiveness of other policies. Businesses and consumers need to be confident that they will be able to effectively enforce contracts and handle litigation in court, or where possible out of court, throughout the EU, within a reasonable time and without encountering the variety of hurdles they still confront today. Growth in the digital economy also requires the trust and confidence of citizens, as they are concerned about the large-scale processing or surveillance of their personal data when using online services.

4. Addressing the challenges : consolidate, codify, complement

To tackle the challenges identified for bringing about a fully functioning European area of justice, the focus of EU justice policy in the years to come should be on **consolidating** what has already been achieved, and, when necessary and appropriate, **codifying** EU law and practice and **complementing** the existing framework with new initiatives. Depending on the type of challenges, the future EU justice policy should use a combination of these methods, based on a case by case analysis and impact assessment.

When applying any of these methods, the EU should fully take account of the fact that the diversity of legal systems and traditions in the EU has to be preserved; that subsidiarity and proportionality have to be respected as well as the need to base all EU action, and notably EU action in the field of justice policies, firmly on the EU Charter of Fundamental Rights.

4.1. Consolidate

In carrying the EU agenda for justice forward, the EU should first and foremost consolidate the progress achieved, ensuring that fundamental rights are upheld and that rights granted by EU legislation become a reality. Instruments agreed at EU level must be transposed by Member States, effectively implemented and used. When such rights are not respected, there should be effective remedies available.

i) Upholding Fundamental Rights

The EU should pursue its efforts to ensure that it remains exemplary in its application of the Charter. This requires action from all European institutions and Member States when implementing EU law to promote the effective application of the Charter and of secondary legislation addressing specific rights, such as the protection of personal data, gender equality, citizens' rights, fair trial rights or children's rights. Ensuring the effective protection of these rights across the EU is crucial for the trust of citizens in the proper functioning of the European area of justice. This includes the rights of persons belonging to minorities or those of persons in particularly vulnerable situations such as children, victims of crime and persons with disabilities. Moreover, there should be a continued common determination to fight xenophobic or racist hate speech and crimes within the EU. The advice and expertise of the EU Fundamental Rights Agency is important to contribute to the development of EU policies, including in criminal matters.

The EU should also continue its work in ensuring equal-

ity between women and men in pay, pensions and participation in the labour market, including in positions of top management. This action should help ensuring that Europe is making full use of all available talent.

ii) Ensuring effective remedies

There are no rights without effective remedies. The EU should pursue its efforts to ensure the respect of the right to an effective remedy before a tribunal in case of violation of EU law (Article 47 of the Charter), including in cases where national procedures make it excessively difficult for citizens to claim the rights granted to them by EU law in cross-border cases.

To further facilitate the rapid resolution of disputes, Member States should promote the use of other types of non-judicial redress and remedies mechanisms developed in the EU which could offer a swift, efficient and less costly solution to disputes. Such mechanisms and instruments include, for example, mediation, alternative dispute resolution, online dispute resolution, SOLVIT, the European Small Claims Procedure and the newly agreed European Account Preservation Order.

Administrative review, the work of national enforcement authorities as well as procedures before equality bodies, can also play a role. Close cooperation between national authorities or administrative bodies is particularly important for the effectiveness of certain EU rights, such as the right to free movement

19 <https://e-justice.europa.eu/>
 20 <http://europa.eu/youreurope/>

or the protection of personal data. To better tackle EU-wide breaches of consumer protection law, the cooperation between national enforcement authorities needs to be strengthened. The independence of enforcement authorities, when required by EU law, as is the case for data protection authorities, must be ensured.

Well-functioning justice systems dealing with administrative cases are also crucial for the effectiveness of EU law.

iii) Judicial Training

The impact of EU law on the daily lives of European citizens and businesses is such that every national legal practitioner – from lawyers and bailiffs on the one hand, to judges and prosecutors on the other – should also be knowledgeable in EU law and capable of interpreting and effectively enforcing EU law, alongside his or her own domestic law. In the Union's decentralised legal system, national judges often need to become "Union law judges" to be able to fulfil their responsibilities.

Training legal practitioners in EU law is thus of utmost importance to ensure EU law is implemented and applied correctly, to build trust in each other's judicial systems and enable practitioners to cooperate and trust each other across borders.

More than 130,000 legal practitioners received training in EU law in 2011 and 2012. This includes a quarter of all EU judges and prosecutors. It is now time to take training a step further and actively involve court staff and legal practitioners in EU law from the outset as well. The experience of the European Judicial Training Network should be consolidated and expanded to include all new judges and prosecutors. The potential of e learning should also be fully exploited.

The EU should make full use of existing networks to facilitate the training of legal practitioners and help reach the objective of training 50% of them – a total of 700,000 – in EU law by 2020. The Commission is ready to support these efforts: the 2014-2020 Justice financial programme reflects the importance granted to training by the Commission. 35% of the programme's overall budget of 378 million EUR will support high-quality European training projects for all justice professions and help share best practices on subjects such as curricula or interactive training methodology.

iv) Information and communication technologies

Information and communication technologies (e-justice) facilitate access to justice for citizens and businesses.

The E-justice¹⁹ and other relevant portals informing citizens and businesses on their rights such as Your Europe²⁰, should continue to develop into operational tools that facilitates access to justice, removes red tape and unnecessary procedures in the Member States, notably in civil and commercial proceedings. The E-justice portal can also make cross-border cooperation easier, for example by providing citizens and practitioners with templates and forms translated in all official languages of the EU. The interconnection of national registers at EU level should ensure that legal practitioners, citizens and businesses can access the information they need in other Member States. Such registers include business, land and insolvency registers, as well as registers of wills.

The benefits of e-justice tools are not limited to cross-border contexts alone. Direct electronic communication between citizens, legal practitioners, businesses and courts is becoming a reality across the European area of justice and the EU should support initiatives in this area. In the context of ongoing structural reforms and the work on a modern public administration, the digitisation of national justice systems is becoming a key instrument for ensuring effective national justice systems.

The EU should encourage the use of electronic tools, which can provide a real extra benefit for citizens, businesses, legal practitioners and the courts, including tools to access the case-law of courts in other Member States.

v) Operational Co-operation

Practitioners across Europe need to work together to exchange information in a fast and secure way and to obtain assistance from their counterparts. Enhancing operational cooperation between all parties involved is crucial, particularly for establishing mutual trust.

Existing mechanisms and networks in civil and criminal matters, such as the European Judicial Networks, should be strengthened and their potential fully exploited, including online.

Eurojust needs to play its part to the full, benefiting from its on-going reform, as it will remain an important EU body for coordinating the prosecution of

crime also after the establishment of the European Public Prosecutor's Office, which will focus its activities, at least initially, on the fight against fraud to the detriment of the financial interests of the Union. For other

transnational crimes, Eurojust will have a key role to play and therefore will need to be further strengthened in effectiveness. In this context, the potential of joint investigation teams should be used to the maximum.

4.2. Codify

Codification of existing laws and practices can facilitate the knowledge, understanding and the use of legislation, the enhancement of mutual trust as well as consistency and legal certainty while contributing to simplification and the cutting of red tape. In a number of cases, the codification of certain parts of the existing EU legislation relating to justice or to relevant case-law of the Court of Justice of the Union in the area of justice can be beneficial in terms of providing consistency of legislation and clarity for the citizens and users of the law in general:

- **Civil and commercial law** : Since 2000, the EU has adopted a significant number of rules in civil and commercial matters as well as on conflict of laws. The EU should examine whether codification of the existing instruments could be useful, notably in the area of conflict of laws;
- **Consumer rights law** : Following an assessment of the overall functioning of the Consumer Rights Directive and the related acquis in the field of consumer legislation, codification initiatives

based on existing legislation should be explored and assessed. The aim should be to raise consumers' awareness of their rights, to simplify partially overlapping directives and to help companies apply the same set of rules in different contexts;

- **Criminal law** : EU legislation relating to procedural rights in criminal matters is currently contained in a considerable number of different instruments which have been developed and adopted step by step over the past years. To further strengthen the level-playing field and the consistency of the protection of the rights of suspected persons, the need for codifying criminal procedural rights into one instrument could be examined.

To facilitate trust and mutual cooperation attention should also be paid to the case-law of the Court of Justice of the Union relating to the rules and principles that need to be applied by national administrations when implementing EU law.

4.3. Complement

Justice policy is a dynamic area, shaped in particular by the increasing mobility of citizens and businesses. Initiatives to complement existing justice policies and legal instruments may therefore have to be envisaged where appropriate. This should always be done with the purpose of enhancing mutual trust, to facilitate the life of citizens and to further contribute to growth. The need and the added value of such complementary initiatives will have to be as carefully assessed as in other areas of EU policies. In addition, the diversity of Member States' legal systems and traditions will always have to be taken into account. The approaches to be chosen – for example, mutual recognition, identification of the applicable law, traditional harmonisation, harmonised optional

substantive, or procedural law regime – will depend on the issue at stake.

Enhance mutual trust. Mutual trust requires justice systems which are independent, of quality and efficient. Existing or perceived shortcomings should be addressed so that citizens and businesses can fully rely on the judicial system they are dealing with. Assurance that both parties' procedural rights are protected is also a crucial element in ensuring mutual trust both in civil and in criminal matters. The need to reinforce civil procedural rights should be examined, for example as regards the service of documents or the taking of evidence and in ensuring that the best interests of the child are upheld as a primary concern. In order to facilitate smooth cooperation in criminal

matters, the mutual recognition of instruments could be further strengthened, building on work done so far, in areas such as the recognition of financial penalties, confiscation orders and disqualifications. Once the European Public Prosecutor's Office is set up, practice will show the possible need for complementary measures.

Contribute to economic growth. Complementary justice policy initiatives may also be needed to further contribute to growth, for example, by going a step further in developing an EU “rescue and recovery” culture for insolvencies. Minimum standards in the field of substantive insolvency law could become desirable for all Member States to allow viable businesses that are in financial difficulties to undergo restructuring at an early stage. Technological developments, in particular in markets with significant potential for growth (like the cloud market), require EU civil law to be up-to-date. A clearer and more consistent civil and contract law framework, including by means of optional systems which are respectful of subsidiarity and the diversity of national legal systems, could respond to this challenge by providing businesses with a level-playing field while safeguarding the interests of consumers. Enforcement of consumer protection rights remains national while cross-border shopping increases. Strengthening the enforcement or clarifying existing consumer protection laws should help to strengthen consumer trust.

Facilitate citizens' lives. In order to give full effect to the right of every citizen to participate in the democratic life of the Union and enable mobile EU citizens to better integrate into their host country, the need to adopt provisions adding to the citizenship rights referred to in the EU Treaties can be examined. In order to avoid situations where citizens encounter problems, for example, related to civil status records, the EU should assess the need for further action, such as rules on family

names to complement existing proposals to facilitate the acceptance of those public documents which are of particular practical relevance when citizens or businesses make use of their free movement rights. In criminal matters, victims do not always benefit from a satisfactory level of compensation, in particular from the offender. Action to remedy this should be explored. Furthermore, national Roma integration strategies should be translated into concrete actions at national and local level. This includes the optimisation of the use of EU funds and looking at how to ensure better targeting of EU funds explicitly for Roma inclusion. Being active in **international** fora and engaging with EU partners is crucial to ensure EU citizens and businesses are protected in their relations with third countries. The objective should be that what has been achieved at EU level in the justice areas for defending rights and setting standards, such as in the field of personal data protection, finds support and drives EU relations with third countries. Special attention will be paid to the promotion of effective justice systems in particular in enlargement and neighbouring countries. At multilateral level, focus will be given to more efficient cooperation with the Hague Conference on Private International Law, where the EU speaks with one voice in areas of civil and commercial law.

In view of its importance for the overall fundamental rights architecture around the European area of justice, the EU's accession to the European Convention on Human Rights – negotiated by the Commission between 2010 and 2014 on the basis of a mandate given to it by the Council – needs to overcome the last hurdles. Once the Court of Justice will have issued its opinion on the outcome of these negotiations, the EU, taking full account of this opinion, should take all the action necessary to speedily conclude the negotiations and complete the ratification process in all EU Member States, so as to meet the obligation contained in the Treaties.

5. Conclusion

EU justice policy has become increasingly central to EU integration and very tangible for many citizens. It has a major role to play in enforcing the common values upon which the Union is founded, in strengthening economic growth and in contributing to the effectiveness of other EU policies. A properly designed EU justice policy can ensure that individuals and businesses, notably those who make use of their free movement rights, effectively benefit from a trusted and fully functioning common European area of justice.

This EU Justice Agenda for 2020 sets out the Commission's orientations for the political direction for the EU's work in the years to come, which will now be discussed with the European Parliament and the Council as well as with the public at large. The result of this discussion should also inspire the strategic guidelines to be provided by the European Council under Article 68 TFEU.

Making these orientations a reality will require the continuous and determined efforts of all EU institutions and all Member States, as well as the full involvement of all stakeholders, in particular the citizens as end-users of the justice systems, the judiciary and legal practitioners. Such involvement is crucial for developing solutions that respond to the real practical challenges in citizens' and businesses' daily lives and meet their expectations. As a result, by 2020, justice and citizens' rights should know no borders in the EU.

Communication

II. A New EU Framework to Strengthen the Rule of Law

1. Introduction

- 1 See the Preamble of the ECHR and Article 3 of the Statute of the Council of Europe (<http://conventions.coe.int/Treaty/en/Treaties/Html/001.htm>).
- 2 See Articles 3(2) TEU and 67 TFEU.
- 3 See the speech of Vice-President Reding, EU Justice Commissioner, "The EU and the Rule of Law – What next?" (http://europa.eu/rapid/press-release_SPEECH-13-677_en.htm).
- 4 See http://europa.eu/rapid/press-release_SPEECH-12-596_en.htm and http://europa.eu/rapid/pressrelease_SPEECH-13-684_en.htm
- 5 In March 2013, the foreign ministers of Denmark, Finland, Germany and The Netherlands called for more European safeguards to ensure compliance with fundamental values of the Union in the Member States. On the discussion in the General Affairs Council see http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/genaff/136915.pdf. On the conclusions of the Justice and Home Affairs Council see http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/137404.pdf
- 6 See the EP resolutions setting out various recommendations to the EU institutions on how to strengthen the protection of Article 2 TEU (the Rui Tavares Report of 2013, the Louis Michel and the Kinga Góncz Reports of 2014 - <http://www.europarl.europa.eu/committees/en/libe/reports.html>).
- 7 At the Assises de la Justice, a high level conference on the future of justice in the EU in November 2013 which was attended by over 600 stakeholders and interested parties, one session was specifically dedicated to the topic "Towards a new rule of law mechanism". A call for input was organised before and after the conference that attracted numerous written contributions (see http://ec.europa.eu/justice/events/assises-justice-2013/contributions_en.htm).
- 8 As President Barroso highlighted in his State of the Union address of September 2013, the framework "should be based on the principle of equality between Member States and activated only in situations where there is a serious and systemic risk to the rule of law, and triggered by predefined benchmarks" (see http://europa.eu/rapid/press-release_SPEECH-13-684_en.htm).
- 9 The Venice Commission, officially named the European Commission for Democracy through Law, is the Council of Europe's advisory body on constitutional matters (see http://www.venice.coe.int/WebForms/pages?p=01_Presentation).

The rule of law is the backbone of any modern constitutional democracy. It is one of the founding principles stemming from the common constitutional traditions of all the Member States of the EU and, as such, one of the main values upon which the Union is based. This is recalled by Article 2 of the Treaty on European Union (TEU), as well as by the Preambles to the Treaty and to the Charter of Fundamental Rights of the EU. This is also why, under Article 49 TEU, respect for the rule of law is a precondition for EU membership. Along with democracy and human rights, the rule of law is also one of the three pillars of the Council of Europe and is endorsed in the Preamble to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)¹.

Mutual trust among EU Member States and their respective legal systems is the foundation of the Union. The way the rule of law is implemented at national level plays a key role in this respect. The confidence of all EU citizens and national authorities in the functioning of the rule of law is particularly vital for the further development of the EU into "an area of freedom, security and justice without internal frontiers"². This confidence will only be built and maintained if the rule of law is observed in all Member States.

The different constitutions and judicial systems of the EU Member States are, in principle, well designed and equipped to protect citizens against any threat to the rule of law. However, recent events in some Member States have demonstrated that a lack of respect for the rule of law and, as a consequence, also for the fundamental values which the rule of law aims to protect, can become a matter of serious concern. During these events, there has been a clear request from the public at large for the EU, and notably for the Commission, to take action. Results have been achieved. However, the Commission and the EU had to find ad hoc solutions since current EU mechanisms and procedures have not always been appropriate in ensuring an effective and timely response to threats to the rule of law.

The Commission is the guardian of the Treaties and has the responsibility of ensuring the respect of the values on which the EU is founded and of protecting the general interest of the Union. It must therefore play an active role in this respect³. In September 2012, in his annual State of the Union speech to the European Parliament, President Barroso said: "We need a better developed set of instruments, not just the alternative to the 'soft power'

of political persuasion and the 'nuclear option' of Article 7 TEU. In the following year's speech, he said that "experience has confirmed the usefulness of the Commission role as an independent and objective referee. We should consolidate this experience through a more general framework [...]. The Commission will come forward with a communication on this. I believe it is a debate that is key to our idea of Europe."⁴

In June 2013, the Justice and Home Affairs Council underlined that "respecting the rule of law is a prerequisite for the protection of fundamental rights" and called on the Commission "to take forward the debate in line with the Treaties on the possible need for and shape of a collaborative and systematic method to tackle these issues". In April 2013, the General Affairs Council held a comprehensive discussion on the topic.⁵

In July 2013, the European Parliament requested that "Member States be regularly assessed on their continued compliance with the fundamental values of the Union and the requirement of democracy and the rule of law"⁶.

This Communication responds to these requests. On the basis of the Commission's experience, the inter-institutional debate and broad consultations⁷, the Communication sets out a new framework to ensure an effective and coherent protection of the rule of law in all Member States. It is a framework to address and resolve a situation where there is a systemic threat to the rule of law.⁸

The framework seeks to resolve future threats to the rule of law in Member States before the conditions for activating the mechanisms foreseen in Article 7 TEU would be met. It is therefore meant to fill a gap. It is not an alternative to but rather precedes and complements Article 7 TEU mechanisms. It is also without prejudice to the Commission's powers to address specific situations falling within the scope of EU law by means of infringement procedures under Article 258 of the Treaty on the Functioning of the European Union (TFEU).

From a broader European perspective, the framework is meant to contribute to reaching the objectives of the Council of Europe, including on the basis of the expertise of the European Commission for Democracy through Law (Venice Commission)⁹.

2. Why the Rule of Law is of fundamental importance for the EU

The principle of the rule of law has progressively become a dominant organisational model of modern constitutional law and international organisations (including the United Nations and the Council of Europe) to regulate the exercise of public powers. It makes sure that all public powers act within the constraints set out by law, in accordance with the values of democracy and fundamental rights, and under the control of independent and impartial courts.

The precise content of the principles and standards stemming from the rule of law may vary at national level, depending on each Member State's constitutional system. Nevertheless, case law of the Court of Justice of the European Union ("the Court of Justice") and of the European Court of Human Rights, as well as documents drawn up by the Council of Europe, building notably on the expertise of the Venice Commission, provide a non-exhaustive list of these principles and hence define the core meaning of the rule of law as a common value of the EU in accordance with Article 2 TEU.

Those principles include **legality**, which implies a transparent, accountable, democratic and pluralistic process for enacting laws; **legal certainty**; **prohibition of arbitrariness of the executive powers**; **independent and impartial courts**; **effective judicial review including respect for fundamental rights**; and **equality before the law**¹⁰.

Both the Court of Justice and the European Court of Human Rights confirmed that those principles are not purely formal and procedural requirements. They are the vehicle for ensuring compliance with and respect for democracy and human rights. The rule of law is

therefore a constitutional principle with both formal and substantive components¹¹.

This means that respect for the rule of law is intrinsically linked to respect for democracy and for fundamental rights: there can be no democracy and respect for fundamental rights without respect for the rule of law and vice versa. Fundamental rights are effective only if they are justiciable. Democracy is protected if the fundamental role of the judiciary, including constitutional courts, can ensure freedom of expression, freedom of assembly and respect of the rules governing the political and electoral process.

Within the EU, the rule of law is of particular importance. Compliance with the rule of law is not only a prerequisite for the protection of all fundamental values listed in Article 2 TEU. It is also a prerequisite for upholding all rights and obligations deriving from the Treaties and from international law. The confidence of all EU citizens and national authorities in the legal systems of all other Member States is vital for the functioning of the whole EU as "an area of freedom, security and justice without internal frontiers". Today, a judgment in civil and commercial matters of a national court must be automatically recognised and enforced in another Member State and a European Arrest Warrant against an alleged criminal issued in one Member State must be executed as such in another Member State¹². Those are clear examples of why all Member States need to be concerned if the rule of law principle is not fully respected in one Member State. This is why the EU has a strong interest in safeguarding and strengthening the rule of law across the Union.

¹⁰ For an overview of the relevant case law on the rule of law and the principles which the rule of law entails see Annex I.

¹¹ The Court of Justice does not refer to the rule of law as simply a formal and procedural requirement, but also highlights its substantive value by specifying that a "Union based on the rule of law" means that the EU institutions are subject to judicial review of the compatibility of their acts not only with the Treaty but "with the general principles of law which include fundamental rights" (see *ex pluribus*, Case C-50/00 P, *Unión de Pequeños Agricultores* [2002] ECR I-06677, para 38 and 39; *Joined Cases C-402/05 P and C-415/05 P, Kadi*, [2008] ECR I-06351, para 316). This has been also confirmed by the European Court of Human Rights which gives the rule of law a substantive nature by establishing that it is a concept inherent in all articles of the ECHR (see for example *ECtHR Stafford v United Kingdom*, 28 May 2001, para 63). It must be highlighted that in the French version the Court does not use only the terms "pre-eminence du droit" but also "Etat de droit".

¹² See Case C-168/13, *Jeremy F v Premier Ministre*, not yet published, para 35 and 36.

3. Why a new EU Framework to Strengthen the Rule of Law

¹³ See, for example, cases C-286/12 *Commission v Hungary*, not yet published (equal treatment as regards the compulsory retirement of judges and public prosecutors); C-518/07 *Commission v Germany* [2010] ECR I-01885 and C-614/10 *Commission v Austria*, not yet published (independence of data protection authorities).

¹⁴ The Commission's action to ensure compliance with the Charter of Fundamental Rights illustrates this legal limitation stemming from the Treaty itself. As explained in its Communication "Strategy for the effective implementation of the Charter of Fundamental rights" of 19 October 2010 (COM(2010) 573 final), the Commission is determined to use all the means at its disposal to ensure that the Charter is fully respected by the Member States. This concerns in particular Article 47 of the Charter which provides that everyone whose rights guaranteed by EU law are violated has the right to an effective remedy before an independent tribunal. However, this can be done by the Commission vis-à-vis Member States "only when they are implementing Union law", as set out explicitly in Article 51 of the Charter. See for example Case C-87/12, *Kreshnik Ymeraga and Others v Ministre du Travail, de l'Emploi et de l'Immigration*, not yet published, C-370/12 *Thomas Pringle v Government of Ireland, Ireland and The Attorney General*, not yet published and C-617/10, *Åklagaren v Hans Åkerberg Fransson*, not yet published.

¹⁵ Communication from the Commission of 15 October 2003: Respect for and promotion of the values on which the Union is based, COM(2003) 606 final.

¹⁶ In some cases, systemic deficiencies related to the rule of law may be tackled using the Cooperation and Verification Mechanisms (CVM) based on the Acts of Accession for Romania and Bulgaria. However, these mechanisms, which have their basis directly in primary EU law, address pre-accession-related and therefore transitional situations. They are therefore not suitable for addressing a threat to the rule of law in all EU Member States.

¹⁷ Article 8 of the Statute of the Council of Europe provides that a Member State that has "seriously violated" the principles of the rule of law and human rights may be suspended from its rights of representation and even be expelled from the Council of Europe. Like the mechanisms set out in Article 7 TEU, this mechanism has never been activated.

In cases where the mechanisms established at national level to secure the rule of law cease to operate effectively, there is a systemic threat to the rule of law and, hence, to the functioning of the EU as an area of freedom, security and justice without internal frontiers. In such situations, the EU needs to act to protect the rule of law as a common value of the Union.

However, experience has shown that a systemic threat to the rule of law in Member States cannot, in all circumstances, be effectively addressed by the instruments currently existing at the level of the Union.

Action taken by the Commission to launch **infringement procedures**, based on **Article 258 TFEU**, has proven to be an important instrument in addressing certain rule of law concerns¹³. But infringement procedures can be launched by the Commission only where these concerns constitute, at the same time, a breach of a specific provision of EU law.¹⁴

There are situations of concern which fall outside the scope of EU law and therefore cannot be considered as a breach of obligations under the Treaties but still pose a systemic threat to the rule of law. For these situations, the **preventive and sanctioning mechanisms provided for in Article 7 TEU** may apply. The Commission is among the actors which are empowered by the Treaty to issue a reasoned proposal in order to activate those mechanisms. Article 7 TEU aims at ensuring that all Member States respect the common values of the EU, including the rule of law. Its scope is not confined to areas covered by EU law, but empowers the EU to intervene with the purpose of protecting the rule of law also in areas where Member States act autonomously. As explained in the Commission's Communication on Article 7 TEU, this is justified by the fact that "if a Member State breaches the fundamental values in a manner sufficiently serious to be caught by Article 7, this is likely to undermine

the very foundation of the EU and the trust between its members, whatever the field in which the breach occurs"¹⁵.

Nevertheless, the preventive mechanism of Article 7(1) TEU can be activated only in case of a "clear risk of a serious breach" and the sanctioning mechanism of Article 7(2) TEU only in case of a "serious and persistent breach by a Member State" of the values set out in Article 2 TEU. The thresholds for activating both mechanisms of Article 7 TEU are very high and underline the nature of these mechanisms as a last resort.

Recent developments in some Member States have shown that these mechanisms are not always appropriate to quickly respond to threats to the rule of law in a Member State.

There are therefore situations where threats relating to the rule of law cannot be effectively addressed by existing instruments¹⁶. **A new EU Framework to strengthen the Rule of Law** as a key common value of the EU is needed in addition to infringement procedures and Article 7 TEU mechanisms. The Framework will be complementary to all the existing mechanisms already in place at the level of the Council of Europe to protect the rule of law¹⁷. It reflects both the objectives of the EU to protect its founding values and to reach a further degree of mutual trust and integration in the area of freedom, security and justice without internal frontiers.

By setting up a new Framework to strengthen the Rule of Law the Commission seeks to provide clarity and enhance predictability as to the actions it may be called upon to take in the future, whilst ensuring that all Member States are treated equally. On the basis of this Communication, the Commission is willing to engage in further discussions with the Member States, the Council and the European Parliament on these issues.

4. How the new EU Rule of Law Framework will work

The purpose of the Framework is to enable the Commission to find a solution with the Member State concerned in order to prevent the emerging of a systemic threat to the rule of law in that Member State that could develop into a “clear risk of a serious breach” within the meaning of Article 7 TEU, which would require the mechanisms provided for in that Article to be launched.

In order to ensure the equality of Member States, the Framework will apply in the same way to all Member States and will operate on the basis of the same benchmarks as to what is a systemic threat to the rule of law.

4.1. What will trigger the new Framework

The Framework will be activated in situations where the authorities of a Member State are taking measures or are tolerating situations which are likely to systematically and adversely affect the integrity, stability or the proper functioning of the institutions and the safeguard mechanisms established at national level to secure the rule of law.

The new EU Rule of Law Framework is not designed to be triggered by individual breaches of fundamental rights or by a miscarriage of justice. These cases can and should be dealt with by the national judicial systems, and in the context of the control mechanisms established under the European Convention on Human Rights to which all EU Member States are parties.

The main purpose of the Framework is to address **threats to the rule of law** (as defined in Section 2)

which are **of a systemic nature**¹⁸. The political, institutional and/or legal order of a Member State as such, its constitutional structure, separation of powers, the independence or impartiality of the judiciary, or its system of judicial review including constitutional justice where it exists, must be threatened – for example as a result of the adoption of new measures or of widespread practices of public authorities and the lack of domestic redress. The Framework will be activated when national “rule of law safeguards” do not seem capable of effectively addressing those threats.

The Framework would not prevent the Commission from using its powers under Article 258 TFEU in situations falling within the scope of EU law. Nor would it prevent the mechanisms set out in Article 7 TEU being activated directly, should a sudden deterioration in a Member State require a stronger reaction from the EU¹⁹.

18 With regard to the notion of “systemic deficiencies” in complying with fundamental rights when acting within the scope of EU law, see, for example, Joined Cases C-411/10 and 493/10, N.S., not yet published, para 94 and 106; and Case C-4/11, Germany v Kaveh Puid, not yet published, para 36. With regard to the notion of “systemic” or “structural” in the context of the European Convention of Human Rights, see also the role of the European Court of Human rights in identifying underlying systemic problems, as defined in the Resolution Res(2004)3 of the Committee of Ministers of 12 May 2004, on Judgments Revealing an Underlying Systemic Problem, (<https://wcd.coe.int/ViewDoc.jsp?id=743257&Lang=fr>).

19 See also the Commission Communication of 15 October 2003 (footnote 15).

20 See in particular Article 4(1)(a) of Council Regulation (EC) No 168/2007 establishing a European Union Agency for Fundamental Rights (OJ L 53, p.1).

4.2. The Framework as a three stage process

Where there are clear indications of a systemic threat to the rule of law in a Member State, the Commission will initiate a structured exchange with that Member State. The process is based on the following principles:

- focusing on finding a solution through a **dialogue** with the Member State concerned;
- ensuring an **objective and thorough assessment** of the situation at stake;
- respecting the principle of **equal treatment** of Member States;
- indicating **swift and concrete actions** which could be taken to address the systemic threat and to avoid the use of Article 7 TEU mechanisms.

The process is composed, as a rule, of three stages: a Commission assessment, a Commission recommendation and a follow-up to the recommendation.

The Commission's assessment

The Commission will collect and examine all the relevant information and assess whether there are clear indications of a systemic threat to the rule of law as described above. This assessment can be based on the indications received from available sources and recognized institutions, including notably the bodies of the Council of Europe and the European Union Agency for Fundamental Rights²⁰.

- 21 See also the Commission Communication of 15 October 2003 (footnote 15).
- 22 The FRA can give advice within the scope of its tasks as defined by Council Regulation (EC) No 168/2007 (see footnote 20).
- 23 Network of the Presidents of the Supreme Judicial Courts of the European Union (see <http://www.networkpresidents.eu/>).
- 24 Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union (see <http://www.aca-europe.eu/index.php/en/>).
- 25 European Network of Councils for the Judiciary (see <http://www.enj.eu>).

If, as a result of this preliminary assessment, the Commission is of the opinion that there is indeed a situation of systemic threat to the rule of law, it will initiate a dialogue with the Member State concerned, by sending a “rule of law opinion” and substantiating its concerns, giving the Member State concerned the possibility to respond. The opinion could be the result of an exchange of correspondence and meetings with the relevant authorities and, where appropriate, be followed by further exchanges.

The Commission expects that the Member State concerned cooperates throughout the process and refrains from adopting any irreversible measure in relation to the issues of concern raised by the Commission, pending the assessment of the latter, in line with the **duty of sincere cooperation** set out in Article 4(3) TEU. Whether a Member State fails to cooperate in this process, or even obstructs it, will be an element to take into consideration when assessing the seriousness of the threat.

At this stage of the process, while the launching of the Commission assessment and the sending of its opinion will be made public by the Commission, the content of the exchanges with the Member State concerned will, as a rule, be kept confidential, in order to facilitate quickly reaching a solution.

The Commission's recommendation

In a second stage, unless the matter has already been satisfactorily resolved in the meantime, the Commission will issue a “rule of law recommendation” addressed to the Member State concerned, if it finds that there is objective evidence of a systemic threat and that the authorities of that Member State are not taking appropriate action to redress it.

In its recommendation the Commission will clearly indicate the reasons for its concerns and recommend that the Member State solves the problems identified within a fixed time limit and informs the Commission of the steps taken to that effect. Where appropriate, the recommendation may include specific indications on ways and measures to resolve the situation.

The Commission's assessment and conclusions will be based on the results of the dialogue with the Member State concerned as well as on any additional evidence on which the Member State would also need to be heard in advance.

The sending of its recommendation and its main content will be made public by the Commission.

Follow-up to the Commission's recommendation

In a third stage, the Commission will monitor the follow-up given by the Member State concerned to the recommendation addressed to it. This monitoring can be based on further exchanges with the Member State concerned and could, for example, focus on whether certain practices which raise concerns continue to occur, or on how the Member State implements the commitments it has made in the meantime to resolve the situation.

If there is no satisfactory follow-up to the recommendation by the Member State concerned within the time limit set, the Commission will assess the possibility of activating one of the mechanisms set out in Article 7 TEU²¹.

Institutional interaction

The European Parliament and the Council will be kept regularly and closely informed of progress made in each of the stages.

Benefitting from third party expertise

In order to obtain expert knowledge on particular issues relating to the rule of law in Member States, the Commission may, notably during the phase of assessment, seek external expertise, including from the EU Agency for Fundamental Rights²². Such external expertise could notably help to provide for a comparative analysis about existing rules and practices in other Member States in order to ensure equal treatment of the Member States, on the basis of a common understanding of the rule of law within the EU.

Depending on the situation, the Commission may decide to seek advice and assistance from members of the judicial networks in the EU, such as the networks of the Presidents of Supreme Courts of the EU²³, the Association of the Councils of State and Supreme Administrative Jurisdictions of the EU²⁴ or the Judicial Councils²⁵. The Commission will examine, together with these networks, how such assistance could be provided swiftly where appropriate, and whether particular arrangements are necessary to that end.

The Commission will, as a rule and in appropriate cases, seek the advice of the Council of Europe and/or its Venice Commission, and will coordinate its analysis with them in all cases where the matter is also under their consideration and analysis.

5. Conclusion

This Communication sets out a new EU Framework for the Rule of Law as the Commission's contribution to strengthening the capacity of the EU to ensure effective and equal protection of the rule of law in all Member States. It thereby responds to requests from the European Parliament and the Council. While not excluding future developments of the Treaties in this area – which will have to be discussed as part of the broader reflections on the future of Europe –, it is based on Commission competences as provided for by existing Treaties. In addition to the action of the Commission, the role of the European Parliament and the Council will be crucial in reinforcing the EU's determination to uphold the rule of law.

Annex I : The Rule of Law as a foundational principle of the Union

1 The first reference to the rule of law was made in the Preamble of the Maastricht Treaty of 1992. The Amsterdam Treaty referred to the Rule of law in Article 6(1) in substantially the same way as current Article 2 TEU.

2 Case 294/83, "Les Verts" v European Parliament, [1986] ECR 01339, para 23.

3 Case C-496/99 P, Commission v CAS Succhi di Frutta [2004] ECR I-03801, para 63.

4 Joined cases 212 to 217/80 Amministrazione delle finanze dello Stato v Salumi [1981] ECR 2735, para 10.

5 Joined cases 46/87 and 227/88 Hoechst v Commission [1989] ECR 02859, para 19.

6 Case C-583/11 P Inuit Tapiriit Kanatami and Others v Parliament and Council, not yet published, para 91; Case C-550/09 E and F, [2010] ECR I-06213.

The rule of law and the Union legal system

The rule of law is a legally binding constitutional principle. It is unanimously recognised as one of the founding principles inherent in all the constitutional systems of the Member States of the EU and the Council of Europe.

Long before the principle of the rule of law was explicitly referred to in the EU Treaties¹, the Court of Justice in its judgment of 1986 "Les Verts" had emphasized that the EU is "based on the rule of law inasmuch as neither its Member States nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the basic Constitutional Charter, the Treaty"².

In its case law, the Court indicates that the rule of law is the source of fully justiciable principles applicable within the EU legal system. The Court also highlights that those principles are general principles of law stemming from the constitutional traditions common to the Member States. The following principles are noteworthy:

- (a) **the principle of legality**, which in substantial terms includes a transparent, accountable, democratic and pluralistic process for enacting laws. The Court has confirmed the principle of legality as being a fundamental principle of the Union, by stating that "[...] in a community governed by the rule of law, adherence to legality must be properly ensured"³;
- (b) **legal certainty**, which requires inter alia that rules are clear and predictable and cannot be retrospectively changed. The Court has emphasised the importance of legal certainty by stating that by virtue of the principles of legal certainty and the protection of legitimate expectation, "[...] the effect of [Union] legislation must be clear and predictable for those who are subject to it [...]"⁴. The Court also stated that "[...] the principle of legal certainty precludes a

[Union] measure from taking effect from a point in time before its publication and that it may be otherwise only exceptionally, where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected"⁴;

- (c) **prohibition of arbitrariness of the executive powers**. The Court of Justice has stated: "Nonetheless, in all the legal systems of the Member States, any intervention by the public authorities in the sphere of private activities of any person, whether natural or legal, must have a legal basis and be justified on the grounds laid down by law, and, consequently, those systems provide, albeit in different forms, protection against arbitrary or disproportionate intervention. The need for such protection must be recognized as a general principle of [Union] law. [...]"⁵;
- (d) **independent and effective judicial review, including respect for fundamental rights**. The Court reiterated that the EU is a union based on the rule of law in which the acts of its institutions are subject to review of their compatibility with, in particular, the Treaties, the general principles of law and fundamental rights". The Court specified that this means, in particular, that "individuals are entitled to effective judicial protection of the rights they derive from the Union legal order". The Court clearly explained that the right to such protection is "one of the general principles of law stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms"⁶.
- (e) Moreover, with regard to the link between the right to a fair trial and the separation of powers the Court specifically stated that "[...] the general principle of [Union] law under which

every person has a right to a fair trial, inspired by Article 6 of the ECHR [...] comprises the right to a tribunal that is independent of the executive power in particular [...]”⁷. The principle of the separation of powers is, of course, an important element of ensuring compliance with the principle of rule of law. Nevertheless, it can take different forms given the different parliamentary models and the different degrees to which this principle applies at national level. In this respect, the Court referred to the operational separation of powers implying an independent and effective judicial review, pointing out that “[...] EU law does not preclude a Member State from simultaneously exercising legislative, administrative and judicial functions, provided that those functions are exercised in compliance with the principle of the separation of powers which characterises the operation of the rule of law”⁸.

(f) **equality before the law.** The Court has emphasised the role of equal treatment as a general principle of EU law by stating that “it must be recalled that the principle of equal treatment is a general principle of EU law, enshrined in Articles 20 and 21 of the Charter of Fundamental Rights of the European Union”⁹.

The rule of law and the Council of Europe

Those aspects of the rule of law as a common denominator of the Union are fully reflected at the level of the Council of Europe. While there is no definition in the statute of the Council of Europe or in the ECHR¹⁰, and while the precise list of principles, standards and values stemming from the

rule of law may vary at national level, the Venice Commission, in a report published in 2011 refers to the rule of law as “a fundamental and common European standard to guide and constrain the exercise of democratic powers” and as an “inherent part of any democratic society” which “requires everyone to be treated by all decisions-makers with dignity, equality and rationality and in accordance with the law, and to have the opportunity to challenge decisions before independent and impartial courts”¹¹. More particularly, on the basis also of the relevant case law of the European Court of Human Rights, in its Report the Venice Commission identified the following important but not exhaustive common and generally shared traits of the rule of law:

- (a) legality (including a transparent, accountable and democratic process for enacting law);
- (b) legal certainty;
- (c) prohibition of arbitrariness;
- (d) access to justice before independent and impartial courts;
- (e) respect for human rights; non-discrimination and equality before the law.

The rule of law at national level

While not precisely or exhaustively defined by national constitutions or courts, and not always clearly and uniformly codified in written constitutions, the rule of law is a common denominator in modern European constitutional traditions. In many circumstances national courts refer to it in order to guide their interpretation of national law or use it as a source to develop fully justiciable principles.

7 Joined cases C-174/98 P and C-189/98 P Netherlands and Van der Wal v Commission, [2000] ECR I-00001, para 17.

8 Case C-279/09 DEB, [2010] ECR I-13849, para 58.

9 Case C-550/07 P Akzo Nobel Chemicals and Akros Chemicals v Commission [2010] ECR I-08301, para 54.

10 There is a reference but no definition of the Rule of law also in the preamble to the United Nations Universal declaration of Human Rights (1948).

11 See Report of the Venice Commission of 4 April 2011 Study No. 512/2009 (CDL-AD(2011)003rev).

Annex II

A rule of law framework for the European Union



