GOVERNANCE, COHERENCE AND RULE OF LAW (Paper II – Expanded version)

Recommendations to the European Commission by the subgroup on “GOVERNANCE, COHERENCE AND RULE OF LAW” of the Multi-Stakeholder Platform on the Implementation of the Sustainable Development Goals in the EU
Towards a sustainable future of Europe:
Strengthening the Rule of Law, Improving EU’s Governance, providing better Policy Coherence for Sustainable Development (PCSD) and linking the Better Regulation approach to sustainability.

PAPER 2 – EXPANDED VERSION

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Foreword

This paper is an expanded version of the “Recommendations on Governance, Coherence and Rule of Law” adopted on 29 June 2018 by the sub-group of the Multi-stakeholder Platform on the Implementation of the Sustainable Development Goals in the EU.

The recommendations within the paper are based on discussions in the sub-group on Governance, Coherence and the Rule of Law, additional contributions made by members and recommendations contained in the contribution of the MSP to the Reflection Paper, October 2018. The final recommendations were adopted by members of the subgroup on 26 April 2019 with the exception of one member1.

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- **Sub-group members**: BusinessEurope; CEMR; CSR Europe; COFACE; CONCORD Europe; COR, COPA COGECA; EEB; ESADE; EPHA; ETUCE; European Youth Forum; Social Platform; SDG Watch; Transparency International; WWF
- **Observers**: EEAC; ESDN; OECD

Policy Recommendations

Reinforcing the Rule of Law:

- The Commission should be more resolute in taking prompt and effective enforcement action when infringements occur;
- The Commission should fully resource with staff, expertise and funding the departments responsible for enforcement, notably the implementation and support directorates and enforcement units;
- The Commission should improve internal capacity to build a strong factual evidence base which draws on substantiated sources from the public and civic sectors capable of withstanding scrutiny in court;
- The Commission should speed up dealing with complaints – speed is often of the essence to halt damage before it’s too late;
- The Commission should ensure that the complaints and infringement processes are more transparent;
- The Commission should resume the work towards a legally binding instrument establishing minimum standards for environmental inspections;

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1 BusinessEurope
• The Commission should seek interim measures more frequently so that the ECJ can intervene to prevent damage even before a final decision is reached.
• The Commission should move swiftly to rectify the problem of insufficient access to justice at the level of the EU institutions by expediting the preparation of a legislative proposal to strengthen the relevant EU implementing legislation to bring it in line with the Aarhus Convention;
• The Commission should build on the interpretive guidance on access to justice in environmental matters at the Member State level by starting work on a new legislative proposal on the topic;
• The EU institutions should complete the self-assessment of its anti-corruption capacities and accountability mechanisms as required by the UN Convention Against Corruption.
• As a first step, an EU level strategy on the promotion of civic space, including guidelines on the rights to freedom of association and assembly, should be adopted. This should include the appointment of an EU coordinator on civic space and democracy whose tasks include monitoring and acting as a contact point for NGOs to report incidents related to restriction of civic space such as any harassment or restriction of their work;
• The Commission should seek to collect information on a more systematic basis on whether Member States comply with fundamental rights and the rule of law in the application of EU law. An EU body such as the Fundamental Rights Agency should be tasked with collecting this information. This would allow a more systematic and principled use of the powers of the Commission, as guardian of the treaties, to file infringement proceedings related to breaches of the Charter of Fundamental Rights.

Governance and participatory policy-making

• Remodel EU governance to face current challenges while giving life to the principle of partnership, including civic participation.
• Review and reform of existing mechanisms for participation, together with new and different structures and ways of working between the EU institutions and other stakeholders in line with SDG 16.
• Complement models of representative democracy with participatory policy-making mechanisms to rebalance the interests of minority and marginalised groups.
• Adapt to new forms of expression, activism and mobilisation and ensure that these are recognised as a legitimate form of political participation.
• Transfer the Council of Europe’s co-management in the youth sector to other EU institutions by re-examining the EU treaties that currently restrict a transfer.
• Support formal and non-formal education that is necessary for a flourishing participatory democracy.
• Ensure the highest level of transparency in the functioning of institutions and in the policy-making process including through access to documents complemented by a legislative footprint that publicly discloses the input from interest groups.

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2 See https://civilsocietyeuropedoteu.files.wordpress.com/2017/11/letter-vp-timmermans--civic-space-strategy.pdf&sa=D&ust=1529400702393000&usg=AFQjCNGFTK74b4SY0mKZAwAYPDduJNdptaQ.
Better regulation:

- Make the 2030 Agenda and the SDGs the overarching reference point for sustainable development as defined in the Better Regulation guidelines and toolbox. In addition, the legally binding Paris Agreement on climate change is an integral part of the 2030 sustainable development agenda to be pursued by the EU.
- Evidence-based decision making: all planned policies, laws and strategies should be accompanied by impact assessments. Political urgency is not an excuse and may result in poor or weak policy making with undesired consequences.
- Make multilevel and multi-stakeholder consultations effective. This means including local governments in decision making processes in order to ensure the coordination of the SDGs’ implementation at every level of governance and ensure more coherence in the EU.

Policy coherence for sustainable development:

- Given the integrated nature of the Sustainable Development Goals, the existence of a comprehensive, long-term and overarching EU strategy would facilitate policy coherence for sustainable development.
- To operationalise Policy Coherence for Sustainable Development, the internal (domestic), external (transboundary) and intergenerational impacts of policies should be evaluated for coherence at the time of policy design as well as implementation.
- Policy coherence for sustainable development can be enhanced through the identification of positive synergies between SDG targets and maximising co-benefits between sustainable outcomes in different policy areas.
- If trade-offs need to be addressed, transparency of the evidence, analysis and decision process are critical, including opportunities for further stakeholder participation. Comprehensive analysis should take into account costs and benefits including costs of non-action and both short and long term consequences.

A. Introduction

This is a report prepared by the subgroup on “governance, coherence and the rule of law” of the multi-stakeholder platform on the implementation of the United Nations Sustainable Development Goals (SDGs) in the EU. The multi-stakeholder platform (the platform) was set up by the European Commission in 2017 to “support and advise the Commission and all stakeholders involved on the implementation of the Sustainable Development Goals on Union level”. The corresponding subgroup was set up by the management committee of the platform. The members of the subgroup deliver

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4 See also the minutes of the platform's management committee meeting of 13 June 2018, available at https://ec.europa.eu/info/strategy/international-strategies/global-topics/sustainable-development-goals/multi-stakeholder-platform-sdgs/meetings_de.
the following report in addition and to complement the platform’s contribution to the Commission’s Reflection Paper advice on strengthening the Rule of Law (see B.), and on improving EU’s Governance and Participatory Policy-Making (see C.) by inter alia providing better Policy Coherence for Sustainable Development (see D) and linking Better Regulation to sustainability (see E), topics that all are fundamental to a sustainable future for Europe.  

B. Reinforcing the Rule of Law

The rule of law is of particular interest also from the perspective of implementing the SDGs in the EU.

1. Why the rule of law matters for a sustainable future of Europe

The rule of law guarantees fundamental rights and values and is – like democracy and respect for human rights – one of the fundamental values upon which the EU is based. Besides requiring that individuals and institutions are subjects to the law, the principle requires equal application of the law. It thus also links to good governance – both of the European Union and the Member States.

The rule of law is also of particular interest when looking at the implementation of the SDGs. SDG 16 is about the promotion of peaceful and inclusive societies for sustainable development, providing access to justice for all and building effective, accountable and inclusive institutions at all levels. Target 16.3 thereby recalls the promotion of the rule of law at the national and international levels, and equal access to justice for all. In this context the platform recommends:

- The EU should seize the opportunity when reporting to the HLPF to demonstrate action taken to strengthen participation, democracy, transparency and the promotion and enforcement of rule of law.

But reinforcing rule of law not only supports implementation of SDG 16. Various other SDGs directly profit from strengthened enforcement. A recently adopted report of the European Economic and Social Committee (EESC) shows why – with aspects that are valid also beyond the environmental acquis. The EESC acknowledges that a lack of respect for the mechanisms that guarantee the implementation of (environmental) legislation and governance is a regrettable factor that contributes to unfair competition and economic harm. Consistent and certain application of EU law across the EU, with non-compliance being sanctioned, allows businesses to rely upon EU law while also creating a level playing field for businesses in all Member States. Rule of law is thus also about implementing the SDGs linked to businesses (i.a. SDG 8, 9). Shortcomings are also undermining

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5 Members of the subgroup on “governance, coherence and the rule of law” are: European Youth Forum, WWF, SDG Watch, BirdLife Europe, Transparency International, Business Europe, Concord, EPHA, OECD.

6 It is important that readers of the document are clear that when the document refers to “sustainable development” it means: all SDGs. A ‘pre-SDG’ framing of sustainable development as consisting of three dimensions: economic, social and environmental risks not covering the full scope of SDGs (e.g. the dimension of health and well-being).

7 See Art. 2 of the Treaty on the European Union.

8 In 2019, the High-level Political Forum on Sustainable Development (HLPF) will review SDG 16 amongst the other SDGs for review.

people’s trust in the EU, its institutions and the effectiveness of EU legislation. And furthermore, enforcing the European acquis also delivers on the main objectives of EU’s legislation, e.g. with environmental legislation on SDGs 6, 12, 13, 14 and 15.

2. Further instruments needed to enforce the rule of law

Looking at specific policy fields one can assume that there is still room for reinforcing the rule of law, in particular through better enforcement of the European acquis. This holds especially when looking at how the European Commission could foster compliance at Member State level.

One first has to acknowledge that – also as follow up to the Fitness Check of EU’s Nature Directives – the Commission initiated some actions relating to better compliance assurance.\(^{10}\) These actions were welcomed by stakeholders. They nonetheless lack important elements. When thinking about compliance assurance, also the Commission seems to be identifying three elements: Promotion, Inspections and Enforcement. The recent Commission’s initiatives though focus primarily on the dimension of compliance promotion. Actions to improve proper enforcement through more efficient and effective complaint handling or through inspections on the ground are missing.

In the field of environmental legislation, solid complaints of Member State stakeholders to the European Commission are often dealt with at a slow pace. The Commission’s approach implies that it will focus on strategic priorities and thus giving signals that Member States can get away with other infringements. In certain policy areas such as environment, there seems to be a two-speed approach to infringements, with high-profile cases going ahead while other cases progress slowly. High profile cases may be indicative of an overall problem, as they are often due to systemic issues in the implementation of the environmental acquis.

Despite the corresponding Commission Communication\(^{11}\) foreseeing the investigation of such complaints with a view to arriving at a decision to issue a formal notice or close the case within not more than 1 year from the date of the registration of the complaint, various complaints are pending for several years.\(^{12}\) This is also in contrast with the Commission’s communicated intention to speed up implementation and enforcement.\(^ {13}\) In this context unified and complete databases could bring more transparency to complaint and infringement handling.

Greater transparency around the infringements process could increase both democratic accountability and better implementation, by creating additional pressure on Member States to fully comply. Unfortunately, the Commission routinely invokes confidentiality to restrict public access to information that is or even may become related to infringement processes. In the case of

\(^{10}\) Just to mention the Environmental Implementation Review (EIR) and the Action Plan on Compliance Assurance.


\(^{12}\) Examples are to be found in the short publication “Nature’s last line of defence”, see https://www.birdlife.org/sites/default/files/attachments/pamphlet_-_formatted_-_final_iii.pdf.

\(^{13}\) Among others, Commissioner Vella stated in a speech to the European Parliament the 14.11.2017: “I agree ... \"that we have not only to implement but to speed up implementation because there is a lot of urgency.\" See http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20171114&secondRef=ITEM-017&format=XML&language=EN.
environment-related information, which is subject to the provisions of international law in the form of the Aarhus Convention, it is questionable whether the use of exemptions is legally justified, having regard to the legal obligation to take the public interest into account. Even if it were, the Commission would still have scope to invoke the public interest to adopt a more transparent approach – in other words, even if it were legally permitted to withhold certain information, it is not necessarily legally obliged to do so. There is no intrinsic reason why the bulk of documentation related to potential or even ongoing infringement processes concerning Member States should not be in the public domain, given that the (potential) parties to the proceedings are supposed to be acting on behalf of, and in the interests of, their respective publics.

Having effective inspection regimes in place, at EU and Member State level, is a pre-requisite for effective enforcement and thus for consistent application of the rule of law. The ‘dieselgate’ scandal, which was brought to light by the US regulatory authorities, highlighted the EU’s lack of preparedness to effectively enforce legally binding standards that are supposed to protect health and the environment. The divergence in the quality of national inspection and enforcement regimes across Member States is evident and has been widely acknowledged. In the past, Member States opposed the European Parliament’s efforts to have an EU directive on environmental inspections with the result that the only progress that was made horizontally was the adoption of the non-binding 2001 recommendation on minimum criteria for environmental inspections. Thereafter, inspection requirements of a binding nature have been included in some sectoral laws. However, an EU law establishing minimum standards for environmental inspections horizontally, without in any way hampering or weakening existing environmental inspection provisions in sectoral laws, would be more efficient and lead to a more harmonised application of EU environmental law and requirements. This would help to uphold the rule of law, be positive for the environment and would also contribute to more harmonised business conditions.

The “Barroso II” Commission was at an advanced stage in the preparation of a legislative proposal on environmental inspections which would to some extent have addressed this problem, but unfortunately it failed to issue the proposal before the expiry of its mandate, and the Juncker Commission has also thus far failed to issue any legislative proposal on the issue. The issue was however addressed in the 7th Environment Action Programme through which the EU committed to “extend requirements relating to inspections and surveillance to the wider body of Union environment law, and further develop inspection support capacity at Union level” (para. 60). Pursuant to this, the Commission’s intentions to improve compliance assurance are welcome, but mere recommendations and best practice information exchanges will never deliver the results of an environmental inspections law.

There also should be sufficient capacity within the services to deal with all complaints and infringements, a responsible person at cabinet level and mechanisms to refer, if necessary, to the First Vice-President level.

To foster enforcement, the platform inter alia recommends:

- The Commission should be more resolute in taking prompt and effective enforcement action when infringements occur;
The Commission should fully resource with staff, expertise and funding the departments responsible for enforcement, notably the implementation and support directorates and enforcement units;

The Commission should improve internal capacity to build up a strong factual evidence base completing existing and past information on progress which draws on substantiated sources from the public and civic sectors capable of withstanding scrutiny in court; this could improve on ongoing initiatives such as “have your say”

The Commission should speed up dealing with complaints – speed is often of the essence to halt damage before it’s too late

The Commission should ensure that the complaints and infringement processes are more transparent;

The Commission should resume the work towards a legally binding instrument establishing minimum standards for environmental inspections;

The Commission should seek interim measures more frequently so that the ECJ can intervene to prevent damage even before a final decision is reached.

While EU level mechanisms exist to improve the effectiveness of national judicial systems, to support Member States with the necessary reforms, issues with corruption persist, undermining the rule of law. A recent report on combating environmental crime in the Danube-Carpathian highlighted corruption as one of the enablers of illegal logging in Romania. Better enforcement – through, inter alia, strengthened capacity of actors tasked with enforcement, more transparency and accountability of public institutions are needed to tackle the issue. The platform recommends:

- EU recommendations and support through mechanisms such as the Cooperation and Verification Mechanism (CVM) should be used to the fullest, with no cherry-picking of recommendations, while treating Member States fairly.

3. Better access to justice and stakeholder participation for strengthening the rule of law

Even though the Commission – as guardian of the treaty – is the final line of defence for the European acquis, stakeholders can support enforcement actions and the rule of law if sufficient possibilities for access to justice exist. This holds for actions at Member State level and also at the level of the EU institutions themselves. In the field of environment, access to justice is granted through the provisions of the Aarhus Convention.

At the Member State level, successive studies, court rulings and Aarhus Convention Compliance Committee findings have found widespread failures by Member States to properly apply the access to justice provisions of the Convention. Such failures do not only deny the public the democratic right to challenge violations of the law and represent a missed opportunity to enlist the support of the public in improving implementation, they also represent an obstacle to a level playing field for business due to the disparities in levels of access to justice between Member States. In 2003, in preparation for the EU to ratify the Convention, the Commission issued a proposal for a directive on

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access to justice but due to resistance from Member States this was withdrawn a decade later under the REFIT programme. As the problems in relation to access to justice had not been resolved, in April 2017 the Commission issued a Communication setting out interpretative guidance on access to justice in environmental matters aimed at helping Member States to provide access to justice in more consistent way. This is a potentially useful instrument but is not a substitute for legally binding measures.

While the Commission’s role in promoting democratic accountability and the rule of law at Member State level is essential, there is a significant accountability deficit at the level of the EU institutions. In March 2017, the EU has been found in violation of international law, notably the Aarhus Convention, due to the insufficient possibilities for the public to have access to justice before the Court of Justice of the EU. This situation as well as the EU’s attempts to prevent the endorsement of the finding of non-compliance by the Convention’s governing body in September 2017 have jeopardized the democratising influence of the Aarhus Convention throughout the wider continent of Europe and Central Asia as well the credibility of the EU as a proponent of the rule of law. The Commission’s reluctance to address the problem, which appears to stem in turn from its resistance to having its decisions directly challengeable by NGOs and members of the public before the ECJ, led Member States in June 2018 to take the almost unprecedented step of adopting a Council Decision invoking Article 241 of the TFEU to request the Commission to take action on the matter. Unfortunately, neither the Council Decision nor a Commission roadmap adopted around the same time commit to correcting the deficiencies in the EU implementing legislation15 to bring it in line with Convention, only to study options and if appropriate come forward with a legislative proposal. Furthermore, the lengthy timeline envisaged would only see a legislative proposal adopted in September 2020, too late to ensure that the EU is in compliance with the Convention by the time of the seventh session of the Meeting of the Parties to the Convention in 2021, thus ensuring that the EU remains in violation of international law for an extended period.

Democratic accountability also requires regular reflection and review by the EU institutions. Unfortunately, the EU has neglected its obligations under the UN Convention Against Corruption, which require the EU institutions to conduct a self-assessment of its capacities to fight corruption in a holistic manner, including preventive strategies such as good governance and civic participation. This is a preparatory step to participation in the convention’s peer review mechanism. Despite ratifying the UN convention in 2008, no self-assessment has been forthcoming, or even started. Of the 183 parties to the convention, the EU is the only one that has not completed this first step.

The platform recommends:

- The Commission should move swiftly to rectify the problem of insufficient access to justice at the level of the EU institutions by expediting the preparation of a legislative proposal to strengthen the relevant EU implementing legislation to bring it in line with the Aarhus Convention;

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• The Commission should build on the interpretive guidance on access to justice in environmental matters at the Member State level by starting work on a new legislative proposal on the topic;
• The EU institutions should complete the self-assessment of its anti-corruption capacities and accountability mechanisms as required by the UN Convention Against Corruption.

4. Addressing failures in the protection of human rights and democratic accountability

The Commission is responsible and accountable for ensuring implementation and enforcement of EU laws and values. It should therefore uphold the highest standards and should address failures in the protection of human rights and democratic accountability, such as the erosion of civic space which has been observed by civil society organisations in several Member States. The situation with regard to the role of NGOs, including their access to funding, engagement in public processes such as public consultations, and ability to inform and criticise without fear of vilification has deteriorated in several Member States in recent years.

The shrinking of civic space across Europe and the attacks that are made on the rule of law are a source of increasing concern to civil society. Clampdowns against civil society whereby governments are introducing restrictive laws or are applying tactics limiting the funding, access to public media and operations of civil society organisations are taking place across the world including in Europe. The reasons behind this closing space are complex and diverse.

Restricted civic space is a threat that affects civil society organisations, local communities and indigenous people. The Office of the United Nations High Commissioner for Human Rights (OHCHR) defines civic space as “The place civil society actors occupy within society; the environment and framework in which civil society operates; and the relationships among civil society actors, the State, private sector and the general public”\(^\text{16}\). The assessment of civic space is based on several criteria: CIVICUS identifies three key dimensions: the right to freedom of association, peaceful assembly and freedom of expression. These three dimensions can be further defined: the right to freedom of expression includes the right to access information, critically evaluate and speak out against the policies and actions of state and non-state actors without fear of retribution. Freedom of association includes the right to access funding and resources. Civic space can be considered to be diminished when one or more of these dimensions are affected.

Attacks on these core civic freedoms have become more regular. The CIVICUS Monitor\(^\text{17}\) reports that at present there are serious systemic problems with the legal and policy environment of civic space in 109 countries worldwide, including one EU Member State\(^\text{18}\). Furthermore, civic space was found to have narrowed in 11 EU Member States\(^\text{19}\). Narrowed civic space is defined as a situation where while the state allows individuals and civil society organisations to exercise their rights to freedom of


\(^{18}\) Hungary – civic space considered to be obstructed.

\(^{19}\) France, Spain, United Kingdom, Poland, Slovakia, Lithuania, Latvia, Romania, Bulgaria, Greece, Croatia.
association, peaceful assembly and expression, violations of these rights also take place, for example authorities sometimes deny permission for public protests, citing security concerns, or use excessive force against peaceful demonstrators, and press freedom is undermined either through strict regulation or by exerting political pressure on state media and private media owners. States with obstructed civic space impose a combination of legal and practical constraints – for example, recent laws adopted by Hungary which restrict action by civil society, restrict peaceful protest and undermine the independence of the judiciary, laws enacted or considered in Member states limiting foreign donations and support, as well as various judicial mechanisms, which make it more costly to enter regulatory or legal procedures as a CSO. Or changes to legislation which restrict the opportunities and abilities for NGOs and CSOs to engage in local planning procedures such as environmental impact assessments or block access to information which should normally be in the public domain.

Restrictive laws and regulations include those which restrict CSO registration and access to funding and suppress free speech and advocacy, and restrict opportunities for public protest.

The erosion of civic space is also linked to the worsening situation with regard to media independence and press freedom in recent years. The latest ‘reporters without borders’ annual press freedom index, published in April 2018, notes a worsening climate for press freedom in Europe, with the regional indicator worsening the most. Three of the year’s five biggest falls in the index occurred in EU countries: Malta, the Czech Republic, and Slovakia. Bulgaria fell to 111th place, going down from 36th place in its first democratic decade. Six EU countries are listed as having a problematic or bad situation.

- As a first step, an EU level strategy on the promotion of civic space, including guidelines on the rights to freedom of association and assembly, should be adopted. This should include the appointment of an EU coordinator on civic space and democracy whose tasks include monitoring and acting as a contact point for NGOs to report incidents related to restriction of civic space such as any harassment or restriction of their work;
- The Commission should seek to collect information on a more systematic basis on whether Member States comply with fundamental rights and the rule of law in the application of EU law. An EU body such as the Fundamental Rights Agency should be tasked with collecting this information. This would allow a more systematic and principled use of the powers of the Commission, as guardian of the treaties, to file infringement proceedings related to breaches of the Charter of Fundamental Rights.

5. Adequate regulatory frameworks needed for effective law-making

The rule of law presupposes that there is an adequate body of law that is to be respected. In the extreme case of a highly deregulated state, rule of law in the sense of full implementation of such laws as remained would not mean much. While there may be different views as to what constitutes an adequate body of law, it appears that the Commission’s pace of developing legislation under the

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20 See https://monitor.civicus.org.
22 See https://civilsocietyeuropedoteu.files.wordpress.com/2017/11/letter-vp-timmermans-_civic-space-strategy.pdf&sa=D&ust=1529400702393000&usg=AFQjCNFTK74b4SY0mKZAawAYPDduUNdpjaQ.
Juncker Presidency has slowed down, even – or indeed, especially – where such legislation is needed to expedite progress towards implementation of the SDGs. There are also clear examples where the Commission has opted for a non-binding path even where its own impact assessment has suggested that a binding path would be preferable, e.g. in the case of the impact assessment on measures to strengthen access to justice which the Commission attempted to keep secret but in early September 2018 was forced by the European Court of Justice to reveal. The Commission has attempted to justify its choice not to regulate even when it would be the best way to achieve results through its mantra of being ‘big on big things and small on small things’, but is unconvincing in its application of this principle, failing to adequately confront some of the biggest challenges of the 21st century such as reversing biodiversity loss to prevent the sixth mass extinction.

C. Improving EU’s Governance and Participatory Policy-Making

The following chapter initially focuses on some of the bigger changes that would be required to achieve EU governance that provides for effective, accountable and transparent institutions, and responsive, inclusive, participatory and representative decision-making. The second part looks at more specific changes necessary within the different EU institutions and in how they interact with civil society and citizens for the implementation of the 2030 Agenda for Sustainable Development.

1. Governance and Participatory Policy-Making

Sustainable development requires public institutions that conform to the highest standards of integrity, transparency, accountability and democratic governance, and decision-making processes that are open, inclusive and participatory for all social groups.

a. Why EU’s governance structure is important to achieve the SDGs

Goal 16 of the Sustainable Development Goals (SDGs) includes a strong focus on building effective, accountable and inclusive institutions. Target 16.6 demands to develop effective, accountable and transparent institutions at all levels; target 16.7 aims to ensure responsive, inclusive, participatory and representative decision-making at all levels, while target 16.10 focuses on ensuring public access to information and protecting fundamental freedoms. More generally, political participation is also a guiding principle of the Universal Declaration of Human Rights.

In sum, accountable and transparent governance and participatory policy-making are both means to and ends of sustainable development. A shift needs to occur on two levels. Changes to the governance model of all EU institutions are necessary for the comprehensive implementation of the 2030 Agenda for Sustainable Development, which provides an opportunity for improving these models. Yet, to be successful and support the achievement of truly sustainable development, remodelling EU governance needs to be embedded in a larger shift towards greater participation in policy-making and truly participatory democracy.

23 Also the Taskforce on Subsidiarity,
b. Why a shift towards participatory democracy is needed for governing and achieving progress towards sustainable development

The current forms of representative democracy in the EU do have limits: The European Union needs to remodel its own governance to face current challenges while giving life to the principle of partnership, including civic participation. The current forms of representative democracy alone are not enough anymore to deal with the challenges the EU is facing in the 21st century.

There is a loss of trust in current political institutions that can be explained by current forms of representative democracy themselves, where those in power are unwilling to share that power or make fundamental changes to bring about a more inclusive and participatory system. Today, many democracies in the EU debate policies that address short term issues instead of longer term visions based on values, such as justice, human dignity or the common good, which are at the heart of the sustainable development concept.

Formal participation of civil society in political processes exists but has remained largely tokenistic, elitist, often depoliticised and confined to narrow spaces. Marginalised groups face greater difficulties in accessing and participating in political processes. Additionally, while civil society may at times have a seat at the table, political space for civil society to organise, operate, protest and dissent is shrinking.

Participatory democracy is needed to achieve the 2030 Agenda: While Article 10 of the Treaty on the European Union (TEU) states that the “functioning of the EU shall be founded on representative democracy”, the same article gives citizens the “right to participate in the democratic life of the Union”, with decisions to be made “as openly and as closely as possible to the citizen”. Article 11 TEU, moreover, gives the institutions the task of giving the citizens and organised civil society “the opportunity to make known and publicly exchange their views in all areas of Union action”, stipulating that they “shall maintain an open, transparent and regular dialogue with representative associations and civil society”.

Some elements of participatory democracy are enshrined in the Treaty on the European Union, but this is insufficient. The responsive, inclusive and participatory foundations for decision-making, recognised in SDG 16 as necessary for sustainable development, need to be further developed within the functioning of the EU if it is to make progress towards the 2030 Agenda. There is a need for review and reform of existing mechanisms for participation, together with new and different structures and ways of working between the EU institutions and other stakeholders.

The limits of a governance system that relies only on representative democratic institutions can mean that elected legislatures are often biased against the interests of the future. Voters, and as a consequence their elected representatives, tend to focus on their short-term needs rather than the longer-term interests of society as a whole, or the impact of policies on future generations. Electoral cycles encourage this short-termism. Combining representative institutions with mechanisms of participatory democracy, which avoid re-election aspirations of elected officials, can rebalance this short-termism and therefore lead to more sustainable, long-term political agendas and policies.

Complementing models of representative democracy with participatory policy-making mechanisms is also necessary to rebalance the interests of minority and marginalised groups. The lack of social,
gender, ethnic or age diversity among decision-makers can lead to policies that tend to be biased in favour of the interests of the majority and the most well-off, and certain groups, and their interests, end up being under-represented in institutions and policies. There is a need to look to the voices and experiences of people on the margins of the political discourse whose political space is being obviously and radically restricted. Marginalised causes at the core of sustainable development, such as access to rights and defence of human rights defenders, systemic critique or the protection of whistleblowers, are often neglected in favour of less politicised or less controversial issues.

Participatory policy-making mechanisms can redress this imbalance by including and giving space for under-represented groups, such as young people, women, LGBTIQ or people with disabilities, to be heard, and ensure that decision makers are faced with a wider range of divergent interests. This is crucial for the sustainability of democratic societies and for the legitimacy of policy-making; incorporating civil society input increases the legitimacy of EU output. It also ensures that policy-making abides by the 2030 Agenda principle of leaving no one behind. Beyond this, it will be important to adapt to new forms of expression, activism and mobilisation and ensure that these are recognised as a legitimate form of political participation. Achieving the SDGs depends on the active engagement of citizens and civil society; stronger policies to counter the remoteness of institutions from citizens are required.

Citizens need to be included beyond elections: The EU’s Structured Dialogue on Youth makes a good start in including young people, but need to be improved, as well as complemented by new mechanisms for deliberation and participation, especially for the most marginalised. The co-management system within the Council of Europe youth sector allows for more meaningful participation than the Structured Dialogue on Youth. However, transferring a system like the Council of Europe’s co-management in the youth sector (co-decision and ownership) to the context of the EU institutions is restricted by the EU treaties. This needs to be re-examined against the backdrop of new challenges and the need to allow for new, more participatory forms of democratic participation.

Formal and non-formal education plays an important role in supporting participatory democracy: A shift towards more participatory democracy requires quality education, education for sustainable development and citizenship education, in both formal and non-formal settings. Citizenship education serves many functions that are essential for the creation of a more sustainable and just society, fostering a culture of active citizenship and democratic participation in Europe. New democratic models cannot flourish without the right educational structures in place.

Why transparency and accountability are crucial: The highest level of transparency in the functioning of institutions and in the policy-making process to ensure a fair, open and trustful relationship between public institutions and the citizens they serve and as a necessary step towards accountability of those institutions. Transparency and access to information is a necessary, but not sufficient, precondition for keeping citizens informed. European institutions should guarantee the right of public access to documents related to policy making in a harmonised, comprehensive, accessible and user-friendly way. Access to documents should be complemented to by a legislative footprint that that publicly discloses the input from interest groups, such as lobby meetings and

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24 The initialism LGBTIQ is used to mean all of the communities of Lesbian, Gay, Bisexual, Transgender, Intersex or Queer.
position papers, at all stages of the EU decision-making process (trilogues and conciliation discussions between the European Commission, the Parliament and the Council). Yet there is also a need to go beyond access, towards active promotion of information.

‘More Europe’ requires more accountability: When the decisions that shape people’s lives are taken ever more remotely and the individual’s influence over those decisions diminishes, it becomes increasingly important to develop new tools and mechanism to promote transparency, accountability and inclusiveness. When the EU institutions put obstacles in the way of accountability, such as through the aforementioned violation of the Aarhus Convention, this only strengthens the arguments of Eurosceptics that the EU is governed by an unaccountable elite. Indeed, the success of further European integration and the countering of Euroscepticism is closely linked with success in improving the transparency and democratic accountability of the EU institutions.

2. Linking the Better Regulation Approach to Sustainability

The Commission committed: “The Commission will mainstream the Sustainable Development Goals into EU policies and initiatives, with sustainable development as an essential guiding principle for all its policies. Existing and new policies should take into account the three pillars of sustainable development, i.e. social, environmental and economic concerns. The Commission will to this effect ensure that its policies are sustainability-assured through its better regulation tools.”

Sustainable Development objectives need to be mainstreamed and integrated at all stages of the policy-making process. This is essential if the EU is to deliver on its commitments under the 2030 Agenda and the Paris Agreement. The Commission’s Better Regulation procedures, which provide guidelines for the preparation of legislation as well as its evaluation, is a key tool to achieve this.

In 2015, the Commission presented its Better Regulation package, to overhaul the procedures in place within the Commission when new proposals and initiatives are put forward, as well as when evaluating existing legislation. Following the adoption of the Better Regulation guidelines, an inter-institutional agreement was agreed with the European Parliament and the Council of the EU. While this was before the adoption of the 2030 Agenda and the Paris Agreement, the 2017 update of the guidelines did little to ensure sustainable development is mainstreamed in practice, with only a mention of Better Regulation as a means to do so.

a. Adjusting the Better Regulation objective

A stronger focus on and more explicit mention of sustainable development should therefore be incorporated in the Better Regulation Guidelines with the reference framework as the 2030 Agenda and the 17 SDGs and the accompanying principles, i.e. Indivisibility, integration, leave no-one behind, and well-being within planetary boundaries.

In addition to civil society, the European Parliament in its report on “EU Action for Sustainability” adopted in July 2017 has called on the Commission to establish an “SDG check” of all new policies and legislation and to ensure full policy coherence in the implementation of the SDGs.

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In addition, the EU’s commitment to deliver the Paris Agreement on climate change also adopted in 2015 implies ambitious efforts to hold temperature increase to well below 2°C and pursue efforts to limit the temperature increase to 1.5 °C. Climate change will reverse progress on economic, social and environmental objectives and is an integral part of the 2030 sustainable development agenda to be pursued by the EU.

b. Adjusting the provisions for Impact Assessments

A key component of the Better Regulation guidelines is the rules governing impact assessments. These are carried out on initiatives expected to have significant economic, social (including health) or environmental impacts. Impact Assessment reports are scrutinised by the Commission’s Regulatory Scrutiny Board.

The Better Regulation guidelines provide guidance for how impact assessments should be carried out. This tool should be used to systematically assess the economic, social, environmental and governance impacts of initiatives. However, these and their application could be further improved to ensure the 2030 Agenda and its SDGs are mainstreamed throughout the impact assessment process.

The ex-ante impact assessment (IA) stage is one key point in the better regulation process to address PCSD. Although sustainable development is currently mentioned as one objective in the Better Regulation guidelines and toolbox, there is no further definition. There should be an explicit focus on sustainable development, as the essential guiding principle, with the overarching reference point for sustainable development being the 2030 Agenda and the SDGs.

The guidance for impact assessments should take account of the social (including health), economic, environmental and governance dimensions of sustainable development in a balanced way and include the assessment of potential longer term, intergenerational impacts. The scope of IAs should be wide enough to provide decision makers with sufficient information on the full range of options and the SDGs primarily implicated. All potential costs and benefits, including the costs of inaction, should be taken into account. Guidance for IAs should not only cover and provide tools for all dimensions of sustainability, but also explicitly for the delivery of an integrated and indivisible set of SDGs which will also mean assessing interlinkages and spill-over effects (i.e. impacts, negative or positive, on the ability of other countries to achieve the SDGs).

A similar recommendation has been made by the High Level Expert Group on Sustainable Finance in the form of a “Think Sustainability First” principle as a core approach for the application of the Commission’s Better Regulation guidelines in order to stimulate sustainable finance. They propose

27 Also the European Parliament called for improving IA procedures to better reflect on the SDGs, see i.a.: EU Action for Sustainability, European Parliament report, adopted 5 July 2017.
that short-term and long-term sustainability assessments should be carried out to identify whether the impacts are sustainable or non-sustainable and supported by a methodology that demonstrates whether the specific policy is contributing to the long-term sustainability goals of the EU, notably the climate and SDG commitments.

All policies, laws and strategies should be accompanied by impact assessments. Two recent significant examples where impact assessments were not carried out are the Partnership Framework on Migration and the External Investment Plan. Political urgency or expediency is not an excuse for not producing an impact assessment because the end result may be poor or weak policy making with undesired and adverse consequences. In the interests of transparency, all impact assessments should be published and not only those that result in a legislative proposal. The Impact Assessments to be conducted by the European Parliament and the Council in certain cases, need to be performed more systematically, for improving the knowledge basis of the decision making for the benefit of stakeholders and citizens. Ex-post impact assessments are also a valuable exercise to determine coherence for sustainable development provide lessons for future policy making and should be routinely carried out above all for those files where no initial ex-ante assessment exists.

Publication of the evidence before the proposal is adopted would improve transparency and accountability and facilitate further work done by the Council and European Parliament. In a judgment on 4 September 2018, the Court of Justice of the EU found that impact assessments are linked to the EU legislative process and should be publicly available as soon as they are carried out and not only once the Commission tables a legislative proposal\(^{29}\). The Commission should immediately take steps to respect this ruling and ensure Impact Assessments are made public once they’re carried out.

The Inter-service Steering Group should include participation of all relevant Commission experts to make sure that potential impacts on sustainable development are considered from their perspective and incoherencies avoided at an early stage.

In terms of the Treaty obligation towards policy coherence for development, research shows that in 2016, less than a quarter of the policy proposals relevant to developing countries were accompanied by an impact assessment that looked in sufficient depth at those impacts\(^{30}\) and in fact this was already an improvement from previous years. A more recent analysis\(^{31}\) for 2017 and 2018 finds a further small improvement but also some obvious gaps in the IA coverage. The external impacts of EU policies must continue to be an important element of assessments. Stakeholders outside the EU should be encouraged to respond to public consultations on issues that are likely to impact them and here the EU delegations can also have a role in assessing potential or real impacts of EU policies and listening to concerns of those affected.

In this regard, the EU should pay particular attention to the role of local governments in ensuring the coherence of development cooperation’s policies. In Europe, it is necessary to increase their consultation to gauge EU development policies efficiency. In partner countries, local governments

\(^{29}\) Judgment of 4 September 2018, ClientEarth v Commission, C-57/16 P, EU:C:2018:660

\(^{30}\) The impact of EU policies in the world: seeing the bigger picture, Concord 2017.

\(^{31}\) Seeing the bigger picture—one year on. Concord, October 2018
should be systematically included into EU programmes’ decision boards. Policy coherence for sustainable development will be effective when the role of coordination played on the ground by local governments will be taken into account. Their integration into the policy making process is about the adaptation of development policies to specific local contexts. This is the main principle at the core of the SDGs’ localisation which asserts that sustainable development issues also have to be addressed at local level. The localising process constitutes a tool to ensure better policy coherence for sustainable development.

c. Evaluations and fitness checks

The way how the Commission deals with fitness checks may be inconsistent. It seems rather arbitrary which policies are chosen to undergo evaluations and fitness checks. While for instance the Birds and Habitats Directives were assessed in a long lasting exercise, while other policies that use a large part of the EU’s Budget and have impacts on several sectors, such as CAP and the MFF, were not assessed in the same manner. Decision-making should be consistent and transparent.

d. Subsidiarity and Proportionality

The principles of subsidiarity and proportionality are interwoven into the concept of better regulation by definition. As laid down in Article 5 of the Treaty on the European Union, subsidiarity “aim[s] to ensure that decisions are taken as closely to citizens as possible and limited to what is necessary to achieve the objectives of the treaties”. The principle is commonly misunderstood only as a way to prevent more EU action. By definition, the principle should ensure more or less EU action, depending on what is necessary to achieve the objective.

The proper application of subsidiarity should, therefore, mean more efficient legislation in the EU.

A recent development in breaking the misconception of subsidiarity was the reasoned opinion of the French National Assembly on COM(2018) 392\(^{32}\) that states that the proposal does not comply with subsidiarity because it does not include enough EU action\(^{33}\).

Other issues with the application of subsidiarity include:

- Most actors focus only on pointing out infringements (the "less EU" aspect of subsidiarity).
- Currently, there is not a common understanding of the principle and it is not assessed by the same set of rules.
- Local and regional authorities are the levels responsible for the implementation of about 70% EU laws, yet they have very limited impact in their design or revision.

Accordingly, a Task Force on Subsidiarity, Proportionality and "Doing Less More Efficiently" was established by EC President Juncker as part of the Better Regulation agenda. It involved the EC, the


\(^{33}\) The contribution of the French National Assembly can be found here.
CoR, representatives of the national parliaments and gave the opportunity to input to stakeholders. The Task Force did not identify a single area where competences could be returned to the national level.

This is especially relevant for SDGs. There are several objectives laid down in the treaty that link to the SDGs and refer to sustainable development (see Art. 3 of the Treaty).

In the field of environment in particular, more EU action is needed, not less. Due to their cross-border nature, environmental issues in almost all cases have EU added value, as they are better addressed by acting together rather than unilaterally. For example, rivers such as the Rhine or the Danube flow through large parts of Europe and water pollution or the construction of a dam in one country can have serious consequences in other countries. Our wildlife doesn’t know borders either, and migratory birds and animals moving across our continent might not everywhere receive the same level of protection without the harmonised protection rules that exist at EU level. And of course, the atmosphere does not care where greenhouse gases are emitted – they all contribute to climate change.

When Member States take measures at a national level following the absence of EU-level harmonisation, or when EU-wide standards fail to provide sufficiently high levels of health, social, consumer and environmental protection, the European Commission should, when evaluating such measures in light of the internal market, take account of the imperative to implement the SDG agenda.

e. Political discontinuity

‘Better regulation’ implies among other things more efficient regulatory processes. In this regard, it is important to point out the potential for considerable regulatory inefficiency arising from over-zealous application of the so-called ‘political discontinuity’ principle by the Commission. The Juncker Commission, with its stated intention to be a more political Commission, took this principle to a new level by overturning or seeking to overturn some significant sustainability-related outcomes of the previous Commission even when these had fully entered the co-decision phase. The withdrawal of the July 2014 circular economy package and the (ultimately withdrawn) threat to withdraw the National Emission Ceilings Directive proposal are more well-known examples but many other less high profile workstreams were suspended and the fruits of that work could be lost. Apart from the serious questions about democratic legitimacy raised by the fact that one person, even if appointed by democratically elected bodies, can have so much influence on the direction of the EU, the sheer inefficiency of every new Commission President exercising their supposed right to unilaterally apply political discontinuity flies in the face of regulatory efficiency. The logic of strictly applying the political discontinuity principle is that a Commission approaching the end of its mandate should cease to take any initiatives. If each Commission behaved in this way, it would effectively mean that the Commission only works at full capacity for three or four years out of its five-year term. In the immediate future, political discontinuity should not be invoked as a reason for the current Commission to reduce its output during the final year of the mandate.
3. Providing better Policy Coherence for Sustainable Development

The following chapter illustrates why better policy coherence is necessary for sustainable development and how it might be achieved.

a. Why Policy Coherence for Sustainable Development

The Commission itself acknowledges: “The Sustainable Development Goals can only be attained successfully at EU level and by its Member States if new policies take into account sustainability and policy coherence from the start and if implementation of existing policies on the ground is pursued in partnership with all stakeholders and on all levels”.34

Policy coherence for sustainable development (PCSD) is embodied in SDG 17 as a cross-cutting means of implementation (see target 17.14). Global interdependence and the challenges that the SDGs aim to address are increasingly complex and require coordinated and integrated approaches, clearly demonstrating why policy coherence for sustainable development is fundamental. Without a PCSD assessment to inform policy, there are real risks that progress in one policy area can undermine or counterbalance actions in another, or that potential synergies will remain unexploited. The EU has in place a political commitment to policy coherence for sustainable development35 but needs to institutionalise and strengthen coordination mechanisms, monitoring, reporting and accountability as well as the PCSD tools.

The OECD defines PCSD as an approach and policy tool to integrate the economic, social, environmental and governance dimensions of sustainable development at all stages of domestic and international policy making. It aims to foster synergies across economic, social and environmental policy areas; identify trade-offs and reconcile domestic policy objectives with internationally agreed objectives; and address the spillovers of domestic policies. PCSD can help avoid costly and inefficient duplication, prevent unintended consequences and foster effectiveness. To do so, it is important to break out from institutional and policy silos. Integrated policies should be supported by strong institutional mechanisms, including multi-level governance with the involvement of regional and local authorities, as well as stakeholder engagement36. The eight PCSD building blocks being developed by the OECD could provide useful guidance here.

The existence of a comprehensive, integrated, long-term and overarching strategy for the implementation of the 2030 Agenda by the EU would facilitate PCSD. An integrated agenda requires integrated policy making. Thus in order to operationalise PCSD, the internal (domestic), external (transboundary) and intergenerational impacts of policies should be evaluated for coherence at the time of EU policy design as well as during implementation. In other words, to assess the potential policy impacts and to address trade-offs between the “here and now, elsewhere and later”37, EU policy making should consider:

34 Next steps for a Sustainable European Future, Commission Communication, November 2016.
36 Towards Policy Coherence for Sustainable Development – Towards sustainable and resilient societies 2018 – OECD.
• Does the planned policy balance all the dimensions of sustainable development – social, economic, environmental and governance? Does it reinforce or counteract progress on other SDGs?
• Does it have a positive or negative transboundary effects? Will it support or hinder the achievement of SDGs in and by other countries?
• Does it have consequences for future generations? Are we squandering assets today that will limit the sustainable development options of generations to come or are we building up social, economic and environmental capital for the future?

Lessons learned from many years of Policy Coherence for Development (PCD), an obligation in the Treaty (TEU), can support the transition to policy coherence to sustainable development (PCSD). Policy coherence for development requires that EU policies in the non-development field do not undermine the EU’s objectives for development cooperation.

There is a lack of indicators for measuring both PCD and PCSD.38 UN Environment is the custodian agency for developing a methodology at global level for SDG 17.14.1. OECD is also working to develop indicators to track progress on PCSD at the national level, including for transboundary impacts. We would encourage Eurostat to work with them, perhaps in the UN International Expert Group or as a pilot country to test the methodology and therefore be in a good position to adopt relevant indicators for measuring PCSD and PCD at EU level. PCSD monitoring should adopt a range of different approaches which go beyond simply having mechanisms in place to enhance PCSD which is the current global indicator. For example, how the EU has succeeded in decoupling its production and consumption from environmental and social pressures in third countries or how trade agreements are delivering on the objective of “leaving no-one behind”. The studies on spillover effects in the SDG Index and Dashboards39 are also useful assessments. Information on how governments are addressing incoherencies in their sustainable development planning are increasingly forming part of their Voluntary National Reviews and reporting to the High Level Political Forum but could be further strengthened.

b. PCSD and Policy-Making

Impact assessments are an important mean to address PCSD.40 But in general, all policies should be designed with the interlinkages between the SDGs in mind from the outset. In other words the SDGs should be the starting point for gathering the multiple perspectives, leaving behind silo thinking. Nevertheless, questions of trade-offs may arise in which case, transparency of the evidence, analysis, process and decision making are critical, with opportunities for further stakeholder participation. It is evident that certain objectives are non-negotiable and cannot be traded-off, for example, the fulfilment of human rights. However, in the case of other competing or conflicting objectives, the independent Regulatory Scrutiny Board should make a recommendation based on transparent and comprehensive analysis of the full range of options available, taking into account costs and benefits, including costs of non-action and taking into account both short and long-term consequences.

39 Bertelsmann Stiftung and the Sustainable Development Solutions Network (SDSN).
Proposals should be made at this stage for the mitigation of any potential negative impact that is identified.

A number of **hotspots** can already be identified where the nexus between different SDGs can easily lead to incoherence and thus ineffectiveness unless policies are designed or redesigned with policy coherence for sustainable development as the guiding principle. Examples include the food-water-energy nexus or infrastructure-economic growth-climate change-life on land nexus. It is incoherent to subsidise fossil fuels and carbon intensive infrastructure while at the same time implementing other policies which aim to move the EU to a decarbonised economy. EU trade policy and agreements may compete with sustainable consumption and production or zero poverty objectives until trade agreements are designed to accelerate sustainable development in EU and in trading partners. An example of the importance of transparent and evidence-based policy making to prevent incoherencies in policy making is the recent directive on the promotion of the use of renewable energy sources. Although this includes many positive changes regarding the use of energy in the EU, the proposal and the resulting directive contains no restrictions on the types of forest biomass that can be burned for energy. Although the intent was a positive outcome in terms of increasing the use of renewable energy in the EU and therefore reduce the emissions of greenhouse gases and despite some criteria on sustainable sourcing , the resulting proposal and the resulting directive, allows harvesting and burning of wood directly for energy production alongside residue and wastes.\(^{41}\)

Although an impact assessment was carried out, it seems that some of the vital evidence was ignored or omitted. Some 800 scientists pointed out that in fact, as it stood, this directive would accelerate climate change, the destruction and degradation of forests worldwide and pose threats to biodiversity and called for eligible biomass to be restricted to residue and wastes.\(^{42}\)

Although the **Paris Agreement on climate change** and the 2030 Agenda for Sustainable Development were negotiated at the same time, they were developed along separate tracks in separate multilateral processes and are taken forward through different channels in the EU. Nonetheless, there are real synergies between them which can be exploited to improve coherence and effectiveness of implementation of both. The Paris Agreement requires parties to embed climate action in the context of sustainable development and the 2030 Agenda includes climate-related actions throughout. In fact a study by WRI and GIZ\(^ {43}\) points to 49 targets across 13 SDGs which provide climate mitigation and adaptation synergies and outcomes, including on agriculture and forests and other targets provide enabling conditions. The same study finds that globally 103 Nationally Determined contributions reinforce sustainable development and SDG targets in particular. Thus the two processes provide an ideal opportunity to identify the synergies, maximise the co-benefits and minimize potential trade-offs from the outset working across all EU Directorates, i.e. a coherent whole-of-government approach.\(^ {44}\)

\(^{41}\) Copa and Cogeca support the document with the exception of the example here and in the subsequent paragraph


\(^{43}\) Connecting the Dots: Elements for a joined-up implementation of the 2030 Agenda and Paris Agreement, GIZ and WRI, July 2018.

\(^{44}\) See also the NDC partnership, co-chaired by Germany and Morocco, for further analysis of NDC-SDG linkages.
Equally, the implementation of the 2030 Agenda, based on the principle of “leaving no-one behind” and the achievement of the SDGs will contribute to the realisation of human rights. Thus the Universal Declaration on Human Rights and the core international human rights treaties must be integral to the implementation of the 2030 Agenda and to ensure coherence in the EU’s action, both frameworks should be taken into account. The EU’s actions towards sustainable development must protect, respect and fulfil the human rights of its citizens and those living within its borders and must also not conflict with other countries’ ability to realise human rights and fulfil their obligations as duty bearers. To ensure policy coherence for sustainable development and a rights-based approach, interlinkages can be maximised, identifying the challenges and opportunities presented by the high degree of convergence between human rights and the 2030 Agenda for Sustainable Development.  

**c. The importance of the economic governance in the implementation of SDGs and the European Semester**

As the annual EU tool to coordinate economic, but also other policies, the European Semester, and more generally the EU economic governance, will be instrumental in enabling a consistent implementation of SDGs over time.

Accountability, transparency and participation are therefore also necessary within the economic governance of the EU.

Civil society, employers, trade unions as well as local and regional authorities need to be integrated within this governance. For instance, 36% of all 2018 Country Specific Recommendations directly involve local and regional authorities in 16 Member States, up from 24% in 2017\(^\text{46}\). [Add civil society example]. During the European Semester process, some member states are already involving key stakeholders in the formulation of their National Reform Programmes. However their degree of involvement differs greatly between Members\(^\text{47}\). This is due to the different competences of regions and cities within each Member state, as well as to different history and traditions. No one-size fits all model should be imposed though, but while the EU institutions must start working to align and guide the European Semester with the SDGs, the economic governance of the EU must become more inclusive.

To this end, the European Commission should propose a Code of Conduct for the involvement of local and regional authorities\(^\text{48}\), civil society and business. It should build on the approaches of multi-
level governance and partnerships, listing guidelines for the EU institutions and Member states to make stakeholders contribute to each European Semester deliverables in a meaningful way, involving them timely in this process.

The implementation of the country-level provisions of the Code of Conduct should be left to Member States, to respect existing differences between Member States' constitutional layouts and sharing of competencies between levels of government.

The transition to a new European strategic framework succeeding the Europe 2020 strategy – a Sustainable Europe 2030 Strategy – would be an appropriate juncture for reforming the governance of the European Semester, integrating both the above-mentioned Code of Conduct, and the necessary additional SDGs coordination steps cited in the Platform's recommendations for the EU Reflection Paper for a Sustainable Europe by 2030. Both will enable the mainstreaming over the long-term of the SDGs within the European Semester.

4. Delivering sustainable development through effective institutions

The Commission acknowledged: “Sustainable development requires a holistic and cross-sector policy approach to ensure that economic, social and environmental challenges are addressed together. Hence, ultimately sustainable development is an issue of governance and requires the right instruments to ensure policy coherence, across thematic areas as well as between the EU's external action and its other policies”.49

Ensuring policy coherence for sustainable development is also a governance issue in terms of institutional and procedural arrangements. The process of collegiate decision making, inter-service working consultations and the establishment of project teams within the Commission facilitate horizontal exchange and coherence – even though this is not yet guaranteed to deliver policy coherence for sustainable development – because sustainable development is not yet the common single direction in which all EU Commissioners are travelling. The following proposals cover the different EU institutions as well as different aspects of governance.

a. Inter-institutional strategy for the implementation of the 2030 Agenda

The EU should be prepared to go beyond business-as-usual. Before any adequate treatment through a strategy, governments need to make a correct diagnosis of the problems. This can only be ensured if strategies are underpinned by an in-depth gap analysis of existing policy frameworks, processes and mechanisms. The Council Conclusions from June 2017 demand a gap analysis “in all relevant policy areas in order to assess what more needs to be done until 2030 in terms of EU policy, legislation, governance structure for horizontal coherence and means of implementation”. This shows the general willingness of Member States to undertake such an exercise, but most still need to follow up on these good intentions.

An overarching strategy is needed to support cross-sectoral integration and horizontal coordination, and mainstreaming of sustainable development within the competences of all EU institutions. All Directorate-Generals of the European Commission, European Parliament Committees and formations

49 Next steps for a sustainable European Future, Commission Communication, November 2016.
of the Council of the EU must be made accountable for the implementation and the monitoring of the sustainable development strategy, within their role in EU legislation and scrutiny.

**b. European Commission**

The 2030 Agenda should be the overarching framework governing the priorities of the next Commission. Overall responsibility for sustainable development within the Commission should sit at the highest level. The President of the European Commission should have cross-cutting responsibility for sustainable development and be accountable for the achievement of the SDGs, reporting annually on progress to the European Parliament through the State of the Union address and a linked annual implementation report.

Portfolios of Commissioners within the 2019-24 Commission should reflect the different dimensions of sustainable development and link to the SDGs. The system of Vice-Presidents could contribute to sustainable development and implementation of the 2030 Agenda, if there were a better balance between the dimensions of sustainable development in the portfolios of Vice-Presidents and the project teams they coordinate, ensuring equal attention and political weight to the social, environmental and economic dimensions of sustainable development, taking into account where the EU has exclusive and shared competence.

The College of Commissioners’ mandate should include a clear commitment towards the 2030 Agenda, with performance indicators for each Commissioner to assess whether and how they are contributing to creating a more enabling environment for progress towards sustainable development, related to the relevant SDG targets falling within the portfolio of each Commissioner.

Sustainable development should be taken as a guiding principle of the next European Commission, as the basis for overarching priorities, political guidelines of the President and the Commission’s annual work programme. A structural coordination mechanism between different Directorate-Generals of the European Commission should be set up and targeted for sustainable development, with participation of a body like the Multi-Stakeholder Platform. Interservice consultation should ensure that all dimensions of sustainable development and all relevant SDGs are included in legislative proposals. Staffing choices within different DGs should be used to mainstream sustainable development, with meaningful staffing and resources dedicated to the implementation of the 2030 agenda, including supporting participation of different stakeholders.

There is a need to create institutional roles for long-term planning with a specific aim to defend the needs of future generations and the natural systems on which they will depend. Wales, for instance, has introduced a Future Generations Commissioner in order to help public bodies and those who make policy to think about the long-term impact their decisions have, in line with the 2015 Well-being of Future Generations Act. Efforts are currently being made to introduce a similar concept within the United Nations system. A similar body should be established in the European Commission.

The EC Inter-service Steering Group should include participation of all relevant Commission experts to make sure that potential impacts on sustainable development are considered from their perspective and incoherencies avoided at an early stage. The Regulatory Scrutiny Board could assume a stronger role evaluating the impact assessments in terms of their delivery of the 2030 Agenda and sustainable development.
c. European Parliament

In the European Parliament, working methods do not currently allow Members to adequately take account of the interconnected challenges Europe faces as well as the new realities posed by the adoption of the 2030 Agenda and the Paris Climate Agreement. Currently, European Parliament Committees beyond the Development and the Environment Committee have little interaction with the 2030 Agenda for Sustainable Development. The European Parliament tends to define its positions within the silos of its twenty Committees leading to a compartmentalisation of policy and law making. This flies in the face of the integrated nature of the SDGs. There is currently no structure responsible for coordination and oversight of implementation of the 2030 Agenda and limited opportunities for broader engagement of the whole Parliament during plenary sessions. For example, agriculture policy is inextricably bound up with food policy, environmental policy, labour conditions, water management, climate change and similar and can impact positively or negatively on all of these areas. In order to overcome such limitations, we propose that the rules of procedure be evaluated and amended as necessary to allow for more integrated decision-making and improved policy coherence for sustainable development. For example, all Parliament Reports could include an explanatory memorandum identifying how the proposals will support the 2030 Agenda for Sustainable Development and its specific goals and targets.

For democratic oversight of the implementation to be strengthened, parliaments must create bodies that have the capacity to actively monitor and review SDG implementation. Within the European Parliament, this could take the form of the creation of a new standing committee or intergroup charged with this.

Further recommendations include the following:

- The European Parliament’s resolution on the Commission Work Programme should address how well the SDGs are addressed, based on a systematic scrutiny.
- The European Parliament should produce an annual report assessing progress towards the Sustainable Development Goals and targets within the reports it has adopted.
- Standing debate in plenary and exchanges with the European Commission and the Council of the EU (represented by the Presidency) on implementation of the 2030 Agenda should be envisaged.

The European Parliament should take the opportunity of the 2014-19 mandate drawing to a close to reflect on the approach to the SDGs within the mandate and produce recommendations to improve the Parliament’s working methods during the next parliamentary term for the achievement of the SDGs, in terms of the Parliament’s role as co-legislator and in democratic scrutiny.

d. Council of the European Union

There is a fundamental disconnect between decision-making power and accountability at the level of the Council of the EU. The Council as a formation is not accountable to the European Parliament or to EU citizens for decisions made or for their role in legislation passed; only individual government representatives are accountable to their own citizens for their role in the Council, and due to a lack of transparency in Council decision-making processes, the role and position taken by particular government representatives is often not known. This disconnect is coupled with a general lack of
transparency in the workings and decisions of the Council, which must be addressed for better governance both as a means and an end to sustainable development. The Council should therefore implement in full the recent recommendations and suggestions for improvement from the European Ombudsman on the transparency of the Council legislative process (case 01/2/2017/TE) to facilitate the right of citizens to participate in the democratic life of the Union.

Further recommendations include:

- The SDGs should be systematically part of the working programme of the Member State holding the EU Presidency within the Council.
- The General Affairs Council should include SDG implementation as a regular item on its agenda, prepared by the newly established 2030 Agenda Working Party.

Also, the working party on sustainable development of the Council should take on an oversight role for policy coherence since this working party will be most familiar with the SDGs and their implementation in the European context.

e. Committee of the Regions

The European Committee of the Regions should take on a key coordinating role to ensure that multi-level governance is assured and step up the awareness about SDGs at local and regional level. To this end, as the EU institution representing the voice of cities and regions, the CoR should be fully integrated within an EU SDGs governance that is open, transparent and effective. The CoR should relay the needs, concerns and feedback that local and regional authorities identify on the ground, as well as liaise with other territorial organisations at EU level to ensure that the territorial dimension of SDGs is clearly voiced out, and that it is taken up within EU policies to boost SDGs implementation. It should also be a key vector for the EU to communicate with regions and cities on SDGs and promote the SDGs as the new framework for action at all levels.

f. European Economic and Social Committee

The European Economic and Social Committee has been calling for of a framework for governance and coordination alongside the long-term strategy for the implementation of the 2030 Agenda, in order to ensure coherence between centralised and decentralised measures, as well as to involve organised civil society at national and regional levels. The transformation to sustainability will only be successful if it is based on broad support and active participation of a majority of businesses, local and regional authorities, workers and citizens. The challenges require transparent and freely accessible multi-stakeholder dialogues for all EU legislative processes at EU and local level. Multi-stakeholder alliances were used in framing the 2030 Agenda and are decisive in the area of climate action. These can serve as a blueprint for an inclusive democratic governance model which could be applied across policy sectors and facilitate transformational change and innovation. The EESC has a role in feeding back information about the progress of change and the demands from the bottom to the European institutions, and promoting the involvement of civil society at EU level, for example via its involvement in the Better Regulation agenda. Civil society is a major and creative driver of the necessary transformation to a more sustainable society. The EESC Sustainable Development Observatory is committed to fostering the active participation of citizens and civil society in making
the shift towards a more sustainable Europe. It is the only body within the European institutions that is dedicated exclusively to advancing sustainable policies across all sectors.

f. A role for the European Court of Auditors (ECA)

The International Organisation of Supreme Audit Institutions (INTOSAI) has identified four roles that could be performed by their members. These are:

- Assessing the preparedness of national governments to implement, monitors and report on the progress of the SDGs and subsequently to audit their operation and the reliability of the data they produce.
- Undertaking performance audits that examine the economy, efficiency and effectiveness of key government programmes that contribute to specific aspects of the SDGs.
- Assessing and supporting the implementation of SDG16 in particular regarding transparent, efficient and accountable institutions and SDG17 concerning partnerships and means of implementation.
- Being models of transparency and accountability in their own operations, including auditing and reporting.

The European Court of Auditors, a member of INTOSAI, could make important contributions through these roles and functions, for example, through regular assessments of progress on implementation and reporting and performance audits of the contribution of specific EU policies and strategies towards the achievement of the 2030 Agenda.

g. Inclusion of civil society in current structures

With regard to civil society participation in the implementation of the Agenda, it is important to remember that States and institutions remain the primary duty-bearer for the achievement of the SDGs, but that civil society must be involved in the decision-making, target and indicator setting, implementation, follow-up and review for the 2030 Agenda to ensure the highest level of ambition towards the SDGs. The creation of multiple participatory mechanisms may be necessary to be inclusive of all groups in society, such as children, youth, people with disabilities, those living in rural locations, and the ones who are the hardest to reach. Examples of such mechanisms include social audits, scorecards, surveys and online polling. These efforts must not come to the detriment of mechanisms for structured dialogue with civil society organisations in their role as a bridge between the EU and its citizens, as well as between the EU and people affected by its policies more broadly. Civil society’s role in civil dialogue and policy-making must be allowed to flourish. This will entail review and reform of existing mechanisms for participation, together with new and different structures and ways of working between institutions and other stakeholders.

Consultation of stakeholders must never be a tokenistic exercise. Sufficient time for consultation, access to adequate information about proposed policy areas in order to inform responses, as well as genuine follow-up on how different inputs have been included in the final policy or legislative proposal, are necessary. Feedback on consultations must be given, including explanations on suggestions not incorporated. This information should be publicly available.

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Equality of access of different stakeholders within the policy-making process is needed, to ensure a balance of interests. All formal engagement of and consultation with civil society organisations and other stakeholders must ensure outreach to a diversity of civil society and equal weight of all stakeholders participating in the process. This requires investment from the side of the EU institutions in understanding the nature of different stakeholders who should be involved and the different levels of participation required, as well as the different levels of outreach necessary to guarantee that participation.

**i. The future of the multi-stakeholder platform**

Permanent, cross-sectoral, structured and institutionalised participation of civil society and other stakeholders is required for the implementation of the 2030 Agenda for Sustainable Development in the EU. The current Multi-stakeholder Platform could provide the basis for establishing a consultative stakeholder advisory group while maintaining regular sectoral dialogues with stakeholders and creating additional open spaces for diverse multi-level, multi-stakeholder and cross-sectoral dialogues on the SDGs.

Improvements in the role, access, structure, working methods and inclusivity or diversity of stakeholders will be necessary for the Multi-stakeholder Platform to continue and take a stronger role in EU decision-making for sustainable development. An evaluation of the work of the platform has carried out should be foreseen for the end of the current term, to take stock of the contribution of the platform and consider its role in the future, as well as which adjustments are necessary to improve its functioning.

**ENDS**