GOVERNANCE, COHERENCE AND RULE OF LAW

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
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Recommendations, 29 June 2018

Foreword

These recommendations were produced in the subgroup on "Governance, Coherence and the Rule of Law" of the multi-stakeholder platform on the implementation of the SDGs in the EU. They are based on the contributions made by the sub-group members during their meeting on 16 April 2018. The final recommendations were adopted by the members of the subgroup on 29 June, with one abstention1.

- **Drafters:** European Youth Forum, WWF, Birdlife, SDG Watch
- **Sub-group members:** BusinessEurope; CEMR; CSR Europe; COFACE; Concord; COR; COPACOGECA; ESADE, EPHA, ETUCE; European Youth Forum, Social Platform; Transparency International
- **Observers:** EEAC; ESDN, OECD

Mainstreaming the SDGs into EU policy making through Better Regulation

The overarchin reference point for sustainable development as defined in the Better Regulation guidelines and toolbox should be the 2030 Agenda and the SDGs. In addition, the Paris Agreement on climate change is an integral part of the 2030 sustainable development agenda to be pursued by the EU.

The Better Regulation Guidelines do not yet ensure an effective implementation of the SDGs. Guidance for impact assessments should take account of the social, economic, environmental and governance dimensions of sustainable development in a balanced way and include guidance on assessing potential longer term impacts (intergenerational). 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.

All policies, laws and strategies should be accompanied by impact assessments. Political urgency is not an excuse not to do so and may result in poor or weak policy making with undesired 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.

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1 BusinessEurope abstained from endorsing these recommendations of the subgroup.
Policy coherence for sustainable development (PCSD)

The interlinkages and inter-relationships between SDG goals and targets clearly demonstrate why the policy coherence for sustainable development is fundamental. Without PCSD, there are real risks that progress in one policy area will be set back by badly thought out actions in another, thus leading to inefficiency and ineffectiveness or even long term damage. On the other hand, through PCSD, objectives in several different policy areas can be advanced simultaneously. 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 engagement.²

Moreover, the internal, external and intergenerational impacts of policies should be evaluated for coherence at the time of EU policy formulation. 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 state. The Regulatory Scrutiny Board should have a stronger focus on evaluating the impact assessments in terms of their delivery of the 2030 Agenda and sustainable development.

The EU has played a successful role in getting the value of PCSD recognised in the 2030 Agenda and now must demonstrate how it will take this forward in its decision making mechanisms. It should also mobilise and support other countries in implementing the SDGs.

There is a current lack of indicators for measuring both PCD and PCSD as evidenced by the Eurostat report. Appropriate indicators should be developed in conjunction with external experts and the UN.

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 future policy making. The external impacts of EU policies must continue to be an important element of assessments, as we move towards PCSD. Stakeholders outside the EU should be encouraged to respond to public consultations on issues that are likely to impact them.

Coherence through the European Semester

According to the Commission website, the European Semester is a "framework for the coordination of economic policies across the European Union". While it was created for monitoring the implementation of the Europe 2020 strategy, which covers in principle the

² Towards Policy Coherence for Sustainable Development – Towards sustainable and resilient societies 2018 – OECD
three dimensions of sustainable development, following the financial crisis, it has become increasingly narrow and focussed on macro-economic aspects.

Nevertheless, the European Semester is a useful governance mechanism for recommendations to Member States and reporting. It is therefore a suitable mechanism which could be used to assess and encourage progress on SDGs but would need to be aligned throughout its cycle with the long-term strategic framework now provided by the 2030 Agenda and the SDGs. An annual Sustainability Survey should be established to include Country Reports, National Reform Programs and country specific recommendations to mainstream sustainability.

The European Semester process could also be improved to be a viable coordination tool. It currently lacks sufficient ownership among the different stakeholders involved in its implementation, including local and regional authorities, cities and regions. A dedicated EU code of conduct – while respecting Member states prerogatives – would help structure the European Semester and apply the partnership principle across Member States.

In addition, as key partners in the implementation of the European Pillar of Social Rights, civil society stakeholders need to be adequately consulted and involved in a regular and structured dialogue in the scope of the European Semester process.

Reinforcing the Rule of Law

The Commission as guardian of the Treaties 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 in several Member States. The erosion of civic space is also linked to the worsening situation with regard to media independence and press freedom in recent years. (See the latest ‘reporters without borders’ annual press freedom index April 2018).

The Better Results through better application communication implies that the Commission will focus only on strategic priorities and thus giving signals that Member States can get away with other infringements. There should be sufficient capacity within the services to deal with all complaints and infringements, a responsible person at cabinet level and mechanisms to refer to FVP level if necessary, more transparency on details of complaints, infringements and action taken. Furthermore, there should be greater transparency around the infringements process to increase democratic accountability.

While EU level mechanisms exist to improve the effectiveness of national judicial systems and to support Member States with the necessary reforms, issues with corruption persist, undermining the rule of law. Better enforcement (through, inter alia, strengthened capacity of

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3 Improving the governance of the European Semester: A code of conduct for the involvement of local and regional authorities. 2017 – European Committee of the Regions http://webapi.cor.europa.eu/documentsanonymous/COR-2016-05386-00-00-AC-TRA-EN.docx

actors tasked with enforcement) and more transparency and accountability of public institutions are needed to tackle the issue. EU recommendations on corruption in the European Semester and the Cooperation and Verification Mechanism (CVM) should be implemented in full, with no-cherry picking and distribution of EU funds should be conditional on their implementation.

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, to the extent that 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. The Commission should move swiftly to rectify the problem by coming forward with a legislative proposal to strengthen the relevant EU implementing legislation to bring it in line with the Convention.

In 2019, the HLPF will review SDG16 amongst the other SDGs for review. This presents an important opportunity for the EU report to HLPF to demonstrate action taken to strengthen participation, democracy and transparency.

Overall governance for sustainable development (some proposals)

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 and The President should report annually to the Parliament on progress on SDG implementation in the State of the Union address.

The European Parliament's resolution on the Commission Work Programme should address how well the SDGs are addressed, based on a systematic scrutiny.

Similarly, the Joint Declaration of the three Presidents (according to the Interinstitutional Agreement on better law making 2016), as agreement on multi-annual priorities at the beginning of the legislature need to address the SDGs in a systematic way.

The present Multi-stakeholder Platform could provide the basis for establishing a permanent stakeholder advisory group while maintaining and creating additional open spaces for diverse multi-level, multi-stakeholder and sectoral dialogues on SDGs. (In other words, the Multi-stakeholder Platform must not be the only mechanism or channel).