

THE “RULE OF LAW- PRINCIPLE” IN THE EU

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EU COMMISSION'S ANNUAL REPORT ON THE RULE OF LAW - THE ECONOMIC DIMENSION SHOULD BE GIVEN MUCH GREATER IMPORTANCE

The **rule of law** is one of the common values on which the European Union is founded - as are the EU's fundamental principles of subsidiarity and proportionality. The European Commission's **rule of law mechanism** (in particular the **annual report on the rule of law**, most recently in July 2022) has so far only examined compliance with the rule of law in the member states in **only four areas, but unfortunately not as a prerequisite for economic activity or as a location factor**. [REDACTED] therefore calls for the **inclusion of the economic dimension**.

The existing examination concerns the areas of

Justice system | Anti-corruption framework | Media pluralism | Other institutional issues related to checks and balances

Rule of law as a location factor: Reliable rule of law structures in economic life and rule of law behaviour by public authorities are key prerequisites for investment and trade. Companies operating across borders emphasise the central importance of reliability and credibility of the political and legal framework for their investment behaviour and, in addition to a lack of political stability of certain government systems, complain about the unpredictability or short-term nature of legal regulations and the lack of reliability in the enforcement of the law.

There is an **increasing tendency towards protectionism** and the implementation of discriminatory measures against foreign investors in some member states. **Non-compliance and circumvention of European regulations** lead to enormous **distortions of competition for companies operating in the internal market**. There must therefore be a **stronger focus on the uniform and rapid application, implementation and enforcement of existing legislation**.

Anti-investment barriers such as bureaucratic obstacles, taxes or ownership regulations, which are **de facto primarily directed against foreign investors**, prevent or make cross-border economic activity more difficult. EU investors and service providers are sometimes discriminated against compared to domestic companies, e.g. in public procurement or taxation. Union law countermeasures are often not applicable or take a very long time!

Therefore, in particular, more attention must be paid to the **economic dimension of the rule of law** and the **principle of the rule of law** must play a **stronger role in the internal market**.

Likewise, the **freedom to conduct a business** (Art 16 of the EU Charter of Fundamental Rights) and the **right to property** (Art 17 of the EU Charter of Fundamental Rights) must be guaranteed, which is partly not the case, as the following examples show:

Examples of protectionist and nationalist tendencies in some member states:

- **Introduction of special taxes** that de facto only affect foreign investors (SK 2019, RO 2019, HU 2010/2014)
- **High fines for marginal infringements** with simultaneous abolition of suspensive effect of legal remedies in food trade (SK 2019)
- **Property law problems in land acquisition** by foreign investors, protection of investors' confidence undermined by state procedures (RO 2019)
- **Forced conversion of foreign currency loans** (HU 2015, PL 2016, HR 2017)
- **Preferential treatment of certain creditors and some "systemically important" suppliers** - violation of the principles of legal certainty and protection of legitimate expectations as well as the general principle of equality and non-discrimination (HR 2017)
- **Takeover of a financial services provider by a foreign company was prohibited** the day before the takeover by emergency decree (ad hoc addition of the relevant branch to the law). The basis is a law that makes the acquisition and sale of companies in strategically important industries subject to the permission of the Minister of the Interior. (HU 2021)

Compromise solution with the Hungarian government at the beginning of 2022 through participation of HU company Corvinus Internationale InvestitionsAG (state holding) with 45% - immediately before the EC found a violation of the Merger Regulation through the original prohibition of the transaction (without HU participation) by HU.

- **Introduction of a special tax on profit surpluses for mining companies** or producers of cement, lime or gypsum with annual turnover > HUF 3 billion. HU has set a threshold price below cost price for these product groups and imposed a special tax of 90 % on the turnover generated by the prices above cost price. Due to the design of the tax, practically all HU mining companies are exempt from the tax, while foreign companies are subject to the tax. In addition to violating internal market rules, there is also a violation of Article 16 of the CFR (freedom to conduct a business) with regard to the official setting of prices below cost price (HU 2021).
- AT company has a **pellet plant in Croatia** and relies on **wood allocations from the Croatian State Forests**, which are made through tenders. AT company has again received only about 30% of the volume of wood pellets it is entitled to, while HR competitor companies have received the full allocation. HR-State Forests is generally considered a nontransparent organization. (HR 2021)
- **Croatian courts**, in particular the HR Supreme Court, have issued several **rulings that raise doubts about rule of law standards** and put banks in particular at risk (CHF loan disputes; HR supreme courts issue legal opinions that are binding on all second instance courts but do not need to be reasoned and are not subject to review by the HR Constitutional Court). (HR 2020 and 2021)
- Slovenia has decided - as already considered by HU and PL - to introduce a **retroactive exchange rate cap on foreign currency loans** (especially CHF), 17 years retroactively, all exchange rate effects detrimental to the customer are to be borne by the lending banks; concerns mainly foreign institutions and especially AT banks (SI 2022).

These abuses cannot be directly assigned to the existing four pillars, they are not a problem of "corruption", often they are not directly contrary to the internal market.

therefore demands that monitoring be intensified in this direction and that the economic dimension of the rule of law be brought more into focus. It should be given much greater consideration in the rule of law mechanism or a separate economic chapter should be included in the Rule of law report of the Commission.

Introduction of an investment protection system within the EU:

The ECJ's "Achmea" ruling on investment protection left a legal protection vacuum, especially in Central and Eastern Europe. The European Commission plans to present a non-binding investment facilitation mechanism in the coming months. However a **binding instrument** would be of pivotal importance.

Rule of law and enlargement:

- The prospects of EU accession are drivers for economic reforms and strengthening the rule of law in candidate (and potential candidate) countries.
- **Austria has close economic ties with all candidate countries** in the Western Balkans and is one of the **largest investors** in the region.
- Of utmost importance is a **credible enlargement strategy**, therefore it is important that the official accession negotiations with Albania and Northern Macedonia have finally begun.

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