

## I. COVID-19 and the Legality of Certainty of Emergency Measures

DRI has provided in-depth analyses of the state of the rule of law across the EU during the first wave of the pandemic and continues to work at analysing the situation during the second wave, from October 2020 onwards.

### A. *The Legality of emergency measures*

While only a few EU member states have introduced formal states of emergency in response to the second wave of the pandemic, all have introduced various emergency measures that amount to de facto states of emergency. Many of these measures raise concerns as to their legality. These concerns range from those about the prevalence of the use of governmental decrees as means of introducing emergency measures, through those about the relation between the severity of measures and their intended goal, to issues related to the constitutionality of the measures and their conformity with domestic and regional standards.

### B. *Legal certainty*

Across the EU, there has been a marked lack of legal certainty when it comes to COVID-19 measures. Governments have frequently failed to provide clear instructions as to what elements of restrictions are legally binding and which amount to non-enforceable suggestions. There have been a startling number of legislative U-turns, with the authorities announcing certain legal measures, only to rapidly backtrack following a backlash from experts or the public. In several instances, emergency measures were introduced with minimal to no *vacatio legis* – time before adopted measures come into force – leaving individuals with little or no opportunity to prepare and alter their daily routines or business activities so as to respect the restrictions.

## II. European Judicial Order Under Threat

Recent years have seen an increasing uptick in countries undermining this respect and refusing to implement the judgments of regional courts. While the CJEU has long been held in extremely high regard by EU member states – even when they did not agree with its decisions – there is an increasing trend of those decisions being disregarded and left unimplemented. Recent examples, such as the Hungarian asylum case and the Polish Disciplinary Chamber case, show that some member states have begun defying the CJEU.

Respect for the CJEU is critical for ensuring adherence to the rule of law in the EU. While the Court cannot replace the European Commission as the primary enforcer of EU values, and proceedings before the Court take considerable time to reach legally binding conclusions, it is the CJEU that has the power to introduce interim measures aimed at halting worrying developments in member states. The Court's key role rests in the assumption that the member states will respect its rulings. Thus, the open flouting of the court by countries declining to implement its judgments threatens to critically weaken the entire EU, as it would lose its primary enforcement mechanism.

This concern is not, however, limited to the CJEU. An even more worrying trend can already be seen with regards to the ECtHR. The implementation of leading ECtHR judgments is also at

a worryingly low level, with several EU member states failing to implement even 50 per cent of leading judgments from the last 10 years.

### III. The Situation of State-owned Media

The Commission's rule of law report also covers the issue of media plurality and the ability of journalists to exercise their profession freely. These are important considerations in relation to protecting the rule of law, as free and independent media are crucial to holding governments accountable and informing society. The next rule of law report should, however, also cover the specific situation of state-owned or de facto state-controlled media.

In some member states, there is growing concern over the state and role of public, state-owned de facto state-controlled media. In Poland, the government controls both the public television broadcasting service, TVP, and several radio channels. Since 2015, these outlets have increasingly become outright partisan in their pro-government and pro-ruling party support, while at the same time attacking the opposition and, at times, EU institutions. In December 2020, Orlen, a state-owned enterprise, announced the purchase of several local newspapers and news portals from the private media holding PolskaPresse.

In Hungary, the situation of the state-owned media is similar, with the messaging of the public outlets being fully supportive of the government. The issue in Hungary is exacerbated, however, by the fact that the private media have been nationalised, shut down or taken over by individuals and businesses supportive of the government. This leads to a situation where practically the entire array of Hungary-based media outlets is controlled by the government or owned by those close to it and, as such, refrains from criticism and aligns itself with the line of the ruling party.