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TIMMERMANS**

[Introduction]

- Minister, distinguished guests, Ladies and Gentlemen,
- On behalf of First Vice-President Timmermans, I would like to warmly thank the Finnish Presidency for the invitation to introduce today's discussion on the rule of law as a prerequisite for a democratic society. The First Vice-President was very much looking forward to delivering this keynote speech in person but, as you know, the composition and responsibilities of the next College of Commissioners were made public only yesterday and he had to remain in Brussels.
- In this respect, many had been asking in the past months and weeks who exactly would finally be responsible for the Rule of Law in the Commission, as if the identity of the Commissioner in charge was the one factor making a difference. But while some would want to make everyone believe that the issue of the Rule of Law was merely a personal -and party-politically motivated- mission of Mr. Timmermans, the cold reality is that it was not just Mr. Timmermans, and not even just the Commission.

- If one takes the trouble of reading the numerous reports and declarations of the Council of Europe, the Venice Commission, the UN Human Rights Committee, the networks of judges and lawyers, all come to the same conclusion: there are serious problems with the Rule of Law in some parts of our Union.
- Moreover, the Commission's policy on the Rule of Law is a policy that has been supported and defended every single step of the way by the College as a whole. It is a Commission policy, not the policy of one or the other member of College. And it will remain Commission policy with the same intensity, as President-elect Ursula von der Leyen has stated clearly in her political guidelines and in her presentation to the European Parliament.
- In any event, and as you know, in the next College Commissioner Didier Reynders, under the supervision of Vice-President Vera Jourova, will be dealing with the Rule of Law. Both have a public record of commitment to the defence of the Rule of Law that needs no further comment.
- Coming now to the topic, its choice is more than ever timely. Respect for the rule of law is unfortunately no longer something that we can take for granted, be it outside or inside our Union. This is first and foremost a moral problem and a problem questioning our very identity, as Art. 2 TEU lists the rule of law as a founding value of the

Union and also as a value common to the Member States. In this regard, no value can be truly common if its meaning is different in each Member State, as some wrongly argue. And this also means that respect for the rule of law is not just a legal matter, to be addressed only by Courts, but also a political matter, to be therefore politically assessed by the Union's institutions.

- Beyond these general political considerations, lack of respect for the rule of law is also a real problem for the everyday functioning of our Union as whole, including the Internal Market. And it greatly diminishes our credibility of our external and enlargement policies; for how can we point at the failings of other countries if we ourselves are challenged?
- What we have seen over the last years is the temptation in some Member States to use democracy as a justification for eroding the rule of law. We need to openly challenge this line of reasoning and reject the perverse notion that one can simply brush aside the rule of law based on a parliamentary majority. In a democracy, majorities are not all-powerful and cannot take it all.
- So democracy, the rule of law and fundamental rights go hand in hand – the tripod. If you weaken one of them, the others suffer. And you simply cannot use one against the other. The rule of law is therefore crucial to ensure the

resilience of our democracies: without independent justice systems and separation of powers our representative democracies become vulnerable to those who use the ballot to capture the different branches of government, and then the constitution itself, to entrench their power. We have seen it all before.

[Importance of rule of law in the Union]

- So it is not a surprise that the rule of law, together with democracy and fundamental rights, are all three enshrined in Article 2 of the Treaty on European Union listing the core values of our Union.
- Respect for the rule of law is crucial for the effective application of EU law, for mutual trust between Member States and their national courts, for the internal market and for an investment-friendly environment. And that means that a rule of law problem in one Member State is not just a problem isolated in that Member State. In our Union it becomes a problem for *all* other Member States, and for the EU as a whole. In short, respect for the rule of law is essential for the very functioning of our Union.
- And neither is the rule of law just a matter by and for lawyers. According to a recent Eurobarometer survey, 89% of all respondents consider respect for the rule of law as

important or essential, not only in their own Member State, but also in other Member States and in the EU as a whole.

- For these reasons, the rule of law is a matter of EU policy and the Commission, as guardian of the Treaties, has taken a number of actions to promote, and defend it during these last five years.

[Rule of Law Communication]

- To be sure, the last years have seen a great evolution of how we deal with the Rule of Law in the EU. On the one hand it is lamentable that we had to do so, as it proves there are problems. On the other hand it is good that aside from talking about transport or finance, important as they are, we now also can talk about fundamental values and the rule of law in particular. Three years ago, no one could have thought we would be discussing in the Council the situation of the Rule of Law in certain Member States.
- Based on these experiences over the past years, the Commission decided on 17 July 2019 to strengthen its actions further by presenting new concrete measures, based on our own reflections and on a public consultation opened on the matter in April.
- These measures -presented in the “Communication on further strengthening the rule of law within the Union”- pursue three objectives: *promoting* a rule of law culture, *preventing* rule of law problems from emerging or

deepening, and providing an effective *response* when a significant problem has been identified.

- As regards promotion, the Commission clearly recognises the need to strengthen the rule of law culture among the general public. To do so, and to promote a better knowledge of the requirements of EU law and European standards relating to the rule of law, the Commission will develop a dedicated communication strategy on the matter. We will strengthen our cooperation with international organisations active in the field, such as the Council of Europe, the OSCE and the OECD. And we will reach out at civil society organisations, which have an essential role in this.
- The Commission has therefore committed to make full use of funding possibilities to empower stakeholders - including civil society- to promote the rule of law.
- As regards prevention, the Commission decided to deepen its monitoring of the situation in Member States, to be able to identify risks to the rule of law, develop possible solutions, and target support early on.
- For this reason, the Commission has announced what is arguably the most innovative element of the Communication, namely the establishment of an annual *Rule of Law Review Cycle*.
- The monitoring undertaken in the context of this Cycle will

cover all Member States, but will naturally be more intense in Member States where particular risks -notably a risk of regression- have been identified. This monitoring will also feed and complement the European Semester.

- To support this process, the Commission will prepare an annual Rule of Law Report and further develop its EU Justice Scoreboard. The annual report will provide a synthesis of significant developments -both positive and negative- in the Member States and at EU level, including the case law of the European Court of Justice, and other relevant information. It will be based on a variety of sources in order to correctly reflect the reality on the ground.
- As regards response, the Commission, as Guardian of the Treaties, will build on the evolving case law of the Court of Justice, and develop a strategic approach to infringement proceedings.

[Implementation of the Communication]

- So, what is next?
- We need to transform now all these initiatives into reality. And the Commission cannot, and should not, do this alone. The defence of the rule of law will only be successful if we all contribute within our respective responsibilities.
- The Commission will be looking forward in the coming months to what we hope will be a fruitful and constructive

dialogue with all parties involved on the development of this new and stronger framework.

- All actors, including Member States, EU institutions, Council of Europe, judicial and lawyers' networks and civil society, have a role to play in upholding the rule of law.

[The Council]

- The Council is invited to follow up on the annual Rule of Law Report prepared by the Commission, by using it as a basis in their own discussions and debates.
- The Commission is well aware of the current discussions among Member States about establishing a possible peer review mechanism and of the upcoming discussions on the Council's approach to the annual Rule of Law Dialogue, scheduled to take place under the Finnish Presidency in November.
- In that sense, I am convinced that the discussions in the Council which will take place every year following the publication of the Rule of Law Report will provide a perfect opportunity for a dialogue on Rule of Law matters and at the same time constitute in themselves a form of peer review.
- The key difference of the Rule of Law Review Cycle in comparison to other ideas is that the Review Cycle will take place fully within the EU institutional framework and

based on a report prepared by the Commission. This means predictability, clear rules and inclusiveness.

- The importance of embedding the Review Cycle within the EU institutional framework has also been confirmed by the ruling of the Court of Justice of 24 June 2019. This landmark ruling has made it unambiguously clear that although the organisation of justice in the Member States falls within their competence, Member States must nevertheless comply with EU law obligations when exercising that competence.
- It is the joint responsibility of the EU institutions to uphold the rule of law, and the Rule of Law Review Cycle will allow for such a joined exercise of this responsibility.
- In this context I would also like to welcome the recent adoption by the Council, at the initiative of the Finnish Presidency, of new procedural modalities in respect of Article 7 hearings, which is an important step in the direction of more efficient procedures.
- Finally, it would be important for the Council to rapidly advance in the negotiations on the Regulation on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States, which is a necessary tool to protect the EU budget when rule of law challenges arise.

[The European Parliament a.o.]

- The European Parliament has also an essential role to play in each of the three pillars of promotion, prevention and response.
- In particular, the Commission encourages the European Parliament and national parliaments to develop a specific inter-parliamentary cooperation on rule of law issues, to which the Commission would be ready to contribute.
- The Parliament is also invited, together with the Council, to integrate its actions in the Rule of Law Review Cycle by using the annual Rule of Law Report as basis for its discussions.
- As regards the Article 7 TEU procedure, the Communication underlines that, to ensure the institutional balance, the European Parliament should always be given the possibility to present its position in the Article 7 TEU procedures it has itself initiated.
- Other EU institutions and bodies, such as the Economic and Social Committee and the Committee of the Regions, can also contribute to promoting the rule of law and to feeding the Review Cycle with relevant information.
- Of course, the EU cannot ensure the respect of the rule of law without the active engagement of the Member States. This is why the Commission also calls upon Member States to promote the rule of law at national level and to engage together in a permanent dialogue and mutual

exchange of information in this respect.

[Other stakeholders]

- Bodies such as the Council of the Europe, judicial and lawyers' networks, academia and civil society organisations are also essential for the EU institutions to obtain a truthful picture of the situation on the ground. They can therefore feed the Cycle with relevant information.

[The Court of Justice]

- And finally, speaking about key actors to uphold the rule of law, we can never stress enough the ground-breaking role played by the Court of Justice. In the last two years, through a range of landmark rulings, the Court has reminded us of the importance of respecting the rule of law for the effective functioning of the EU. And I am sure that forthcoming rulings will continue to do so.

[Conclusions]

- Let me conclude by underlining that the future of the Union depends on its capacity to ensure the respect of the fundamental values on which it is founded.
- In line with the political guidelines of the President-elect, and under the direct guidance of Commissioner Reynders and the supervision of Vice-President Jourova, the Commission will continue its uncompromising approach when it comes to defending our common values, and the

counts on all other EU institutions, Member States and stakeholders to join its efforts.

- This is why I congratulate the Finnish Presidency for having chosen the rule of law as one of its priorities and for its determination to move things forward. We have already seen plenty of concrete action, including the organisation of this very timely conference.
- Finally, I think it is important to make this one point. It is essential that we discuss our instruments and procedures, and the way forward. But that discussion must never detract us from dealing with the direct challenges at hand, as soon as they arise and for as long as they remain on the table.
- I wish you a fruitful discussion.