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Foreword by Commissioner Reynders

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The work of legal practitioners is key for a well-functioning EU justice area. When it comes to ensuring access to quality justice and effective legal protection, legal practitioners make the EU law that guarantees these rights a reality for citizens and businesses alike. Legal journals like the *Revue de droit commercial belge* play an important role in this work. They allow for the diffusion of valuable ideas and arguments, which is instrumental in facilitating constructive exchanges on topical legal issues. Legal practitioners also play an important role when it comes to promoting and upholding the rule of law, which is one of the building blocks upon which the European Union is founded.

Respect for the rule of law is a necessity for protecting all other values. It is of crucial importance for mutual trust between Member States, including their judicial authorities, as the basis for judicial cooperation in civil and criminal matters, and for the effective application of EU law. It is also essential for the trust in public institutions, of citizens and businesses alike.

Recent decisions by the Court of Justice have further emphasised the crucial importance of the rule of law for the European Union. In fact, respect for the rule of law in Member States is a condition for the very functioning of the European Union. In recent years, however, we have witnessed concerns regarding respect for the rule of law emerging in some Member States. This shows us that the rule of law cannot be taken for granted.

In recent years, the Commission has deployed a number of instruments to protect the rule of law in the Union, including measures under the European Semester, the annual cycle for aligning economic and fiscal policies in the Union. In this context, the Commission has made several country-specific recommendations on justice reforms in Member States, which were subsequently adopted by the Council of the European Union.

This demonstrates the importance of the rule of law for a business and investment-friendly environment. Effective justice systems that uphold the rule of law have been identi-

fied as having a positive economic impact. Where judicial systems guarantee the enforcement of rights, creditors are more likely to lend, transaction costs are reduced, businesses are more likely to invest and are dissuaded from opportunistic behaviour.

In addition, on the basis of the Commission proposal of May 2018 for a Regulation on the protection of the Union budget in the event of shortcomings in the rule of law in the Member States, the co-legislators established a new mechanism to protect the Union's budget against breaches of the principles of the rule of law that affect or risk affecting its sound financial management or the protection of the financial interests of the Union. The Regulation applies as of 1 January 2021, and any breach that occurs from that day onwards is covered by the Regulation. The Commission will now proceed with adopting guidelines on the application of the Regulation.

Over the years, the European Commission has developed several instruments to help enforce the rule of law, which together make up a "rule of law toolbox". In recent years, the Commission has also considered how the toolbox should be further developed, leading to the establishment of a new European Rule of Law Mechanism. This Mechanism, with the Commission's Rule of Law Report at its centre, represents an innovative approach, aiming to protect the rule of law in a preventive manner as well as to promote it. The first annual Rule of Law Report was published by the Commission on 30 September 2020.

The Mechanism is a yearly process during which the Commission aims to prevent problems from emerging or deepening. It will create joint awareness of the rule of law situation across the EU and keep this topic on the political agenda. It will stimulate a permanent discussion on the rule of law, year after year. From now on, the Commission will issue a report on the rule of law situation in the Union every year – preparations for the second annual Rule of Law Report are already on-going. The Commission will provide its own qualitative assessment of general trends and the specific situation in all Member States, in the reports' 27 country chapters. This

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unique source of information will enable a better understanding of the rule of law situation in the entire EU.

The report describes recent developments, beginning this year with developments since the beginning of 2019. The report also reflects emergency measures adopted during the COVID-19-pandemic, where relevant. It contains the Commission's assessment of both positive and negative developments, drawing attention to emerging or deepening challenges, as well as highlighting good practices.

However, the report does not contain formal recommendations to Member States. It is rather an important source of information on significant developments related to the rule of law in the Member States, and provides clear messages on these topics.

Through the publication of the first annual Rule of Law Report, the Commission wants to achieve a deeper dialogue on the rule of law at the level of the EU and at national level, by having open debates and by exchanging best practice. The Commission wants to build a rule of law culture and make EU citizens better aware of what the rule of law actually means for them and how it shapes their lives.

If citizens or businesses have a problem that needs to be examined by a court, they have the right to be sure that they will have an independent judge in front of them. While the details of how national justice systems are organised can vary from one country to another, the principle of an independent judiciary, free from political interference, is vital throughout the entire EU, in all of its Member States.

To set up the European Rule of Law Mechanism, the Commission established a network of national rule of law contact points in all 27 Member States. This was a key aspect of the methodology of the Rule of Law Report. The network provided a constant channel of communication with Member States, and facilitated the discussions throughout the preparation of the first report. This ensured a harmonised approach and wide and regular consultation, which has informed the report. All 27 Member States participated fully in the process and provided written input.

The Commission also carried out a targeted stakeholder consultation, where over 200 stakeholders provided written input. This included EU agencies, national and European civil society organisations, and professional associations. Furthermore, over 300 visits were organised, which took place in a virtual manner due to the pandemic. During these visits, the Commission discussed rule of law developments with Member States' administrations, with judicial and independent authorities and with other relevant stakeholders.

It was of importance to the Commission to ensure the close involvement of all Member States on an equal footing. The same methodology was applied to all Country Chapters of the 2020 Report, and consistency was ensured. The process was robust, transparent and as inclusive as possible. The final Report represents the Commission's own assessment.

As to the contents of this first edition, the 2020 Rule of Law Report examines four key areas of the rule of law. It gives an overview of significant developments in all Member States since 2019, relating to their justice systems, their anti-corruption frameworks, their frameworks for media pluralism, as well as other institutional issues related to checks and balances.

As regards the national justice systems, the Report finds that in a number of Member States, efforts are underway to strengthen judicial independence and to reduce the influence of the executive and legislative powers over the judiciary. The setting up or strengthening of independent national councils for the judiciary is a good example of this, and is a noteworthy recent development in a number of Member States.

At the same time, judicial independence remains an issue of concern in certain Member States. These concerns relate, for example, to the ability of councils for the judiciary to exercise their functions. The report also finds more structural concerns regarding an increasing influence of the executive and legislative branches over the functioning of certain justice systems, including the functioning of Constitutional Courts and Supreme Courts.

As regards the quality of justice, the ongoing COVID-19-pandemic has highlighted the importance of accelerating the digitalisation of justice. Many initiatives are ongoing to deliver real improvements in this regard, and some national justice systems are already equipped with the technology to operate remotely. These are good practices to share, in order to learn from one another.

Several Member States have recently adopted comprehensive new anti-corruption strategies or revised existing ones. What will be key, however, is that these strategies are effectively implemented and monitored, to ensure that progress is made on the ground. In some Member States, measures have been introduced to strengthen the institutional capacity to fight corruption, and to reduce obstacles to effective prosecution. The Report highlights concerns in several Member States about the effectiveness of the investigation and prosecution of corruption cases. This includes concerns that high-level corruption cases are not systematically pursued.

As regards the framework for media pluralism and freedom, the Report finds that the independence of media authorities is enshrined in law in every Member State. However, worrying signs have been detected in some Member States, for example with regards to the political influence on the media, a lack of transparency when it comes to media ownership, or risks to journalists and other media actors.

Regarding institutional checks and balances, on the positive side, there is a healthy debate on strengthening legal and constitutional safeguards in a number of Member States. In some of them, reform processes are already underway.

As regards other relevant developments, the COVID-19-pandemic has proved a real test for the functioning of Member States' systems of checks and balances. The Report highlights a number of good examples, where independent authorities at the national level have proved to be an important counterbalance to executive power. Parliamentary scrutiny also helped to frame emergency responses, and measures taken were often reviewed by courts.

However, the Report also notes a number of concerns in relation to Member States' systems of checks and balances. In a few Member States, there is repeated recourse to expedited legislative procedures in Parliament or the issuing of emergency ordinances by the government. Moreover, in some Member States civil society faces a diminishing space to operate, smear campaigns or legislation that limits access to foreign funding, to name but a few examples.

As regards the Belgian context, the Country Chapter for Belgium of the 2020 Rule of Law Report notes that improving the digitalisation of justice remains an important point of attention. In particular, the availability of reliable and consistent data on the efficiency of justice needs further improvement.

At the same time, the Report notes a number of recent initiatives to foster the quality and independence of the Belgian justice system. For example, the integrity framework and appointment procedure for judges have been revised following certain concerns voiced by the Council of Europe's Group of States against Corruption (GRECO) relating to the integrity of the justice system. A reform of the complaint procedure regarding the functioning of justice, as well as an initiative to foster the use of clear language in judicial decisions, may further improve the quality of justice.

Furthermore, the Report notes that Belgium has the legislative and institutional anti-corruption framework in place. While the main institutions involved in the fight against corruption are in place, certain shortcomings are flagged in relation to the oversight of integrity measures for Members of Parliament and top executive functions.

As regards media pluralism, the Report notes that the transparency of media ownership is ensured by the audiovisual media regulators, and cases of threats or attacks against journalists are relatively few. Additionally, in relation to checks and balances, the establishment of a new Federal Human Rights Institution is expected to further enhance fundamental rights protection.

Taking the findings of the 2020 Rule of Law Report as a basis, it is important to recall that the European Rule of Law Mechanism is more than the Report itself. What the Commission wants to achieve through this report, is to foster a deeper dialogue that will contribute to creating a rule of law culture throughout the European Union, to allow Member States to learn from each other and to address challenges before they are emerging or deepening.

Such a dialogue is needed at both the EU and at the national level: with the European Parliament, the Council and national parliaments, national stakeholders, such as academia and universities. Other examples are judges' and journalists' associations, as well as civil society organisations. The legal community in particular plays a central role in that respect.

There is a political determination to promote a rule of law culture across the European Union. The rule of law dialogue in the Council based on the Report has already started, with country-specific discussions addressing key developments in Belgium, Czechia, Denmark, Estonia and Bulgaria in November 2020. A second round of country-specific discussions took place in April 2021, covering Germany, Ireland, Greece, Spain and France. Future presidencies will continue the work, so that over time the situation in all Member States will be discussed.

The Commission is currently in the process of preparing the second Rule of Law Report, which is set to be published in July 2021, following the same methodology established for the first annual Report. All Member States have submitted their written input and a stakeholder consultation has been carried out. Between March and May 2021, the Commission is conducting virtual country visits in all Member States. The 2021 Report will monitor progress made and developments with regard to the points raised in the country chapters of the first Rule of Law Report and any other significant developments.

It is important to discuss the findings of the Rule of Law Report for all 27 Member States. The Commission's goal is to allow Member States to learn from each other and to give every Member State the opportunity to improve further. The Union is built on diversity and inclusiveness. We now have the information on the table to bring the discussion to a new stage. The Rule of Law Report marks a turning point in the European Union, and the Union will grow from this approach.