

DÁIL ÉIREANN

AN COMHCHOISTE UM GHNÓTHAÍ AN AONTAIS EORPAIGH

JOINT COMMITTEE ON EUROPEAN UNION AFFAIRS

Dé Máirt, 9 Márta 2021

Tuesday, 9 March 2021

Tháinig an Comhchoiste le chéile ag 3.30 p.m.

The Joint Committee met at 3.30 p.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
John Brady,	Regina Doherty,
Dara Calleary,	Sharon Keogan,
Francis Noel Duffy,	Vincent P. Martin,
Seán Haughey,	Michael McDowell.
Ruairí Ó Murchú,	
Neale Richmond.	

Teachta / Deputy Brendan Howlin sa Chathaoir / in the Chair.

EU Commission Rule of Law Report: Discussion

Vice Chairman: I welcome Mr. Didier Reynders, European Commissioner for Justice, to our meeting. I look forward to our engagement on the topic of the rule of law. In advance of the meeting, the committee engaged with stakeholders on the topic and sought written submissions on the issue. I thank all the stakeholders who took the time to respond to that request. We found all the submissions very helpful.

Before we begin, all witnesses are reminded of the parliamentary practice that we should not criticise or make charges against any person or entity by name or in such a way as to make him or her identifiable or otherwise engage in speech that might be regarded as damaging to the good name of any person or entity. Therefore, if their statements are potentially defamatory with regard to an identifiable person or entity, they will be directed to discontinue their remarks. It is imperative that they comply with that direction.

For witnesses attending remotely, that is, outside the precincts of Leinster House, there are some limitations to parliamentary privilege, and as such they may not benefit from the same level of legal immunity as witnesses who are physically present in the building. Witnesses participating in this committee session from a jurisdiction outside the State are advised to be mindful of their domestic law.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person identifiable outside the Houses or an official either by name or in such a way as to make them identifiable. I remind members that they are only allowed to participate in the meeting if they are physically located in this complex. In this regard, I ask members partaking via Microsoft Teams, prior to making their contribution or asking a question, to confirm they are on the grounds of the Leinster House campus.

For anybody watching the meeting online, Oireachtas Members and witnesses are accessing this meeting remotely. Only I, as Chair, and staff essential to the running of the meeting are physically present in the committee room. Due to these unprecedented circumstances and the large number of people attending the meeting, I ask everyone to bear with us if technical issues arise.

After all of those technicalities, I invite Commissioner Reynders to make his opening statement.

Mr. Didier Reynders: I thank the Chairman. I thank him for the recall of all the technicalities. It is interesting for me to listen to the rule of law in a Parliament with such a set of rules. First, I thank the members for their invitation to present today the Commission's first annual Rule of Law Report, which was published on 30 September last year.

Let me first express my gratitude to the committee and the Irish authorities for their strong commitment to upholding the rule of law and supporting the Commission in this field. It is important. Respect for the rule of law is key in the Union, yet we have seen in recent years that it cannot always be taken for granted. I thank the committee, therefore, for its support.

It is with this concern in mind that the Commission published its first annual Rule of Law Report in September last year. This report provides a synthesis of significant rule of law developments, both positive and negative, in the EU since the beginning of 2019, as well as country-

specific assessments for all 27 member states, including, of course, Ireland. We are working on the second edition of the report, which we will adopt in July this year. It has come to be a cycle. Year after year, we will go further with a new report to try to see what possible improvements can be to the rule of law if that is the reality in the Union. I hope to be back in Dublin soon, perhaps in person, to present this second report to the Parliament. When we come out of the pandemic, it will be a pleasure to come back to Dublin in my capacity as Commissioner for Justice and discuss this physically in the Parliament, not only with the Chairman but perhaps with all the members.

For Ireland, like for all the 27 member states, the Commission examined four areas, which are key for the rule of law: the independence, quality and efficiency of the justice systems; the anti-corruption framework; media pluralism and media freedom; and other institutional checks and balances.

As regards the first pillar of the report relating to the justice system, let me start by welcoming the establishment of an independent judicial council at the end of 2019. On a general note, the perceived independence of courts and judges has been consistently high over the past number of years in Ireland. The report has also noted the ongoing discussions as regards the reform of the judicial appointment system. A decrease in the number of candidates to be submitted to the Government for consideration, as well as the application of the procedure to all judicial appointments, could limit political discretion.

Concerns had been raised as regards the previous Bill relating to the composition of the Judicial Appointments Commission. The report underlined the importance for this reform to take into account the Council of Europe recommendations about, certainly, the composition of the commission. Again, however, the evolution is in a good way if there is a restriction to the number of candidates submitted to the Government for consideration.

We are aware that the new Government is working on a new Bill and we are following this closely. On 23 February, the Commission's services discussed this issue with the Irish authorities. We will, perhaps, say more about the reforms in the second edition of our report and we will continue to see if it is possible to have a correct implementation of the enormous reform by the Government

A new body in charge of disciplinary proceedings against judges has also been established, that is, the judicial conduct committee. This could improve the accountability of judges. Parliament remains in charge of deciding the removal of judges from office, which could, however, raise concerns about the politicisation of the process. We want to see a decline in the politicisation of the process.

As regards the work on the personal injuries guidelines, the report notes that in the implementation of such guidelines, due regard should be given to the respect of, again, judicial independence, not only from undue influences outside the Judiciary, but also from within.

A review group on civil justice has also looked at access to justice and the cost of litigation. This could be useful to address the concerns raised as regards the civil legal aid system. Continuing the work to tackle remaining barriers to enter the legal services market is also important.

We also note that work is still ongoing on establishing a compensation scheme to award damages in the event of protracted court proceedings, as required by a European Court of Human Rights, ECHR, judgment. The committee will be aware that we take into account stan-

dards for our report, not only the treaties and case law from the European Court of Justice, ECJ, in Luxembourg, but also the case law coming from the ECHR in Strasbourg. Of course, we also try to take into account some decisions from the Committee of Ministers of the Council of Europe.

On the second pillar of the report, the anti-corruption framework, we note that Ireland has carried out several reforms aimed at strengthening the fight against corruption, in particular through the Criminal Justice (Corruption Offences) Act 2018. This Act included several offences relating to corruption, which is a positive development. However, it also contains a dual criminality provision, which may limit the scope for prosecuting foreign bribery. There is a legal and institutional framework in place on asset declarations and interests, as well as codes of conduct and tax clearance obligations, which is under review. The report noted that the Government committed to reform and consolidate the ethics in public office legislation. We also underlined that Ireland's defamation laws raise concerns regarding the ability of the press to expose corruption. We have received some remarks from the press in Ireland about such a situation. Finally, we noted that a comprehensive review of Ireland's anti-corruption framework is being carried out and that a review of defamation legislation is ongoing. It will be an important task for the Parliament to see how to have an evolution about that, regarding the criticism coming from some members of the press about its ability to expose corruption in full compliance with Ireland's defamation laws.

Turning to our third pillar, media pluralism, there are constitutional guarantees and solid regulatory structures in Ireland in this regard. These operate within a political culture that avoids intervention in editorial content of media outlets and prevents conflicts of interests in media ownership. The media regulator took steps to update and publish information on media ownership on an annual basis, which is to be welcomed because transparency about media ownership is an important element in all member states. We need a real vision of media ownership and it is important to have such a publication year after year from the media regulator. Freedom of expression and the right to access official information are well established principles. However, the frequent use and high costs of defamation cases raise concerns.

Concerning institutional checks and balances, which is the last pillar of the report, Ireland has an established practice of consultation on draft legislation by the Government and Parliament, as well as impact assessments. The scrutiny over Private Members' Bills that pass a certain stage of the legislative process is similarly developed. The independent Irish Human Rights and Equality Commission is well equipped to carry out its functions. We do not have any remarks on the providing of resources to such a commission.

The space for civil society organisations is generally considered open. Yet, concerns have been raised by some of them as regards constraints on civil society actions in relation to the current interpretation of the Electoral Act, which imposes restrictions on funding possibilities for civil society organisations.

As the committee may know, the General Affairs Council held very constructive political debates on the rule of law report on two occasions last year under the German Presidency, including the first country-specific discussion on five member states, following the alphabetical protocol order. These discussions will continue in the General Affairs Council in April, where the situation in Ireland will be discussed, together with France, Germany, Greece and Spain. We will continue in the second part of the year with the Slovenian Presidency and again, we will have a general debate on the second rule of law report, which we will publish in July, and on five other member states. We will continue semester after semester with a discussion not

only in general but country by country. I have already presented the report before the European Parliament. It was discussed in the plenary session and in the LIBE committee and I am now bringing the debate before national parliaments. The Irish Parliament is the 16th I am visiting to exchange on the report. This month, I will continue with visits planned to Malta, Luxembourg and Lithuania. Of course, most of those discussions are by video conference but I will try to go physically to Luxembourg if possible because it is not so far. I will be very pleased to come back to Ireland for the presentation of the second report, maybe with a physical presence in Dublin.

Before concluding, I will say a few words about the directive on the protection of the EU financial interest, or PIF directive, and the European Public Prosecutor's Office, EPPO. I understand that the legislative procedure for the transposition of the PIF directive is progressing well and should be finalised very soon. Members might have more information about the process of this transposition. I kindly encourage the Government to complete this procedure as soon as possible. The deadline for transposition was July 2019 and all the other member states have now transposed this directive. As the committee knows, the PIF directive defines the crimes affecting the Union budget, for which the EPPO is competent. I know that Ireland does not participate in the EPPO. However, all member states have an obligation to effectively protect the Union budget and the PIF directive plays a key role in this regard. In addition, I invite Ireland to smoothly co-operate with the EPPO, in line with the principle of sincere co-operation. Member states participating in the EPPO will soon notify it as a competent authority for the purpose of judicial co-operation within the EU. This will open the way for the EPPO to issue decisions based on the principle of mutual recognition, which will also apply also *vis-à-vis* Ireland. I count on the Irish authorities to conclude a working arrangement with the EPPO soon. It will be very important to have good participation of all participating member states, but the non-participating member states that are not in the EPPO also have to play an important role with such a working arrangement. In the future, it may be Ireland's choice to join the EPPO. That is already the case for some common law member states, such as Malta or Cyprus, and we may have an evolution next year with the draft Bill presented to the Swedish Parliament. I do not know but for the moment the most important element is the working arrangement.

It is now important to bring forward the reform impetus and further improve respect for the rule of law in Ireland, like everywhere in the Union. What we want to promote is a stronger European rule of law culture. This is why a debate like the one we are having today is so important. Such debates are key steps towards the creation of a new rule of law culture, where national parliaments play an important role. I therefore hope that the debate will also continue at regional or local level, including within civil society. On its side, the Commission will continue to play its role as guardian of the treaties, and will use all the tools at its disposal to react to threats to the rule of law, whenever necessary. The rule of law report is not the only one tool we have at our disposal. It is also possible to work under the Article 7 procedure or to go to the Court of Justice with infringement proceedings. From the beginning of this year it may be possible to have a real link between the funding of some policies and the rule of law with a conditionality mechanism. I thank the committee again for its invitation and its attention. I am looking forward to hearing members' remarks and questions. I have tried not to mention any individual in order to be in full compliance with the technicalities mentioned at the beginning of the meeting.

Vice Chairman: I thank the Commissioner. I will now open the discussion to members to put their questions in the order they have indicated. I propose to take questions from each member individually, allowing the Commissioner to respond. Senator McDowell is first.

Senator Michael McDowell: I welcome Commissioner Reynders and thank him for his very thoughtful contributions to the discussion this afternoon. I look forward to seeing him in person in the Irish Parliament as soon as circumstances permit. I pay tribute to him for the care with which he is carrying out his duties in ensuring that the rule of law is kept up to an adequate standard across the EU.

I want to mention one or two things which may be of interest to the Commissioner. As a former Minister for Justice, I started the reform of our defamation law back in the early 2000s. I agree with the Commissioner that Irish defamation law is a little bit suffocating of investigative journalism. There is scope for further reform. I had proposed, for instance, that the presumption that charges against an individual are false should be reversed and that people who want to sue in our courts should undertake the onus of proving that what was said about them is actually false. However, there was push back from my then partners in government on that issue. That could be changed. It is important that the law should permit the media reasonable and fair commentary on matters of public interest, in particular in relation to the discharge of governmental functions by important people within the community without the threat of very expensive litigation. There is room for improvement there and I thank the Commissioner for his remarks.

The second issue relates to the question of the upholding of the rule of law across the EU. I would ask the Commissioner to remember that our system of justice is not the same as many other continental systems. We do not have a professional Judiciary and, therefore, the question as to who becomes a member of the Judiciary is not simply a matter of allowing the Judiciary to supervise that function by themselves. Our Constitution requires that our elected Government has the ultimate say in this matter and we are in a hybrid position now between the United States system, which is very politicised, as we saw with the former President, and the other common law countries which provide for a system of vetting, by an independent body, of candidates for the Judiciary. It is a delicate issue and I would ask the Commissioner to bear that in mind. We have a system whereby we choose people from the legal professions in their 50s or 60s to become judges for the first time because of their experience, status, learning and knowledge of the law and the European models may not always suit us.

The third issue I wish to raise is one that many in this Parliament have been asking about. On money laundering, we find that the enhanced scrutiny of politicians and people deemed to be in politics and their relatives, including people who have very minimal connection with the political process, such as the parent of a person on the administrative body of a political party, is overly complicated. We would ask that in the context of measures to address corruption, it should not be the case that my son or parent, for example, is subjected to enhanced scrutiny against the possibility that I, somehow, am being corrupt.

Finally, I have practised before the Court of Justice of the EU on a couple of occasions and believe it could be improved in two respects and will put them to the Commissioner for his consideration. One is that the single judgment rule, which does not apply in the Strasbourg court where there can be minority and dissenting judgments, should be introduced in the Court of Justice of the EU. It is unsatisfactory that a collegiate court would just issue one judgment and that a minority view or jurisprudence is never seen and is kept secret. The second issue I would ask the Commissioner to look at *vis-à-vis* the European institutions, is that the Lisbon treaty made provision for the EU to adhere to the European Convention on Human Rights in Strasbourg itself and while I do not want to be unfair in my criticisms of the Court of Justice, it certainly has thrown many trees across the railway line in the context of achieving that goal. I would like the European Commission to be more proactive in ensuring that the EU as a body adheres

to the European Convention on Human Rights in the manner provided for in the Lisbon treaty.

I reiterate my thanks to the Commissioner for his contribution. I agree very strongly with some of the points he has made and welcome his independent and objective assessment of Ireland.

Mr. Didier Reynders: I thank Senator McDowell for starting a dialogue on the realities in the different member states. It is also good to hear proposals coming from the member states and not only from the Commission. On the issue of defamation law, I thank the Senator for his explanation of the reforms of the past and welcome the opportunity to have a discussion about it. To be very concrete, the report indicates that frequent defamation legal cases, the high cost of defence and the high damages awarded by the Irish courts are seen as an inducement to self-censorship and a constraint on media freedom. This works to the detriment of the fight against corruption. As I said earlier, I have taken note of the fact that the Government has pledged to reform the defamation laws in order to ensure a balance between freedom of expression, the right to the protection of reputation, which is so very important, and the right of access to justice. In our report, we point out that we have seen many attacks against journalists in many member states but it is important to point out that in some member states, we have seen murders of journalists. Of course, in all member states there is violence against journalists but sometimes they are attacked or harassed through social media. I thank the Senator for providing the opportunity to discuss the possibility of further reform of the defamation laws. We have received correspondence from journalist associations and individual journalists on the current situation.

In terms of upholding the rule of law in the entire EU, we must take due account of the different legal traditions of member states. I mentioned the European Public Prosecutor's Office, EPPO, and I know that there are different approaches but we have some common law countries on board and others may follow. We know that this is a delicate issue and it is important to ensure a sufficient degree of independence in the Judiciary. If one looks to the appointment of judges, the most important element is to try to be in line with the different proposals of the Council of Europe. Certainly, there have been many recommendations from the Venice commission on this in terms of how it is possible to organise the Commission's involvement in the process of presenting candidates to the authorities. That is really the most important element. As I said on the reforms, we have seen good progress in limiting the number of candidates so we do not have such large discretion for the authorities. I fully understand the difficulties with organising the process. We want to be sure it is possible to take into account the recommendations coming from the Council of Europe. I note there are some discussions on the revised judicial appointments Bill. Let me stress it is important that the reform takes into account the Council of Europe recommendations. It is always possible to contact the Commission on this. Within the Council of Europe various countries have various systems and legal cultures.

With regard to money laundering, of course it is a reality that we need to be very active on having controls for civil servants at a certain level and politicians. We have tried to develop this in the European Parliament. It has become a tradition to have real scrutiny of the Commissioners. I know what the Senator is speaking about. Of course, it is very important that we reflect on the scrutiny of family members. It is true that the entire family do not become politicians or senior civil servants but it is very important to have some scrutiny of the assets and situation of a person appointed to a specific function. I have taken note of the Senator's remarks.

We try to make progress on various elements and I know this is a fact in Ireland. Through legislation on lobbyists, it is possible to have real verification on contacts between lobbyists and politicians or civil servants. With regard to how it is possible to verify the declaration of

assets, again I take into account the Senator's remarks about the possibility of elements of such verification being too intrusive if we go too far. I must say we have had the same discussions on stabilising the process in the European institutions as perhaps there are at national level. We will continue to exchange views on this.

There are two elements with regard to the European Court of Justice. The first is reform to have the same kind of approach as there is in Strasbourg. Perhaps changing some rules will be part of the conference on the future of Europe. It is also possible simply to discuss it with the members of the Court of Justice and certainly to have a discussion or exchange with the President. If we need to change some rules of course it will be part of the discussion on the future of the institution.

With regard to the accession to the European Convention on Human Rights, we have started negotiations on this. It is very important. It is a commitment in the Lisbon treaty, as the Senator has said. It is also a commitment of the Commission. The President of the Commission, Ursula von der Leyen, has said that we want to organise the accession. Of course, it is very important to organise a smooth process between the two courts. Committee members know the previous discussions were on some requirements put in place by the European Court of Justice in Luxembourg. In recent years, in other roles, I have had contact with the presidents of the two courts. I confirm to the committee that we want to make progress on this. We are seeing whether it is possible to give concrete answers on the various elements put forward by the European Court of Justice in Luxembourg.

We will continue to discuss this because it is important that the European Union takes part in the Council of Europe as a real member. Committee members know we work a lot with the Council of Europe. I have said that in the preparation of our report we worked with the Venice Commission, GRECO and the entire Council of Europe. We want to take part in the process. Perhaps if we are members of the Council of Europe and have accession to the European Convention on Human Rights it will be easier to apply the same rules in the two courts in Luxembourg and Strasbourg. Again, if it would require modifying the treaties it will be a task for the conference on the future of Europe. I thank Senator McDowell for the exchange.

Deputy Seán Haughey: I thank the Commissioner for taking the time to address us this afternoon. We listened to the report with regard to Ireland and have taken note of what the Commissioner has had to say. There is no room for complacency and we appreciate what the Commissioner has to say with regard to this country.

On reform of the judicial appointments system, it would be fair to say that the system has served us very well since the foundation of the State. There have never been major issues about our judges, the separation of powers and judicial appointments. However, there is no room for complacency. We also note what the Commissioner has to say regarding the PIF directive. As parliamentarians we will act on this.

As the Chair has said, we have received many submissions on the rule of law as part of our investigation of this issue. I note the Commissioner mentioned four pillars, namely, the independence, quality and efficiency of the judicial system, an anti-corruption framework, media pluralism and media freedom, and other institutional checks and balances. Is the Commissioner satisfied that the four pillars cover all of the rule of law issues? In one of our submissions, or perhaps in a few of them, reference was made to the Venice Commission's 2016 checklist. I want to know that the rule of law report encompasses all the various issues that need to be investigated as far as we are concerned, for example, data collection and monitoring. This is one

example from the Venice Commission's checklist.

Much of our deliberation so far has not been in respect of Ireland but in respect of other EU member states. In particular, I mention Hungary, Poland, Romania and Bulgaria. Is the Commissioner satisfied that the tools for monitoring and sanctioning non-compliance are adequate? In his contribution, the Commissioner listed the various tools at the disposal of the Commission, including Article 7. Certainly some of the MEPs told us they are not satisfied that the tools at the Commission's disposal are satisfactory. I am thinking in particular about meetings of the European Council and the issue of qualified majority voting where unanimity is needed. It has been suggested that there has been backsliding by some EU member states in enforcing the rule of law. I am interested to know the Commissioner's views on this, if he feels he can comment on it. I hope he can. Perhaps this is something that could be looked at in the context of the conference on the future of Europe, with regard to whether qualified majority voting needs to be looked at in the context of this issue, whereby the member states at which the finger is pointed refuse to go along with whatever sanctions are proposed.

With regard to the EU recovery fund being linked to the rule of law, where stands this now? I know there was a compromise to get it over the line and get the EU recovery fund in place. Is the drawdown of these funds still a mechanism that can be used in this regard?

I want to mention the question of LGBTI+ free zones in Poland. This is an issue that is debated regularly in our Parliament and it is something we abhor. I hope the European Commission is acting on it to do something about it.

My next question is on the future of Europe and the whole question of a multispeed Europe. The EU is an economic union but it is also a union based on common values. If some member states do not adhere to those common values, is there scope for having a multi-speed Europe or for some states breaking away to advance the rule of law situation? I am interested to know about that because we have a problem with some member states. Undoubtedly, the Commissioner will be diplomatic in his response, but there is a problem and I wonder if the concept of a multi-speed Europe comes into play if the problem is not resolved.

Mr. Didier Reynders: First, I do not want to repeat what I have said about the judicial appointments. I know there are different cultures in the different member states, but we must be in full compliance with the standards on which we have agreed, not only in the EU but in the Council of Europe. There are many difficult discussions about the way forward for the judicial appointments. A consultation of the Venice Commission is always very interesting. We took note of some improvement. Now we are sure that there are some discussions about the composition of the Commission able to propose some candidates.

About the EU financial interest, I am thankful for the intention to go forward with the approval of the transposition of the PIF directive because that is the goal.

I will respond to the Deputy's different questions. First, of course I will say that I am quite satisfied about the four pillars due to the fact that we have received a very positive reaction in all the member states. The Deputy mentioned four member states, but I want to insist that in all the member states we have had very good co-operation in the preparation of the report to the end, in the last check of the facts in the final document that we provided to member states. Of course, the report is the assessment of the Commission. It is not a joint assessment between the governments and the Commission. We are working on a very solid methodology. That is very clear. We have discussed the methodology with the contact person of the 27 member states and

we want to continue to work on the same methodology, on the same four pillars.

However, I wish to add three elements with regard to what the Deputy said. First, there are other instruments. This year we will have a report on the Charter of Fundamental Rights of the European Union. If we discuss minority rights or different other fundamental rights issues, it will be possible to assess that in the report on the charter for fundamental rights. It is a separate issue with regard to the rule of law report. We will have more discussions about the European democracy action plan and about democracy. It is also a specific process. At the end, we have a discussion on all the elements of Article 2 of the treaty - the rule of law, democracy and the fundamental rights. However, in the rule of law report, to be honest, the first proposal in my mind, not that of the entire college, was to discuss the justice system first. If there is a rule of law system, the most important element is to be able to go to an independent, qualified and efficient judge to seek a correct application of the law. If one is organised by the law, that is the most important element. We have added the corruption framework, the anti-corruption framework, the media freedom and the checks and balances. Again, it is possible to discuss other issues. We have received a positive reaction from all the member states, with some action plans and some reforms to try to improve the situation. I will go back to that. We have had, as well, some usual suspects with more hesitation to having a positive reaction on what we brought.

As to the non-compliance, it is not by coincidence that we have two Article 7 procedures at present, regarding Poland on the request of the Commission and Hungary on the request of the European Parliament. Again, we will try to use all the tools at our disposal to have full compliance in all member states with the rule of law. The report is a dialogue, and it is a well-performing instrument with many member states. In the second report, we will explain the response from the member states and what is possible to see as an improvement due to the real dialogue that we have with the member states.

Of course, we are going further and forward with the infringement proceedings under Article 7. As the Deputy said, Article 7 is a difficult mechanism due to the majority rules, qualified majority or unanimity at the end to take a decision. It is true that we need to improve the situation. It is the reason we now have the conditionality. There is not only the work of referral, it is a conditionality with the MFF and the next generation EU, so the entire budget from the beginning of this year. The new regulation is in force since 1 January, so we will check the situation in all the member states from 1 January. We have said that we will provide some guidelines about the way to organise the process. Certainly, it is an important part of the guidelines to protect the final beneficiaries. If we want to suspend or to stop the funding of some policies, it is not to organise stopping the financing of, for example, all the farmers in the agricultural policy or the NGOs involved in the protection of the rule of law. It is nonsense to do that. We need to see how it is possible to protect the final beneficiaries - not all if there are problems, but the majority of the final beneficiaries.

However, the Deputy is right. It is possible to think about another kind of majority. The majority rules are an important element. We are coming from unanimity to qualified majority in many policies. Also, on the conditionality now, it will be possible for the Council or on the proposal of the Commission to decide on qualified majority. In the first proposal of the Commission in 2018, we tried to work with the reverse qualified majority, like in the macroeconomic surveillance. Perhaps, as the Deputy said, in the conference on the future of Europe it will be possible to discuss again what kind of majority rules in some fields, not only qualified majority but maybe reverse qualified majority, simple majority or absolute majority if it is possible in some fields. However, it is a very sensitive issue in all member states. In the minds of many

people it is a transfer of sovereignty to the European Union when one changes the majority rules. It is true that we need to be more efficient about the verification of the rule of law.

I want to insist on the conditionalities of the new instrument. We will have, perhaps, a decision of the Court of Justice about that on the request of Poland or Hungary in the near future, but it is already possible to stop some funding of different policies. The Deputy mentioned LG-BTI+ free zones in Poland. It was decided by a European agency to stop the funding of some twinnings between those municipalities and other European municipalities due to the decision to have such a free zone. It is nonsense to have that. It is real discrimination. On the basis of the charter for fundamental rights, we already have the possibility of suspending funding in a specific case. The town twinning last year was a real issue when those municipalities in Poland decided to organise free zones.

The Deputy referred to multi-speed or different formats at European level. This is not new. The Deputy knows that some member states take part in Schengen and some non-member states are members of Schengen, but not all the member states are in Schengen. It is the same for the eurozone. Of course, there is an evolution to have more members of the eurozone, but there is also some possible opting out. There are some member states out of the eurozone. It is the same, as I said, with regard to the EPPO. We have 22 participating member states. However, I am not sure it is a good idea to work with multi-speed. It may be possible to take some member states together in some policies, not in all if it is not the real intention for all the member states. At the end, the goal must be to have real integration.

Again, in the discussions on the future of Europe, to conclude on the Deputy's remarks, it will be important to think, and it is a personal idea, about how it will be possible to take new members on board the European Union. The Deputy knows that we have some discussions with candidates, such as in the Western Balkans. Is it possible to do that for some policies, not maybe a majority for all? Again, it is not new. We already have that for Schengen, the eurozone and for some instruments such as the EPPO. I know that when we are discussing freedom and security it is about opting out for some member states. The Deputy knows that better than me. Again, it is a possibility to discuss. I thank for the Deputy for his remarks. Part of those remarks were dedicated to the future of the institutions and the organisation of the EU. The Irish Parliament can take part in the Conference on the Future of Europe.

Deputy Ruairí Ó Murchú: Following up on Deputy Haughey's comments and the rule of law issues concerning Hungary, Bulgaria, Romania and Poland, the Commissioner referred to the issue of LGBTI free zones. The European Union and the Commission are looking at every facility to ensuring maintenance of the rule of law. I welcome the fact Mr. Reynders spoke about how twinning funding has been removed. From 1 January with the multi-annual budgeting and all major funding, conditionality will be built in. How exactly will this process go for a member state which is involved in a major breach of these rule of law issues?

When we had a number of engagements with MEPs, some of them said they welcomed the fact that there were rule of law actions taken against some of these countries involved in brutal breaches of EU law and decency. They also spoke about some other issues, such as in Spain where Catalonian politicians have been detrimentally impacted in what is seen by many as anti-democratic action. While I understand the Commissioner might not be able to give the complete answer I am looking for on that, some MEPs have pointed out the law will apply to certain member states which breach rules but not to all. That is unacceptable if we are talking about a rule of law ethos.

How does one deal with breaches of rule of law by former member states? Will Mr. Reyn-
ders give an update on the infringement proceedings regarding the British Government's uni-
lateral action in the past week?

Mr. Didier Reynders: Deputy Ó Murchú described different kind of situations concerning
rule of law. Concerning the measures we will take, we will organise the process with the use
of all the tools at our disposal. These are in the treaties. Article 7 concerning infringement
proceedings and the report of conditionality are more tools. We have had conditionality since
1 January. There were many concerns that it was not evident we had efficient tools in the case
of, as the Deputy said, brutal and severe breaches to the rule of law.

We need to continue to improve our instruments and have better possibilities to act. We
have had success with some infringement proceedings. We have received positive answers
from the European Court of Justice. For example, we continue to go to the court about the in-
dependence of the Polish Judiciary. We will continue to do that when necessary. We have asked
for interim measures about the disciplinary proceedings against judges in Poland. We continue
to organise such a process.

However, it is true that it is very possible for more efficient tools in the future with other
kinds of majority rules when we need to decide about Article 7 or conditionality. It is a fresh
new instrument and we will analyse the situation in other member states.

The Deputy compared the situation in other member states and Spain. It is an internal
constitutional issue with Spain and a discussion between the provinces and the national author-
ity. If I may make a comparison, we did not see any problem in the UK when it was possible
between Scotland and London to agree on a consultation with the population. It was organised
and then we saw the result which was possible to take into account. One needs to organise that
in full compliance with the constitutional rules in the country in question.

Again, in Spain, we have said all the time that it is firstly a constitutional issue. About
sanctions against Spain because of some breaches to the different rules, the Deputy is speak-
ing about Spain and criminal legislation. I do not have to insist on the fact that it is a very
sensitive national issue. The Deputy knows that because it is one of the reasons there is some
opting out in some member states when we discuss criminal issues and when we put into place
an institution like the European Public Prosecutor's Office. I know there are differences. We
try in different ways to harmonise the situation and to put together some elements of criminal
law. For example, we have a list of Euro crimes in which we have proposed to extend the list
to hate speech and hate crime. If one does that, then it is possible to harmonise the situation. It
is a very sensitive situation in many member states. We need to take into account the situation
there.

On the UK and the possible infringement proceedings, we ask the UK to respect all the
commitments taken with the European Union in the past several months. I am thinking first
about the respect for the withdrawal agreement. It is key of course. We do not want to have
any hesitation if it needs to go to action with relations with the UK. It could be infringement
proceedings or the possibility to go to an arbitrator. It is important to continue to insist on the
fact that we ask a very clear and correct application of all the agreements between the European
Union and the UK.

We have seen in recent days again some discussion about the extension of the grace on food products decided by the UK. Again, we have had a reaction and we are very open to taking action when it is needed. It is important to us to be able to act in the withdrawal agreement, in the trade agreement or maybe tomorrow another kind of agreement. We ask for full respect for what it is signed by the two parties. If we are concerned about that, we will take action.

Deputy Ruairí Ó Murchú: The Commissioner spoke about media freedom and hate speech. On the European Commission and European Union level, they are dealing with the tech firms, such as Facebook and Twitter. At this time, we are dealing with a huge amount of unchecked conspiracy theories and other such pieces of information that are thrown up without any particular checking. We are talking about people who are vilely attacked online. There are people who end up down a rabbit hole because, if they keep liking certain materials on a social platform, they keep getting fed it. This leads to some of the situations we have here. What initiatives does the European Commission want to use to deal with this issue? Online publication is absolutely uncontrolled at this time. Obviously, there is a responsibility on tech firms to do something about this.

Mr. Didier Reynders: We are working on different ways to organise a process to deal with hate speech or disinformation on new media and social media. We have a code of conduct with the major platforms to try to remove hate speech from them. It started with terrorist content. That was the most important issue at the beginning but we have tried to develop that in a code of conduct. Now we have adopted at Commission level the Digital Services Act, DSA, to go further with obligations to the platforms. There are discussions between the co-legislators to put the DSA in place. It is not just about hate speech. We will try to go further with an extension of the Eurocrime list. That has unanimity at Council level and I am sure we will have the support of Ireland on the extension of the list. Then we need to discuss what sort of reaction is needed against disinformation. It is different when speaking about illegal content like hate speech as opposed to legal content such as false information going to the public. We are working in DSA on this and will continue to see how it is possible to take new initiatives on this. We have seen in Europe and other parts of the world the problems we have. We want to have rules on this. We do not want to leave it in the hands of private companies organising their business on social media. We want rules and the first goal of the Digital Services Act is to organise that.

Vice Chairman: I thank the Commissioner. I will ask a couple of questions as I do not see any other member indicating. First, I will make a point to the Commissioner. In our overview of the law in the European Union, an enormous focus of the submissions we have received has been in relation to the perceived impunity of some countries in taking legal actions against their citizens in a way that to us violates the norms and values of the European Union. I welcome the Commissioner's explanation of how these things will be tackled but I think we need to ensure our own citizenry understands those values will be defended robustly.

On the media platforms, I have a related but different question from Deputy Ó Murchú. We have enacted in Ireland in the last number of months anti-harassment and online bullying legislation. The debate has focused on the notion that there must be a responsibility on providers of the platforms for such damaging actions. Maybe that is encompassed in the proposals the Commissioner has spoken about but I would be interested in hearing that the media platforms, similar to any publisher, would be responsible for bullying, harassing or damaging commentary about any individual. Will there be scope to take action against them?

On the Commissioner's report on our domestic situation, I as Minister introduced the Regulation of Lobbying Act and it is a robust piece of legislation. The final piece of legislation I

introduced in that sphere in 2016 was the ethics in public offices Bill. It was an amendment Bill which was passed at Second Stage but has never been reintroduced. The Commission might have a look at raising that with the Irish authorities. It is an important final stage, learning from everything we can learn from, including commissions of inquiry and so on.

On the European Public Prosecutor's Office, I am interested to hear where that is. It was to be established in 2017. The latest date I saw was this month. Is it to commence operations in Luxembourg this month? Two impediments were described by our Government to account for our non-participation. The first was the point the Commissioner made in relation to us being a common law jurisdiction and the difficulties in that regard. The second was a constitutional difficulty which may require a constitutional amendment here. I do not know if the Commissioner has had those discussions with the Irish authorities and can enlighten the committee on those.

Mr. Didier Reynders: On the explanation on the different regulations in recent years about lobbying, it is important and it is a difficult and sensitive issue in all institutions including the European institutions, but we are trying to organise a real process. On ethics, I have seen that the Irish Government has said it will go further forward with reforms of the code of ethics but it is in the Government's hands and in the national discussion. We will continue to monitor that in the next report.

On the European Public Prosecutor's Office, I am trying to start the operation as soon as possible. In my mind it was yesterday. We have appointed a chief prosecutor, Laura Kövesi, with an agreement between the Council and the Parliament. After the summer of last year, we appointed the college of prosecutors with prosecutors coming from all member states. There is a college in Luxembourg. Now we need implementing legislation in all member states but we have been waiting for that for three years. We need the appointment of the delegate prosecutors in the member states to work with the college in Luxembourg. At the moment we are trying to convince the last member states to be in full compliance with their obligations. We have seen the crisis in Italy so that may be the last participating member state where it will be possible to move. I am sure it will start in the first semester of this year but not this month because we need to have full compliance of all member states on the implementing legislation and the appointment of the delegate prosecutor. That is why I said it is important for non-participating member states like Ireland to adopt the implementing legislation to transpose the PIF directive.

There are some common law countries in the EPPO process, such as Malta and Cyprus, so it is possible to see the differences and the different ways to organise a process, but why not Ireland? If there is a need for constitutional change, it is difficult and takes some time but it is possible. In Sweden, they decided some years ago to opt out but now they are discussing the possibility of going to the parliament next year with draft legislation to take part in the EPPO. We are open to explaining and discussing how it is possible for all common law member states to become a member and the process involved. First, we want Ireland to be a good partner to the EPPO. I am sure that will be the case.

On media platforms, it is a long process with the code of conduct and with decisions taken at European level. Due to the Paris attacks it was possible to work with the platforms to rapidly remove any terrorist content. There are many discussions about doing the same with regard to child sexual abuse. During the pandemic, we have seen an increase in criminality on the web and we are trying to work more closely on that. We are doing the same for the safety of products because we have seen more and more sales online. We are working with the platforms but with the Digital Services Act it will be possible to put an obligation on the platforms to remove illegal content, such as hate speech. With the level playing field, this will not only be the

major platforms, but all platforms. We are working in the same way with regard to the safety of products and we will have the possibility of imposing financial sanctions for a huge amount of money if they do not deliver. We will continue to do that with new obligations and maybe with new so-called pledges. We may ask some platforms to do more than the legislation and to continue to work with us about the disinformation and illegal content with real effect. The Vice Chairman spoke about harassment. It is a difficult issue because sometimes one message on social media is not illegal content, but if there are many different kinds of legal messages together about one person in the same way then we have harassment of one person. We have seen that happen with some young people and children with very difficult consequences. It may be possible to then take that into account when discussing it with the platform. It would be useful for the platform in such a new sort of criminal offence to use artificial intelligence to detect promptly the situation. It is about working on this.

On the perceived impunity of some member states, it is the goal of the Rule of Law Report to show that we tried to do the job to deliver in the EU first because it is very important to protect the shared values such as those we put in the treaties. The Union is a union of values. I am aware that there are many discussions about the Internal Market and the economic development in the EU but the EU is first of all is a political union with shared values among the member states. We need to verify the full respect of those values.

For conditionality we organised a process to verify compliance with the values before the accession, but not so much afterwards. We are now working more on a mechanism to continue to verify the full compliance with the values, as we would verify the full compliance with the economic criteria from the Maastricht treaty, for example. This is why we have Article 7, the infringement proceedings, the Rule of Law Report and the new mechanisms about the conditionality. I must insist that it is also very important to do the job at home in the EU to be credible when we try to say something if we see something odd about the European Union. If we do not show to our partners in the world that we are delivering our message in the EU about the values, it will become difficult to express some criticism against different kinds of powers. To be concrete, just before this meeting we had a college meeting with the US envoy on climate, Mr. John Kerry, as a guest. We discussed the rule of law on both sides of the Atlantic. If we want to say something about the situation in the US, or about the situation in many places in the world, we need to show that we are able to do the job at home in the European Union. There is a real problem, however, about such a kind of perceived impunity as the Vice Chairman has said. It is the reason that discussions such as we are having today, and the presentation of the Rule of Law Report, are so important.

Vice Chairman: I thank Commissioner Reynders for answering so many varied questions in such a comprehensive fashion. Do any other members want to make an interjection? No.

I thank the Commissioner for his time and for fielding all of the questions posed by the committee members. We look forward to welcoming Commissioner Reynders to Dublin as soon as health conditions allow.

Mr. Didier Reynders: I thank the committee for the invitation today, and for the invitation to come to Dublin. It will be a real pleasure to come when we are in the phasing out period of the pandemic. I thank the Vice Chairman for his organisation of the debate today.

Vice Chairman: The committee will now move on to any other business. Do members wish to raise any other issues? No. Very good. That concludes our business for the committee today. We will adjourn until Tuesday, 23 March for an online private meeting when we will

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continue our discussions on our inquiry into CETA. I thank all of the members.

The joint committee adjourned at 5.16 p.m. until 10 a.m. on Tuesday, 23 March 2021.