



Interview | 08.2017

Core European Values Under Threat

Hungary and Poland are violating core principles of law in the EU and are neglecting the rulings of the European Court of Justice. Former Vice President of the European Commission, Viviane Reding, is giving us her opinion on what the EU can and must do to reinforce the respect for the rule of law which forms the very foundation of the EU.

How do you perceive the developments in Hungary, Poland, and also Romania, where increasingly the independence of the judiciary seems to be getting lost, freedom of the press is systematically being limited, and civil society organisations are coming under pressure?

Courts have been crippled, public and private press has been muzzled, refugees have been refused solidarity, NGOs have been discredited and branded as foreign agents, universities have been silenced and Brussels has been demonized. The seemingly endless stream of reports from Poland and Hungary leaves no room for illusion: our fundamental values are under attack.

The issue is not anecdotal, but a matter of urgent concern for all Europeans. It boils down to a question of credibility. The EU cannot extoll the

values of Solidarity, Human rights, Democracy and the Rule of Law abroad (in the case of Turkey for instance), while it is incapable of enforcing those values at home. These values are our compass, they guide our common action. Member States that hold these values in constant contempt, destroy this compass. They threaten our Union to become soulless and in disarray – a ready prey for the vultures that seek to bring down one of the greatest political constructions of our time. Without the compass of our values, we are directionless. Without the threads of our values, the fabric of our unity will unravel. Nothing less than our common future is at stake. And we should act: clearly and decisively.

What options does the EU generally have to persuade Member States like Hungary and Poland to abide by the Rule of Law standards

and basic democratic freedoms that these Member States committed themselves to upon their accession to the EU?

As former Commissioner for Justice and Fundamental Rights, I personally experienced how painstakingly difficult it is to hold a Member State to account for violation of the values it signed up to by joining the EU. Even when constitutional checks and balances are being dismantled it is difficult to bring institutions back to normal. As Guardian of the Treaties, the Commission can introduce legal action (so called infringement proceedings) when a Member State fails to fulfil its obligations inscribed in the Treaties. But Rule of Law issues arise mostly in the sphere of domestic law.

Even the Charter of Fundamental Rights – since Lisbon legally equivalent to the Treaties – contains a handy loophole: Member States are liable under the Charter only when they are implementing European law (the infamous article 51). This leaves us only with the “nuclear option” of the sanctioning mechanism under article 7, which remains a political hypothesis due to its unanimity requirement in the Council.

When a case is brought before the European Court of Justice, the latter is an ally in the defence of Values. In a recent landmark judgement the Court “dismissed in its entirety” the cases that the Hungarian and Slovakian Governments (later backed by the Polish Government) brought against the Council decision from 2015 to instate an emergency relocation mechanism. This relocation, commonly decided as a response to the massive influx of refugees on the shores of Greece and Italy, was a sorely needed action in view of an unprecedented humanitarian drama. Nevertheless, in early September both the Hungarian and the Polish governments had not yet relocated a single refugee. This prompted the European Commission, after repeated appeals for solidarity, to open infringement proceedings against the governments that failed to fulfil their commonly agreed obligations. The Court’s verdict was crystal-clear: it upheld the relocation mechanism. Solidarity is not a one-way-street! In our Community of Values, we have to expect from every Member State that it fulfil its responsibility, and execute commonly taken decisions.

Rule of Law proceedings (whose preparation you were significantly involved in) were instituted against Poland – but so far without Poland having made any concessions. Does a country like Poland still take the European Commission seriously at all?

Because I had experienced how difficult it was for the Commission to bring effective action against recalcitrant Member States, I presented the European Commission with a parting gift in 2014: the Rule of Law Framework. Between the (soft) hammer of political persuasion and the anvil of article 7, a third instrument was necessary: a structured format of exchange between recalcitrant Member States and the Commission. Dialogue remains the European way of business. This dialogue-mechanism has thus far only been activated once: in early 2016 against the Polish Government. It has been instrumental as a tool for the Commission to keep up the external pressure on the Polish Government, in addition to and in support of the internal pressure coming from Polish civil society. Dialogue had to run its course. It was key to give every opportunity to the Polish Government to mend its ways: we wanted the strong, pro-European and democratic partner that Poland once was, back to the negotiation-table.

But this Rule of Law framework was never intended to deal with Member States who have ostensibly chosen to depart from the European value-path and have no intention whatsoever to apply basic rules concerning the independence of the judiciary or the press-freedom. You can lead a horse to the water... but you cannot make it drink. After one and a half years of shuttle-diplomacy between Warsaw and the Commission (and much longer in the case of Budapest!), we have to ask ourselves: what to do when a Member State knowingly destroys the institutional basis of its democracy? That is why the institutions need new tools to credibly counter these new challenges.

And what needs to happen now? In the meantime, is it all the more necessary to institute proceedings against Poland under Article 7 due to the serious and persistent violation of the EU’s basic values (Article 2)? And what happens if Hungary – as it’s

already announced – does not vote for introducing sanctions against Poland?

First the Commission has decided to press forward with targeted infringement actions. For example, recently the second phase of the procedure concerning the Polish law on the ordinary courts organisation was activated. But - as a further step, the abolition of article 51 of the Charter is key. It would make our Charter into a real “European Bill of Rights” that could also be invoked when the Member States are not exclusively implementing European law. It would provide Union citizens with a more homogenous protection of their Fundamental Rights. The European Parliament has endorsed this approach in its report on the Future of the EU. In the same report, the Parliament proposes to allow the Commission to launch “systemic infringement procedures” by bundling a set of specific infringement proceedings that collectively discern a pattern posing a serious threat to the Rule of Law. This would allow the Court and the Commission to take more effective and faster action aimed at stopping backslides.

Another tool in the Commission’s arsenal should be the possibility to suspend EU funds for Member States that consistently flout our common values. No tit for tat, but merely the application to a Member State of the conditionality-clauses that already exist in our international trade agreements for non-Member States.

If we do not defend our values, who will? If Europe is to continue to fulfil its role of lighting beacon and anchorage of stability in the world, if Europe is to continue to fight the good cause and be the herald and forefighter of sustainable change, we need credibility and clout on the international stage, and we cannot be perceived to have double standards. Too much depends on it.

The Luxembourger [Viviane Reding](#) is Member of the EU Parliament, former Vice-President of the European Commission and Member of the Bertelsmann Stiftung’s Board of Trustees.

The interview was conducted by **Stefani Weiss**.

Title page image

Deutsches Zentrum für Luft- und Raumfahrt (DLR)

Address | Contact

Stefani Weiss
 Director
 Brussels Office
 Bertelsmann Stiftung
 Telephone + 49 (0) 5241 81-81601
 Mobil +49 (0) 160 91329878
 Fax +49 (0) 5241 81-681601
 stefani.weiss@bertelsmann-stiftung.de
 www.bertelsmann-stiftung.de