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"*Rule of law and transparency go hand in hand*"

European President's Conference "How much transparency does the rule of law need?"

17 February 2023, Vienna

President Utudjian , Honorary Members of the Bar,

It has always been a pleasure to be in Vienna, but this time it is an honor to join you for this 51st annual meeting.

We are living at the confluence of many traditional and also new global risks. We see competition among great powers, which actually has been with us for decades but currently the division between democracies and authoritarian regimes has a different meaning compared with the past. We see inefficiencies in the global order and multilateral institutions, we see a skyrocketing technological race. And then there is pandemics, it is not clear whether it stays or goes, but certainly there are millions of viruses in the animal world ready to leap into the human world. Cyber threats are lurking at every turn, and we face disinformation, both homemade and generated by interference of autocracies and their minions.

And there is a war in Europe. A cruel, unjustified one, in which the aggressor – a country that has a permanent seat at the UN Security Council – denies a nation of 44 million people the right to sovereignty, to its own state, in violation of international law and human rights.

The Russian aggression has shown the scale of blatant disregard towards democracy and rule of law, exercised by autocracies. It also unveiled the threat of kleptocratic financial structures born in autocratic countries and spread to the democratic world. These structures benefit from kleptocratic gains, undermine the rule of law and dismantle European values piece by piece.

The European Union is a community of law. Common legal framework is the formal glue that is keeping us together. The principle of the rule of law is a fundamental bond that makes the EU a community not only of values, but a community of understanding. Someone says that rule of law is our basic currency. I do not like this

phrase. It reminds me July 2021 when two EU member states offered trading the right to not respect the rule of law for withdrawing their veto to budgetary support for the 27 member states. But rule of law is the basic structure of our institutional language and the core of the EU's philosophical design as a multinational democracy. It is thus something that cannot be dispensed with.

Compliance with the rule of law is not only a prerequisite for the protection of all fundamental values listed in Article 2 TEU. It is also a prerequisite for upholding all rights and obligations deriving from the Treaties and from international law.

For the functioning of the whole EU as "an area of freedom, security and justice without internal frontiers", trust - of citizens, authorities, markets, as well as outside partners or competitors - in the legal systems of all Member States is vital.

The EU has a strong interest in safeguarding and strengthening the rule of law across the Union and its neighborhood.

Sometime we forget that treaties to enter into effect must be approved and ratified by all Member States. This suggests that we have a strong and airtight legal framework and adequate instruments to respect the rule of law. But, treaties have always been based on trust towards signatories, on their credibility and written with the assumption that they will be respected.

When this trust and credibility fail and when there is no political will to respect the rule of law, we are faced with a situation where the few targeted treaty based mechanisms established to secure the rule of law, including political commitments to the rule of law, cease to operate effectively. There is then a systemic threat to the rule of law and, hence, to the overall functioning of the EU.

In recent years, we have had situations where some governments of some member states gave themselves the privilege of their own interpretation of the values and principles the rule of law is rooted in. There are situations when governments do not respect EU law and the judgments of the Court of Justice of the EU. So yes, defiance of the EU law can be seen in the EU, affecting some areas of daily European life, including on matters where EU citizens believe the EU is protecting them. I think here of human rights.

Some Member States do not stop at disrespecting EU law, they also disrespect their national laws. This arrogance toward democracy can be seen in countries like Poland, where we are witnessing a constant undermining of the Polish Constitution by an organ which is supposed to be its main advocate - the Constitutional Tribunal. In Hungary we have been observing a systematic backsliding of the rule of law through all sorts of reforms of their Constitutional Court. In both countries we have seen continuous efforts to dismantle entire judicial systems, destroy the independence of media, and question the rights of NGOs. Those changes weaken democratic oversight and put those in charge above the law. Where the rule of law is distorted, transparency is also suffering as they are undeniably interlinked. Transparency as a tool to rule of law and democracy gets weaker. We see a growing number of cases from these countries in the European Court of Human Rights.

Transparency supports the rule of law by ensuring that citizens know the content of the law and can be expected to act accordingly. Citizens expect from political forces in power acting within the framework of rule of law but also they expect it from other citizens. That means that transparency can reinforce accountability mechanisms and encourage citizens to participate more actively in decision-making, including through taking part in the elections, because their trust in the democratic framework will grow. With that trust, institutions enjoy a greater legitimacy and effectiveness.

My experience in the European institutions allows me to say that links between the rule of law and transparency go both ways. They need each other. They strengthen each other.

European Parliament is the only directly elected institution and it represents the citizens of the Union and not, as it was before the Lisbon Treaty, the people's of the member states. Members of European Parliament can see the importance of an effective transparency framework as legislators, as members of an institution that should be run in a democratic way, and through the perspective of their accountability towards citizens who elect them.

Transparency matter when we legislate, when the law is implemented and enforced, when in line with the Treaty we be befit from the right to be immediately and fully informed. All that requires transparency.

Throughout the years, the European Parliament gradually built its recognition and status among both citizens and other institutions. With each new treaty starting from Maastricht, the legislative power of the Parliament was expanded and developed until it reached the shape it has today with the Lisbon Treaty.

Over all those years the European Parliament has developed a robust transparency framework that includes rules and structures: the EP's Rules of Procedure, Staff regulations, Statute and Code of Conduct of Members, the Advisory Committee on the Conduct of Members, the Code of Conduct-related sanctions regime, the financial declaration system, the Transparency Register, the Anti-Corruption Intergroup, the Ombudsman, committees and plenary meetings being open to the public, specialized committees like the one on Foreign Interference in all Democratic Processes in the European Union, including Disinformation. In protecting the rule of law, we are also cooperating with EU agencies like OLAF and with the office of the European Public Prosecutor, whose deputy, Andres Ritter is here with us.

But we all know that rules to deliver have to be applied, laws have to be implemented and enforced. However, even the best mechanisms and frameworks will fail without a proper awareness of the rules and enforcement, and the commitment of those whose duty is to deliver on these rules. Here, I have to admit, the European Parliament still has a lesson to learn.

Qatargate was a deep shock for all of us. We reacted with strong condemnation of the alleged corruption and produced an immediate reaction. There is no space for corruption in any public institution. We looked immediately at the entire framework I mentioned before. And we realized that there is a very low level of awareness among members of the House about the current rules. This is hurting the system.

I have been for two terms a member of Advisory Committee on the Conduct of Members – Parliament's internal conflict of interest watchdog and advisor to the President of the EP. I have been member of the European Commission at the time when the Transparency Register was introduced there. I am well aware, and so are my assistants, of the rules. In this parliamentary term however, 61% of MEPs are new to the EP and may not have any of these reflexes. I am actually discovering every day that most of my colleagues, long time members of the House, have no

knowledge of rules that have been in place for years. And this in spite of multiple communication efforts of the institution.

The work of the Advisory Committee revolves around two main tasks: (1) providing guidance to Members when they have questions on the interpretation and implementation of the Code of Conduct; and (2) assessing alleged breaches of the Code of Conduct and advising the President on possible action to be taken if and when the President refers a case to the Committee. We are currently working on improving transparency rules, using President Metsola's 14-point plan on *Strengthening integrity, independence and accountability*. When it comes to the conflict of interest the included in the Code of Conduct are not precise. There should be a clear distinction between what is forbidden and what is allowed but must be disclosed.

Linked to this question is the understanding of what constitutes an MEP's freedom of mandate. TFEU Protocol 7 on the privileges and immunities of the European Union Articles 8 and 9 lay down the grounds of the freedom of mandate. Freedom of mandate is also enshrined in Parliament's Rules of Procedures (Rule 2), the Statute for MEPs (Article 2), and its Code of Conduct (Article 2). However, there are different interpretations among members of the Parliament of what constitutes a free exercise of our mandate. It is about voting, but also side jobs, conflicts of interest, meetings with representatives of the interest groups. And we see the different interpretations of what it really means in the context of disclosures or banning of certain activities. Having a common understanding would be particularly relevant in our discussion about side activities and the degree of information required on increased transparency on financial declarations.

I am also the Co-Chair of the Anti-Corruption Intergroup in the European Parliament. It is a cross-party initiative of 129 MEPs, aimed at better understanding mechanisms of corruption. The EP's Anti-Corruption Intergroup, together with the US Caucus against Foreign Corruption and Kleptocracy and the UK All-Party Parliamentary Group on Anti-Corruption and Responsible Tax created an Inter-Parliamentary Alliance Against Kleptocracy. What is interesting is that our EP Intergroup covers the topic of corruption both in the EU and globally, while for example our US counterpart

focuses only on concerns related to kleptocracy and corruption outside their jurisdiction.

I have been also negotiating on behalf of the EP the new Interinstitutional Agreement on mandatory transparency register. The new IIA adopted by the European Parliament, the Commission and - for the first time - the Council entered into force on 1 July 2021. Even though the EP has been pushing for years for a legally binding legislation instead of an IIA, the lack of a strong legal basis made it impossible. In case of an IIA, its power stems from the power of self-organization, which every institution enjoys autonomously. It allows through the restrictions of their internal organization to create de facto obligations for interest representatives to register to have access to decision makers. On many aspects, we are three different institutions. Not only in size. In the EP, there are elected members with a freedom of mandate. Each institution can engage itself toward specific conditionality and other transparency measures on the basis of individual decisions.

If I had to give an example of area where we have to step up our efforts it would be whistleblower protection.

The EU Directive of 23 October 2019 on the protection of persons who report breaches of Union law doesn't apply to EU institution. The EP whistle-blower protections is laid out in Internal Rules Implementing Article 22. However, the EP doesn't have a great track record of using these rules. In 2016, 3 accredited assistants came forward to whistle-blow but were subsequently fired. We have to work more on our contacts with EU agencies. OLAF doesn't have access to EP premises during its investigations even when the case concerns a member. As you know, the provision of lifting immunity of MEPs only concerns criminal investigations, which is the competence of EPPO, not administrative ones that are carried out by OLAF. This is something that we have to reflect on. But also as the EP we should monitor the situation after the OLAF run procedure, when the case is passed to the judicial authorities of the member state and not continued.

The independence, transparency and accountability of EU institutions are of the utmost importance for promoting the trust of citizens, which is necessary for the legitimate functioning of democratic institutions. Ethics standards already exist within the institutions, but are very fragmented and solely rely on a self-regulatory approach.

That is why for some years the option of establishing an independent ethics body has been considered. Its supporters point to the potential of strengthening the trust in the EU institutions and their democratic legitimacy.

The President of the Commission committed to the establishment of an Ethics Body in her political guidelines in July 2019. The EP has supported the idea of establishing the Ethics Body on the basis of an AFCO proposal in 2020. The issue raised some controversies regarding powers given to this body. Currently, we are awaiting the Commission's legislative initiative, which is supposed to be presented in March, as announced by Commissioner Jourova this week in plenary. In brief, the Independent Ethics Body could advise on cases before, during, and in some cases after the term of office; have the right to start investigations on its own; have the possibility to check the veracity of the declaration of financial interest submitted by MEPs and have the possibility to engage in cooperation and information exchange with OLAF, EPPO, the Ombudsman and the European Court of Auditors. The Independent Ethics Body could also adopt harmonized and adequate cooling-off periods of all EU institutions.

As I mentioned before, all EU Institutions and agencies are very different in terms of their structure, number of staff, presence of elected members with political mandate and freedom of mandate. Some point to specific legal constraints which such Body wouldn't be able to interfere with. They also insist that new interinstitutional body has to respect the balance between the institutions and must respect their sovereignty. Only the highest political authority of each institution can decide on measures to take or impose sanctions.

It also seems clear that criminal law cases have to be dealt with by the Courts, not an ethics body and participating institutions must remain within their competences set out by the Treaties. For example, under art. 234 TFEU, it is the Parliament's institutional role to hold Commissioners politically accountable. Exercising political control over the Commission cannot be outsourced to the Ethics Body. In short, in spite of broad commitment to its establishment, there are still some uncertainties and questions when it comes to the idea of the Independent Ethics Body. We look forward to reading the Commission's proposal early March.

To conclude, the world that will emerge from the war in Europe, will be different, and I would expect that the race between democracy and autocracy will be fiercer and

more meaningful. Kleptocratic elites will come back with new ways of acting, new networks, a new appetite for wealth and a new persistence towards intruding into our democratic processes. We need an international strategy to cope with this challenge and be prepared for such a world. We also have to take a hard look at changes needed inside our democratic systems to reduce the risk of their abuse. We must continue to spare no effort to achieve a zero tolerance for corruption.