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END OF MISSION STATEMENT

United Nations Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

Mr. Juan Pablo Bohoslavsky

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Today I end my official visit to institutions of the European Union which began on 30 May 2016 and I would like to thank the European Commission and other European institutions for their full cooperation during the visit.

I have benefitted from discussions with representatives of the European Commission, its Structural Reform Support Service, the European Parliament, the European External Action Service, the European Central Bank, the Eurogroup Working Group and the European Economic and Social Committee. My programme also included meetings with representatives of European National Human Rights Institutions and civil society. I would like to thank all my interlocutors for taking the time to meet with me and for our very open and frank dialogue.

My findings and recommendations will be detailed in a report that I will present to the Human Rights Council in March 2017. Nevertheless, I would like to share some preliminary observations and recommendations with you.

The purpose of my visit was to assess the response of the institutions and member States of the European Union to the sovereign debt and financial crisis from a human rights perspective, and in line with the mandate given to me by the Human Rights Council.

In response to the crisis many EU States resorted to austerity measures, to address excessive public deficits and unsustainable public debt. After the global financial crisis unfolded, 25 of the 28 EU member States were at some stage put under the Excessive Deficit Procedure of the European Union which kicks in when a State has a public deficit above 3 per cent of GDP or is unable to bring its debt to GDP ratio below 60 per cent. In addition, Cyprus, Greece, Hungary, Ireland, Latvia, Portugal, Romania and Spain were experiencing serious difficulties in relation to their financial stability and had to implement economic adjustment programmes as a condition for receiving stand-by-support or loans from European institutions and the International Monetary Fund.

Ensuring financial stability and controlling public debt is an important task. However, I am deeply concerned about a paradigmatic shift that is undermining the previously balanced approach of ensuring economic stability, equality and social cohesion, in favour of a disproportionate focus on budgetary stability. Austerity policies have unfortunately all too often gone hand in hand with an undermining of economic, social and labour rights within the European Union hitting the most vulnerable. In parallel inequalities in income and wealth have increased within Europe. In addition to these outcomes, austerity measures do not appear to have led to full financial and fiscal stability in all countries.

There are currently about 21.4 million unemployed persons in the European Union, still 4.7 million more than in 2008, before the global financial crisis spread. More worrying, nearly every second unemployed has been without a job for more than 12 months and long-term unemployment has remained high in countries that underwent adjustment programmes (For instance: Greece 72.1 per cent, Portugal 57.4 per cent, Ireland, 56.2 per cent of all unemployed persons). The percentage of persons in the European Union who report unmet medical needs and say seeing a doctor is too expensive for them, has also increased after 2009.

Disappointingly, in one of the most affluent regions of the world poverty has been on the rise. About 121 million people in the EU-27 are at risk of poverty or social exclusion, 4.7 million more than in 2008, and their number has in particular increased in Greece, Italy and Spain. Children and women in Europe are more at risk of poverty and social exclusion (27.8 per cent and 25.2 per cent respectively) than the total population (24.4 per cent). In this context, it will be difficult to reach the target the European Union has set for itself, to reduce the number of people at risk of poverty and social exclusion by 20 million people by 2020.

It is paradoxical that when social protection was most needed, social spending was often reduced. In some countries, in an effort to ensure the repayment of public debt, public health and social protection expenditures were excessively slashed. The core question here is why this type of expenditure was particularly targeted by conditionalities. These cuts were often made in public health and social protections systems that already were deficient to ensure that those most in need would receive treatment or benefits. Many European Union countries still have gaps within their social protection systems which should ensure a universal social protection floor guaranteeing a minimum standard of living to all.

In Greece, a country that I visited in December 2015, the overall social protection budget stood in 2009 at 44.2 billion Euro. In 2014 only 35.7 billion euro were spent, a cut of 19.3 %, while at the same time the number of persons unemployed or living in material deprivation dramatically increased. Public health expenditures in Greece were reduced from 16.1 billion (2009) to 8.3 billion (2014) an unprecedented decrease by 48.6 per cent. Poor patients are now relying on solidarity clinics run by volunteers to receive essential medical services.[1]

There is a widespread belief that billions of taxpayer money has been used or provided in the form of guarantees to rescue Greece from defaulting. The amounts were indeed large, but in reality the financial assistance provided through European financial institutions returned to a very large degree to international lenders, who had provided Greece until 2009 with loans without fully following due diligence standards in order to check whether the country would be able to pay back its debt. In total 215.9 billion Euro was disbursed under the first and second adjustment programme from 2010-2014.

[1] See my country visit report UN Doc. A/HRC/31/60/Add.2. The figures above use updated Eurostat data from 16 May 2016, General government expenditure by function (COFOG).

However, a recent study published by the European School of Management and Technology in Berlin suggests that only a very small fraction, 9.7 billion, less than 5 percent, ended up in the public budget of Greece,[2] 64 percent of the disbursed loans were just used to pay back the existing debt and interests, 37.3 billion or 17 per cent was used to recapitalize Greek banks, while 29.7 billion or 14 per cent of the amount was used to provide incentives for investors to engage in the Private Sector Involvement (PSI) in March 2012, a haircut of the Greek debt. Through the PSI private debt was converted to a large degree into public debt.

Looking at these figures from a human rights perspective, I am inclined to ask: who has been given priority? Who has mainly benefitted from the financial support? While bailing out banks and stabilizing the financial system, was enough done to reduce poverty and unemployment in Greece, Spain, Portugal and elsewhere? Were economic and social rights given the needed priority to ensure that everybody within the European Union can live in dignity? Poverty levels and the increase of inequality experienced in those countries make me feel that this is not the case.

I welcome that the Eurogroup has put the issue of debt relief for Greece on its agenda. However, I am worried that decision making on debt relief has mainly been postponed until 2018 and that proposals for debt relief have categorically ruled out a ‘haircut’ to the Greek debt. In my view the country’s debt, currently estimated at around 180 percent of GDP is highly unsustainable. The International Monetary Fund recently published a scenario that Greece’s debt to GDP ratio will further increase to about 250 per cent by 2060, if no front loaded debt relief is provided.[3] Debt relief is currently under discussion in the form of maturity extensions, payment deferrals and lower fixed interest rates; this in my view would be too little, too late, especially for the thousands of people who have suffered in the last years. Postponed debt relief will not restore confidence in the Greek economy nor promote much needed investment.

I am similarly worried about the short and long-term human rights impact of the latest austerity package passed under pressure from international lenders on 20 May 2016 by the Greek Parliament, which includes further cuts to pensions to the tune of 3.6 billion EUR, and an increase of the Value Added Tax (VAT) to 24 per cent, which hits poorer people more forcefully than the more affluent. The package includes across-the board spending cuts, should Greece fail to reach agreed primary surpluses in the future, surpluses that have been considered to be unrealistic by the International Monetary Fund for Greece due to its very high structural unemployment.[4] Such across- the-board spending cuts are unlikely assessed in relation to their social or human rights impact. They would repeat past mistakes, further undermine the Greek economy and deepen the economic and social rights crisis within Greece.

I do not want to be misunderstood. I do not question the policy space authorities need in macroeconomic matters. We need also to reflect on whether it is reasonable to expect that austerity works when economies are weakening, a question that I do not want to pursue here.[5] My point is that obligations under human rights law should be a legitimate and necessary constraint when designing

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[2] Jörg Rocholl and A. Stahmer (2016). *Where did the Greek bailout money go?* ESMT White Paper No. WP–16–02. The findings are consistent with those produced by the Special Committee of the Hellenic Parliament on the Audit of the Greek Debt (Debt Truth Committee) last year.

[3] International Monetary Fund, Greece, Preliminary debt sustainability analysis – Updated estimates and further considerations, IMF Country Report 13/130 http://www.imf.org/external/pubs/ft/scr/2016/cr16130.pdf

[4] See above, p. 12

[5] Arjun Jayadev and Mike Konczal, “When Is Austerity Right?: In Boom, Not Bust,” available at https://ideas.repec.org/a/mes/challe/v53y2010i6p37-53.html; Martin Guzman, “Definitional Issues in The IMF Debt Sustainability Analysis Framework. A Prosal,”CIGI, Plicy Brief, N° 77, 2016.

and implementing macroeconomic policies. The argument can be made that without the financial assistance provided, the consequences in the field of social and economic rights would have been even worse. I am not in a position to assess such a counterfactual scenario. My point here is to stress that irrespectively of the macroeconomic policy chosen, there is a need to ensure that human rights are fully respected and that nobody is left behind.

If there is democratic consensus about reforms that need to be implemented in the welfare and pension systems, and they imply cuts, there are binding human rights standards that must be respected. These measures need to be justified, be proportionate, applied in a non-discriminative manner and should include fiscal measures that mitigate inequalities caused, including through progressive taxation and fighting tax avoidance and evasion. And they should only be introduced after the most careful consideration of all other less restrictive alternatives.[6] Iceland, for illustration, provides a good example on how to face financial crises with in an effective manner that overwhelmingly respected human rights.[7]

Finally core minimum provisions of economic and social rights must always be respected. It is not acceptable when individuals have no longer the means to buy adequate food, loose access to essential medical services or cannot keep a roof over their head.

While Member States of the European Union are primarily responsible for adherence to their international human rights obligations, international institutions, including the European Union, its bodies and financial institutions are not beyond the reach of international human rights law. This applies to international organizations, including multi-lateral financial institutions, such as the International Monetary Fund and the World Bank.[8] When making policy recommendations or setting binding conditionalities for providing loans, institutions and bodies of the European Union have - at an absolute minimum - to respect international human rights treaties to which all their Member States have become a party.

The European Union and its institutions are also bound by the EU Charter on Fundamental Rights, which reiterates core economic and social rights. The EU Charter on Fundamental Rights is also applicable when EU member States are implementing EU law. In my view this includes the design and implementation of economic reform programmes by member States in agreement with the European Commission according to European Union regulation 472/2013. It should be noted that most past financial assistance programmes supported by European institutions were initiated before this regulation came into force.

The duty to respect international human rights norms extends also to international institutions established outside the legal framework of the Treaty of the European Union, such as the European Stability Mechanism, just as there are strong legal arguments that the EU institutions – such as the European Commission and European Central Bank – when acting outside the EU legal order nonetheless remain bound by the Charter on Fundamental Rights.

[6] See letter dated 16 May 2012 from the Chair of the Committee on Economic, Social and Cultural Rights addressed to States parties to the International Covenant on Economic, Social and Cultural Rights.
[7] See UN Doc. A/HRC/28/59/Add.1.

[8] See for example joint letter to the President of the World Bank by Special Procedure mandate holders from 12 December 2014, available at: http://www.ohchr.org/Documents/Issues/EPoverty/WorldBank.pdf

I take this opportunity to remind all EU Member States (including euro area States acting as international lenders) that they are bound by the International Covenant on Economic, Social and Cultural Rights, and other relevant core human rights treaties they have ratified. Furthermore rights enumerated in the Covenant need to be respected as well when they affect rights holders living outside their own territory. States parties to the International Covenant on Economic, Social and Cultural Rights would be acting in violation of their obligations under the Covenant if they were to delegate powers to an international organisation (e.g.: the ESM or IMF) and allow such powers to be exercised without ensuring that they will not infringe on human rights.[9]

Ensuring that human rights are respected in the context of financial assistance programmes is a shared responsibility of lending institutions and Member States proposing and implementing adjustment programmes. While economic policies of the European Union are based on the principle of subsidiarity, this principle should not be used to argue that accountability for the outcomes of adjustment programmes, including adverse impacts on social rights, rests exclusively with the concerned member State. Likewise it would be improper to blame exclusively European or international financial institutions for such impacts.

I commend the European Union for being the first regional institution to ratify the Convention on the Rights of Persons with Disabilities. I am however worried that the economic reform policies across the EU have caused severe cutbacks to health services and social welfare entitlements for persons with disabilities. These cuts have undermined their right to an independent living, reduced support services for families with disabled children, inhibited the deinstitutionalization of persons with disabilities and restricted the right of children with disabilities to live in family settings. The right to an adequate standard of living and social protection was also disproportionately affected.

I therefore reiterate the recommendations made by the UN Committee on the Rights of Persons with Disabilities which called in August 2015 upon the European Union to take urgent measures, in cooperation with its member States and representative organizations of persons with disabilities, to prevent adverse and retrogressive effects of the austerity measures on several rights contained in the Convention.[10]

I could voice similar concerns about the impact of austerity policies on children, older persons, women, migrants and refugees and I intend to reflect on their situation in my final report. Suffice to say that I am not alone with such concerns, which have been raised by the United Nations High Commissioner for Human Rights, fellow Special Rapporteurs, the High Commissioner for Human Rights of the Council of Europe and also in resolutions and studies commissioned by the European Parliament.[11]

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[9] For a detailed consideration, See, Salomon, M.E. and O. De Schutter, 'Economic Policy Conditionality, Socio-Economic Rights and International Legal Responsibility: The Case of Greece 2010-2015', *Legal Brief prepared for the Special Committee of the Hellenic Parliament on the Audit of the Greek Debt* (15 June 2015). http://www.lse.ac.uk/humanRights/documents/2015/SalomonDeSchutterGreekDebtTruth.pdf

[10] See UN Doc. CRPD/C/EU/CO/1.

[11] UN Doc. E/2013/82, A/HRC/17/34, A/HRC/17/34/Add.2, Reports by the Commissioner for Human Rights of the Council of Europe on Cyprus, CommDH(2016)16, Spain, CommDH(2013)18, Estonia, CommDH(2013)12, and Portugal, CommDH(2012)22, Studies commissioned by the LIBE Committee of the European Parliament on Cyprus, Ireland, Greece, Spain and Portugal, EU docs. PE 510.016, PE 510.014, PE 510.019, PE 510.017, PE 510.020.

The European Union has developed several guidelines and tools for carrying out social and human rights impact assessments.[12] However, when it comes to macroeconomic policies in the context of financial crises human rights standards have so far not been explicitly used as benchmarks to assess economic reform programs. It is therefore deplorable how little lending conditionalities were formally assessed on their potential harm to human rights-holders before they were implemented.

Moving forward, I call for a change of approach. For instance, I welcome that the European Commission has undertaken for the first time, in August 2015, a social impact assessment for the 3rd economic reform programme currently implemented in Greece.[13] It is a first step in the right direction, although this social impact assessment, produced on short notice, does not have the ambition to assess the economic reform measures against international human rights standards.

Economic reform programmes should not only undergo social, but also human rights impact assessments that live up to their name. Such assessments should be carried out in consultation with affected rights-holders and civil society and be more than tick-box exercises in order to be meaningful. In addition, evaluations of past reform programmes should not only assess whether they managed to reduce budget deficits, restore debt sustainability, or enhance economic growth, but whether they ensured a fair and equal distribution of the burden of adjustment within society.

We need to put the human person back into the equation, as the economy should serve the people, not vice versa. Therefore it is absolutely relevant to know to what extent economic and social rights have been successfully protected in the context of adjustment policies, what gaps exist and who is most affected by lack of protection of their rights. This exercise would not only allow learning from past mistakes to be better equipped for the future, but ensure that identified infringements of social and economic rights can be addressed and corrected.

There is a need for enhancing policy coherence between economic and social policies of the European Union. I welcome the increase of recommendations in the field of social policy and poverty reduction to EU member States during the annual review of economic policies through the European Semester. I would, however, like to see economic and social rights more thoroughly reflected in the country-specific recommendations.

I would like to encourage efforts to enhance policy coherence in the field of external and internal policies of the European Union. I welcome that the EU Action Plan on Human Rights and Democracy emphasizes the promotion of economic, social and cultural rights in its external policies and development cooperation, including in the area of social policy, health education, access to food and water, and promotes and supports the development and increased coverage of national social protection floors. The European Union is currently also further developing ex-ante human rights impact assessments and ex-post evaluations in the field of its international trade and investment policies with Non-EU countries, and has adopted a human rights based approach to its development cooperation.

No credible argument could be made that what should be done externally for the benefit of rights holders outside the European Union, cannot be done internally, for the benefit of its own EU citizens

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[12] See Better Regulation guidelines SWD(2015) 111 final, and the related a toolbox, available at: http://ec.europa.eu/smart-regulation/guidelines/toc_tool_en.htm, in particular tools 24-27.
[13] SWD(2015) 162 final, available at: http://ec.europa.eu/economy_finance/assistance_eu_ms/greek_loan_facility/pdf/assessment_social_impact_en.pdf

and residents. Rather, a human rights-based approach should guide country-specific recommendations to EU member states in the field of macro-economic policy and the lending policies of European institutions to its own EU member states.

The European Union has initiated in June 2014 in response to the economic and social crisis an Investment plan for Europe to boost growth and employment, endorsed in February 2013 a Youth Employment Initiative to address youth unemployment and published in the same year a recommendation on investing in children – breaking the cycle of disadvantage. The Commission has also urged its member States through its Social Investment Package to invest stronger in people and their skills and has provides guidance to members States to use their social budgets more effectively to ensure adequate and sustainable social protection. I welcome these initiatives, but they appear either not yet to have taken fully root or been so far unable to address in a satisfactory manner poverty and unprecedented youth unemployment in EU member States.

States need sufficient fiscal space to ensure that they can protect and progressively realize economic, social and cultural rights. Debt obligations should never take preference over human rights.[14] It is therefore equally important to combat tax avoidance and tax evasion to prevent States falling into a debt trap and to ensure that they have sufficient revenues at their disposal to uphold economic and social rights.[15] I welcome in this context that the European Commission has recently published new important rules on the disclosure of income tax information by multinational corporations to tackle corporate tax avoidance.[16] The suggested rules would require multinationals operating in the EU with global revenues exceeding EUR 750 million a year, to publish to publish key information on where they make their profits and where they pay their tax in the EU on a country-by-country basis.

Unfortunately the proposed country-by-country reporting does only require corporations to declare in a disaggregated manner profits and tax payments that they make in EU countries. I am consequently concerned that the proposed rules are not fully adequate to detect tax avoidance outside the European Union, in particular in developing nations, who loose every year billions of public funds.

I also want to give credit to European Commission and ten of its member States that are planning to introduce a financial transaction tax. Such a tax would not only ensure additional revenues and respond to an increasing social demand for greater tax fairness but would also constitute an important tool to reduce the risk of future financial crises.

It is time to revive social rights within the European Union. In my view, some recent initiatives from the European Commission, such as the European Pillar on Social Rights, will contribute to this aim. I have stressed during my visit that such a pillar needs to be based on a solid foundation. This foundation should not only reflect the social acquis of the European Union, but also build on the international human rights obligations of EU member States and the recommendations emanating from international and regional human rights mechanism.

Thank you.

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[14] See UN Doc. A/70/275 and the UN Guiding Principles on foreign debt and human rights, UN Doc. A/HRC/20/23.
[15] See my report on illicit financial flows and human rights, UN Doc. A/HRC/31/61.
[16] http://europa.eu/rapid/press-release_IP-16-1349_en.htm