

Didier Reynders

Justice

Hearing due to be held on Wednesday 2 October at 09.00 hours.

European Parliament committees responsible: Civil Liberties, Justice and Home Affairs (LIBE), and Legal Affairs (JURI).



A member of the Belgian Parliament since 1992, Didier Reynders, born in 1958, is best known for his long tenure in successive Belgian federal governments. He is currently a Deputy Prime Minister (since 2004), Minister of Foreign and European Affairs (since 2011), and of Defence (since 2018). He has a background in constitutional law, with a law degree from the University of Liège (1981). Reynders practised as a lawyer (1981-1985) and then served as chair of the Belgian Railways (1986-1991) and the airline Sabena (1991-1993).

His career in the Belgian administration started as Director General of the Ministry of the Walloon Region (1985-1988) and Chief of Staff of the Deputy Prime Minister, Minister of Justice and Institutional Reforms (1987-1988). In the federal government, his career has included the posts of Minister of Finance (1999-2011), Minister in charge of the National Lottery, the Federal Holding and Investment Company and the insurance companies (2007-2011), Minister in charge of the Belgian Buildings Agency (2003-2011), Minister of Institutional Reforms (2004-2011), Minister of Foreign Affairs, Foreign

Trade and European Affairs (2011-2014), and Minister of Foreign Affairs and European Affairs (2014-2018). He has also served as a member of the Liège (1988-2012) and Uccle (2012-2018) local councils. Reynders is also a visiting professor at a number of Belgian universities. As a member (and former president) of the liberal *Mouvement Réformateur* (MR) party, affiliated to the Renew Europe Group (formerly ALDE) at European level.

This is one of a set of Briefings designed to give Members of the European Parliament an overview of major issues of interest in the context of the hearings of the Commissioners-designate. The full set of Briefings can be found at: https://epthinktank.eu/commissioner_hearings_2019

Background

According to his [mission letter](#), as Commissioner-designate for Justice, Didier Reynders will work under the guidance of the Vice-President for Values and Transparency, with support from the Directorate-General for Justice and Consumers. The mission is a continuation of Věra Jourová's Juncker Commission portfolio, with the exception that the rule of law replaces gender equality.

Recent developments

In relation to the **rule of law**, the European Commission's structured dialogue with the Polish government led to the adoption of four recommendations ([2016/1374](#), [2016/146](#), [2017/1520](#), [2018/103](#)), under the 2014 [Rule of Law Framework](#), followed by [Article 7 TEU](#) proceedings begun in [2017](#). The European Parliament, in turn, launched similar proceedings against Hungary in [2018](#). In parallel, the Commission brought infringement proceedings on rule of law issues against Poland ([C-192/18](#), [C-619/18](#)) and Hungary (inter alia [C-286/12](#), [C-66/18](#), [C-718/17](#)). The Commission also proposes to [legislate](#) to cut EU funding to countries with generalised rule of law deficiencies (Parliament's first reading position [adopted](#) in April 2019, work in Council ongoing). Finally, the Commission [communication on the rule of law](#), of July 2019, inter alia envisages establishment of a 'rule of law review cycle' with annual rule of law reports published on each EU Member State.

In the area of **civil justice**, five key pieces of legislation were adopted during the eighth Parliamentary term: a [recast regulation](#) on insolvency proceedings, [reform](#) of the European small claims procedure, as well as two new regulations introducing closer cooperation on property regimes in [cross-border marriages](#) and cross-border [registered partnerships](#). Finally, in June 2019, the co-legislators adopted a new [regulation](#) on judicial cooperation in matrimonial matters and matters of parental responsibility and on international child abduction. Two proposals concerning reformed rules on cross-border civil procedure in the areas of the [taking of evidence](#) and the [service of documents](#) await adoption (Parliament adopted its first reading positions in February 2019, the files are now with Council).

New legislation was adopted in the area of **criminal justice**, including new directives on the [presumption of innocence](#), [rights of minors involved in criminal proceedings](#), and [legal aid](#) for suspects and accused persons and for requested persons in European arrest warrant proceedings, as well as several directives approximating definitions and sanctions to combat serious cross-border crime, such as [terrorism](#), [money laundering](#), [non-cash payment fraud](#) and [fraud](#) against EU financial interests. A new mandate for [Eurojust](#) will take effect in December 2019 and a new [European Public Prosecutor's Office](#) (EPPO) under enhanced cooperation (22 participating Member States) is being set up (with a Chief Prosecutor yet to be appointed), and expected to become operational in 2020 or 2021. New instruments on the [mutual recognition of freezing and confiscation orders](#) and on an upgraded European criminal records information system ([ECRIS](#)) to cover [third-country nationals](#) have been adopted, whilst the 2018 [package](#) of proposals on electronic evidence, comprising a [regulation](#) and a [directive](#), is still being discussed in committee in Parliament.

In the area of **data protection** a new [General Data Protection Regulation](#) (GDPR) was adopted, accompanied by a [directive](#) on protection of personal data by law enforcement authorities, and modernised [rules](#) on data processed by EU institutions and agencies. Following the [Schrems case](#), a new framework covers transatlantic data flows – the [EU-US Privacy Shield](#). However, work on the 2017 proposal to update the [e-privacy](#) regulation, applicable to electronic communications, advanced rather slowly. The [Europe for Citizens programme](#), the backbone of the Commission's action on **citizenship**, financed projects on European remembrance, democratic engagement and civic participation. The proposed new [rights and values programme](#) is to encompass these issues from 2021 onwards. Regarding **consumer protection**, two new directives were adopted on the [sale of goods](#) and [digital content and digital services](#), and provisional agreement has been reached on the [revision](#) of four other consumer directives. A new [regulation on consumer protection cooperation](#) harmonises national consumer authorities' powers and enhances their cooperation.

Priorities and challenges

Public opinion

According to a [2018 Eurobarometer survey](#), 18 % of European citizens consider the rule of law as a key EU value. According to [a 2010 Eurobarometer survey on civil justice](#), 56 % of Europeans believed that access to civil justice in another Member State was difficult, and 73 % of respondents considered that the EU should take additional measures to tackle the issue. Some 84 % saw a need to simplify the cross-border enforcement of court decisions. As the 2013 [Flash Eurobarometer on Justice](#) shows, a majority of Europeans see large differences between national judicial systems in terms of efficiency, quality and independence, and believe that their functioning is a matter of common concern. The 2017 [consumer condition scoreboard](#) shows that one in five consumers had at least once had reason to complain about a purchase in the previous year.

According to the [mission letter](#), the Commissioner for Justice will be responsible for developing a comprehensive European **rule of law** mechanism, preventing and identifying breaches of the rule of law, enhancing communication and awareness-raising to promote a rule of law culture among European citizens, as well as strengthening EU cooperation with the Council of Europe, OSCE and OECD. The European Council's [Strategic Agenda](#) for 2019-2024 stresses the crucial role of the rule of law in European democracies. Similarly, President-elect von der Leyen [committed](#) to uphold the rule of law and EU values throughout her mandate, using all available EU tools, as well as to [foster approval](#) by the co-legislators of the proposal for a [regulation on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States](#). Von der Leyen also proposes creating a comprehensive European rule of law mechanism, applying to all Member States equally. As concerns **justice and consumer protection**, the [mission letter](#) stresses the importance of strengthening consumer protection for cross-border and online transactions, facilitating and improving judicial cooperation, as well as implementing new digital technologies for justice systems. The Commissioner will be in charge of preparing legislation on the human and ethical implications of [artificial intelligence](#), and ensuring that [company law](#) contributes to the strategy on small and medium-sized businesses. It should be noted that the European Council's ['2019-2024 strategic agenda](#) highlights the importance of mainstreaming digitalisation in the EU. In the area of **criminal justice**, the [mission letter](#) tasks the Commissioner with supporting the EPPO. Moreover, in view of international developments such as the adoption of the Cloud Act in the United States, the Commission will have to conduct [negotiations](#) on an EU-US agreement on transatlantic access to e-evidence, as well as on the second additional protocol to the Council of Europe's Budapest Convention on Cybercrime, currently under preparation. Furthermore, the [mission letter](#) mentions that the Commissioner will be tasked with ensuring a justice policy contribution to the fight against **terrorism and extremism** and the **security union**. Since the 2014 CJEU [judgment](#) invalidating the **Data Retention Directive**, Member States have repeatedly called upon the Commission to put forward new rules on this issue, and the JHA Council adopted [conclusions](#) on data retention in June 2019, asking the Commission to consider a legislative proposal. The [mission letter](#) stresses the need for full GDPR implementation and enforcement. Additionally, the [mission letter](#) outlines the Commissioner's task to monitor protection of **European citizenship** rights.

European Parliament

Treaty basis and European Parliament competence

Rule of law is enshrined in Articles 2, 7 and 19 TEU, with Parliament being entitled to trigger Article 7 proceedings independently. On **civil justice** and **private international law** (Article 81 TFEU), the ordinary legislative procedure (OLP) applies, except for legislation concerning **family law** issues, where a special legislative procedure (SLP) applies. **Criminal justice** is covered by Article 82-86 TFEU, with OLP applying, with the exception of Article 86 on the EPPO (SLP, [enhanced cooperation](#)). Both in the case of criminal procedure (Article 82) and substantive criminal law (Article 83), [brake/accelerator clauses](#) apply. EU action in the field of **data protection**, is based on Article 16 TFEU (OLP). **Consumer**, as well as some **civil procedure** laws, are adopted on the internal market basis of Article 114 TFEU (OLP).

In the 2014-2019 term, Parliament proved its commitment to strengthening and upholding the **rule of law** in the EU. Parliament backed the Commission decision to trigger Article 7(1) TEU in relation to Poland in a March 2018 [resolution](#), having criticised the situation in Poland in resolutions of [November 2017](#), [September 2016](#) and [April 2016](#). Parliament also [called](#) on the Commission, in December 2015, to apply the rule of law framework to Hungary and, ultimately [decided](#) to launch the Article 7 procedure in September 2018. Parliament has recently expressed concerns on the rule of law and respect for fundamental rights in [Romania](#), [Malta](#), and [Slovakia](#). Parliament has [consistently](#) stressed the need for impartial and regular assessment of the situation with regard to the rule of law, democracy and fundamental rights in all Member States, [calling](#) on the Commission to establish an EU Pact for democracy, the rule of law and fundamental rights. Similarly, Parliament [proposed](#) changes to the Treaties, to reinforce the rule of law within the EU (mainly, reviewing Article 7 TEU to include a list of possible sanctions to be imposed on Member States, and enabling individuals to bring actions to the Court of Justice when fundamental rights are breached). Regarding **civil justice**, Parliament adopted a [resolution](#) calling on the Commission to table three proposals: on common minimum standards of civil procedure, as well as on the [mutual recognition of adoption orders](#) between the Member States and the [European expedited civil procedure](#) for cross-border litigation between businesses. In the context of **substantive civil law**, recent resolutions have concerned civil law rules on [robotics and artificial intelligence](#), and limitation periods for [traffic accident claims](#). In the area of **criminal justice**, the Parliament considered, in a 2017 [resolution](#), that to upgrade EU capacities to combat terrorism and international organised crime, Europol and Eurojust should be granted investigation and prosecution competences and capabilities. It also [called](#) for wider use of existing tools, such as joint investigation teams. Parliament called repeatedly for common European standards on various forms of detention (pre-trial and administrative detention, and detention of minors) and [advocated](#) common standards to guarantee the fundamental rights of detained persons. On **data protection**, Parliament adopted a [resolution](#) condemning the mass electronic surveillance of EU citizens (2015), and in 2018 [expressed concern](#) regarding the [misuse](#) of Facebook users' data, [calling](#) for the suspension of the Privacy Shield until the US authorities complied fully with EU data protection legislation.

FURTHER READING

[Judicial cooperation in criminal matters achievements during the legislative term 2014-2019: the role of the EP](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2019.

[Personal data protection achievements during the legislative term 2014-2019: the role of the European Parliament](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2019.

Poptcheva, E-M., [Understanding the EU Rule of Law mechanisms](#), EPRS, European Parliament, 2016.

Šajn, N, [EU policies – Delivering for citizens: Protecting European consumers](#), EPRS, 2019.

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