

# Addressing violations of democracy, the rule of law and fundamental rights

## SUMMARY

The common values of democracy, the rule of law and fundamental rights (DRF) lie at the heart of the European integration process and are central to the values of the European Union (EU). In practice, however, individual and collective (lack of) Member State action can undermine these common values. This situation applied before the outbreak of the coronavirus crisis, but some of the national measures taken since the outbreak of the pandemic have tested the resilience of these values further. More generally, the EU's response to DRF violations has so far not comprehensively tackled the problem.

The status quo can result in impunity for criminal activities, as prosecutors are unwilling or unable to take on certain cases, as well as violations of human dignity and fundamental rights. It also denies opportunities for individuals to live out their human potential, and take advantage of economic opportunities, as well as eroding the basis for mutual trust among national administrative and judicial authorities.

This Briefing puts forward a set of proposals aimed at enhancing the EU's resilience to DRF violations. It focuses in particular on possibilities for the European Parliament and national parliaments, with their dual mandate from EU citizens, to jointly strengthen their monitoring and investigative capabilities. In particular, they could build on their general resources to evaluate the implementation of (EU) law and further coordinate their tools to ensure the democratic accountability of Member State governments.

## DRF compliance in the Member States

In Article 2 of the Treaty on European Union (TEU) Member States agreed<sup>1</sup> to adhere to a set of [common values](#). Compliance with these EU common values is also a [requirement for EU accession](#). Moreover, they form the [basis for EU external policy](#). The requirements imposed by the EU on candidate countries and third countries must reflect<sup>2</sup> those imposed on its own Member States. EU common values include democracy, which inter alia requires [free and fair elections](#), a [free and pluralistic media landscape](#) and an open [civic space](#) allowing individuals to assemble and express their views freely. Furthermore, they include the [rule of law](#), a key requirement of which is that the law should be enforced by independent and impartial judicial authorities, inter alia ensuring effective judicial protection to individuals. Moreover, all EU Member States have committed to ensuring that [fundamental rights](#), including those of minorities, are respected. Democracy, the rule of law and fundamental rights need to be deployed together as they are in a [triangular relationship](#), reinforcing each other and together safeguarding the constitutional core of the EU and its Member States. For example, free and fair elections require common action to [respond to online disinformation campaigns](#) aimed at influencing the outcome and a guarantee that [courts examining](#)

## Democracy, Rule of Law and Fundamental Rights Monitoring Group

The [Democracy, Rule of Law and Fundamental Rights Monitoring Group](#) (DRFMG), Chair (Sophie in 't Veld (Renew Europe) was set up by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE). It monitors breaches of democracy, the rule of law and fundamental rights, and the fight against corruption within the EU. Specific situations in one or more EU Member States may be tackled by the DRFMG if deemed necessary by a majority of its Members, weighted according to the number of full Members of their group within the LIBE committee. Should a political group present an objection, the question should be referred to the LIBE coordinators for decision.

The task of the DRFMG is to recommend specific action (such as meetings with stakeholders, proposal to organise hearings and missions, suggest that the LIBE Committee puts forward proposals for resolutions or for reports in the LIBE committee). The Chair reports back to the LIBE committee on a regular basis, at least four times per calendar year: This group is constituted of two standing Members per political group. Members of other Committees may be invited, when needed, to specific meetings.

[electoral disputes are independent](#). Furthermore, measures aimed at safeguarding the rights of minorities, including the [Roma](#) and [LGTBI+ persons](#) will not succeed without tackling [institutional forms of discrimination](#).

Serious allegations have been made regarding the DRF record of a number of Member States. Here, a distinction should be made between the scenario in which there are recurrent [fundamental rights violations](#) and/or there is pervasive [corruption](#) for instance, and the scenario in which a government seeks to systematically weaken the checks and balances within the governance system of the Member State concerned. This latter scenario has also been referred to as '[constitutional capture](#)'. Academics have proposed a 'sunshine approach'<sup>13</sup> for the first scenario, involving dialogue and capacity-building. This could for instance result in support to strengthen the [national prevention, investigation and prosecution capacity in the fight against corruption](#) and the [quality and efficiency of the justice system, as well as detention](#)

[conditions](#). Under this scenario, Council of Europe bodies, such as the European Commission for Democracy through Law ([Venice Commission](#)), Group of States against Corruption ([GRECO](#)) and Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ([CPT](#)), as well as the EU's Agency for Fundamental Rights ([FRA](#)), can provide important assistance to Member States in their efforts to address DRF violations. In the second scenario, the emphasis 'should shift'<sup>4</sup> towards the [EU Treaties' enforcement mechanisms](#). In particular, the Article 7(1) TEU procedure, aimed at determining a 'clear risk of a serious breach' of EU common values, has been activated by the European Commission regarding [Poland](#) and by the European Parliament on [Hungary](#). For the moment, [Romania](#) and [Bulgaria](#) remain subject to the [cooperation and verification mechanism](#) (CVM), with the Commission monitoring their progress in the fields of judicial reform, corruption and (for Bulgaria) organised crime. Furthermore, the European Parliament has recently specifically addressed the situation in [Malta](#) and [Slovakia](#).

Certain national [emergency](#) measures taken since the outbreak of the coronavirus pandemic have [threatened these values further](#). The impact was felt not only in terms of the extraordinary powers granted to governments and the reduction of parliamentary scrutiny and judicial oversight, but also in terms of the severe curtailing of a range of [fundamental rights](#), including that to [free movement, assembly, equal treatment, privacy and data protection](#) and the [right to a fair trial](#). The impact of these measures was particularly felt by [vulnerable groups](#), including the [elderly, the Roma, refugees](#) and [prisoners](#). In this context, in a resolution adopted in April 2020 on 'EU coordinated action to combat the Covid-19 pandemic and its consequences', the European Parliament has [emphasised](#) that all measures taken at national and/or EU level must be in line with the rule of law, strictly proportionate to the exigencies of the situation, clearly related to the ongoing health crisis, limited in time and subjected to regular scrutiny.<sup>5</sup> It also called on the Commission to urgently assess whether national emergency measures are in conformity with the Treaties.<sup>6</sup>

Some allegations of DRF breaches also extend to situations in which Member States were acting in a transnational context. An example concerns the complicity of several EU Member States with a programme run by the United States Central Intelligence Agency (CIA), involving the [transportation, illegal detention and torture of prisoners](#) (CIA rendition) between 2001 and 2006. Despite [consistent efforts by the European Parliament and a number of national parliaments](#),<sup>7</sup> the full extent of this complicity is still unknown, as large parts of a [relevant report](#) by the US Senate remains confidential and accountability efforts in several EU Member States have stalled or never progressed. Similarly, a number of Member States have failed to seriously address<sup>8</sup> issues raised in the resolution following the inquiry by Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) regarding [electronic mass surveillance of EU citizens](#), notably by comprehensively evaluating and revising, where necessary, their national legislation and practices governing the activities of the intelligence services.

## EU response to DRF violations

A forthcoming EPRS study on protecting EU common values within the Member States<sup>9</sup> discusses more extensively the fact that the EU has so far been unable to comprehensively tackle violations of EU values, either through its ordinary monitoring and enforcement activities or the special procedures provided for in [Article 7 TEU](#). In the context of this paper, it is proposed that the reasons for this are a combination of their fragmented nature, weak enforceability, insufficient use and effectiveness, as well as a lack of effective follow-up.

In particular, monitoring activities, such as the [EU Justice Scoreboard](#) and the [European Semester](#) for economic governance have become increasingly relevant for the enforcement of EU values. However, they fail to detect internal linkages between the elements assessed and lack appropriate sanctions. Dialogues [with](#) and [among](#) Member States have also not prevented systemic threats from materialising in a number of Member States. [Preliminary references](#) concerning the interpretation of EU law have been an important tool to clarify the need for Member State compliance with EU values, even where they act outside the scope of EU law.<sup>10</sup> The main weakness of this procedure is that references have to be made by national judges. These [might not](#) refer relevant questions, due to a lack of capacity, knowledge or independence from the government. [Infringement procedures](#) have been used to enforce EU values.<sup>11</sup> However, even if their increased use would certainly reduce the [enforcement gap](#), by their very nature, beyond addressing the specific violations they often do not, or rather cannot, fully restore the systemic damage that has been inflicted.

Moreover, the European Parliament has indicated that the Article 7(1) TEU procedures regarding Poland and Hungary have not resulted in the concerns raised being addressed.<sup>12</sup> This is notably due to a lack of sufficient willingness among Member States so far to actively confront one of their peers during dedicated hearings. Finally, the Article 7(2) and 7(3) TEU procedures for the determination of a 'serious and persistent breach' of common values and the subsequent adoption of sanctions have not been used so far, and the [majority requirements](#) in the European Council make it unlikely that they ever will be.

## Negative impacts of the status quo

This status quo results in impunity for criminal activities as well as violations of human dignity and fundamental rights, including those of EU citizens. In a context within which judicial authorities lack independence from the government, prosecutors will not be willing or able to take on certain cases against powerful individuals (who are either politically active or are 'protected' by those in power), including those involving [fraud affecting the Union's financial interests](#). The present situation not only affects human dignity, particularly of those suffering institutional discrimination, but also prevents the effective exercise of fundamental rights by EU citizens and third country nationals alike. Such consequences were already discussed in an EPRS study on the [Cost of non-Europe in the area of freedom, security and justice](#)<sup>13</sup> published in 2019. The study inter alia highlights the negative

impacts [discrimination](#) has on individuals' ability to live out their full potential due to setbacks in the areas including education, health, housing and employment. It also discussed how negative impacts on fundamental rights cumulate along the [asylum](#) journey.

A future EPRS assessment of the added value of an EU mechanism on DRF<sup>14</sup> will detail the current costs of DRF violations in the EU in terms of GDP, budgetary expenditures, lost tax revenue and societal welfare. A large part of these costs are due to the pervasive [corruption](#) in a number of EU Member States. The study will also point out that more concerted DRF monitoring and enforcement action could reduce these costs significantly.

Moreover, it should be pointed out that Member States rely on each other's compliance with EU law, rights and values. Therefore, depreciation of EU values in one Member State will have EU-wide effects in many ways, notably undermining the basis for mutual recognition of decisions taken in that Member State in areas such as free movement and EU citizenship,<sup>15</sup> asylum<sup>16</sup> and criminal justice.<sup>17</sup> For example, Court of Justice of the European Union (CJEU) [case law](#) has confirmed that judicial cooperation in criminal matters, where individual rights are directly at stake, cannot function properly when there are serious concerns regarding the independence of judicial authorities.<sup>18</sup> This has already led to a more general [suspension](#) of judicial cooperation between certain Member States in the context of [European Arrest Warrant](#) procedures,<sup>19</sup> [pending](#) the reply to preliminary questions raised with the CJEU.<sup>20</sup> In this context the suggestion to [freeze](#) judicial cooperation pending a political resolution of the matter<sup>21</sup> might be worth reconsidering, certainly for the CJEU to signal that it is not up to courts in individual Member States to remedy systemic breaches of EU values, even if they are [obliged to secure the rights of individuals](#) appearing before them.

## Enhancing the EU's resilience to DRF violations

The current situation requires the EU to enhance its institutional [resilience](#) to DRF violations.<sup>22</sup> In this context, it should be noted that the EU has a number of different institutions, agencies and bodies that might contribute towards this aim. These of course include the European Commission, European Parliament and Council, as well as the FRA. At the same time national parliaments contribute to the good functioning of the Union in accordance with Article 12 TEU. As indicated in the summary, this paper focuses on possibilities for the European Parliament and national parliaments, with their dual mandate from EU citizens, to jointly strengthen their DRF monitoring and investigative capabilities.

### Strengthening national watchdogs

Enhancing the EU's resilience to DRF violations starts with [promoting EU values](#) at national level. This can, for instance, be done through strengthening the watchdog functions of [national human rights institutions](#), [civil society](#) and [independent and pluralistic media](#), as well as ensuring [access to justice](#) for victims of DRF violations. EU funding, notably under the [Rights and Values](#), [Creative Europe](#) and [Justice](#) programme, part of the 2021-27 Multiannual Financial Framework (MFF) currently [under negotiation](#), is one way to strengthen these aspects. Beyond the role of media civil society and independent judicial authorities, the importance of individual [whistle-blowers reporting breaches of EU law](#)<sup>23</sup> should be highlighted here. But whistle-blower protection should also be underlined in areas outside the scope of EU law such as [national security](#), activities under the guise of which [may undermine](#) compliance with EU values and rights.<sup>24</sup>

### Concluding a DRF monitoring and enforcement pact

The current weaknesses in DRF monitoring and enforcement activities at EU level notably concern their fragmentation and lack of effectiveness in redressing DRF violations. In this context, the European Parliament has repeatedly [called](#) since 2016 for an EU 'pact' on DRF.<sup>25</sup> This pact would be based on an [interinstitutional agreement](#) between the European Parliament, Commission and Council. It would entail the preparation of an annual report on DRF compliance by the Member

States (DRF report), including country-specific recommendations. The DRF report would be drafted by a panel of independent experts, meant to ensure the thorough and independent contextual analysis needed to detect patterns in risks and threats undermining EU values. It would subsequently be adopted by the European Commission and lead to Council conclusions and the adoption of a Parliament resolution following an [inter-parliamentary debate](#) involving the European Parliament and national parliaments. These could require the Commission to take action, ranging from enhanced monitoring and '[systemic infringement action](#)',<sup>26</sup> which entails bundling several infringement cases together, to triggering a DRF dialogue or procedures to enforce EU values under Articles 7(1) and 7(2) TEU. The pact would integrate, align and complement existing monitoring mechanisms, including the abovementioned [EU Justice Scoreboard](#), the [European Semester](#) and the [CVM](#) applicable to Bulgaria and Romania, as well as incorporate dialogues [with](#) and [among](#) Member States.

Although the Commission initially rejected the proposal, in 2019 it [announced](#) a 'rule of law review cycle' culminating in an 'annual rule of law report' covering all Member States.<sup>27</sup> The first annual rule of law report is to be published in [September 2020](#). As discussed in more detail in a preliminary [European Added Value Assessment of the DRF Pact](#),<sup>28</sup> published in April 2020, there are four main differences between the approach of the Parliament and the Commission. First, the Commission's monitoring exercise is not based on an interinstitutional agreement. This could have been a way to ensure coordination between the institutions, notably as regards the methodology. Second, Parliament envisaged a broader thematic scope for the monitoring exercise, focusing not only on rule of law aspects, but also on elements of democracy and fundamental rights. Third, instead of allocating a key role to a panel of independent experts, the Commission takes this assessment into its own hands, with a strong role for a network of national contact points, which has been [criticised](#) in academia, as such a network partially raises the risk that 'rule of law-deficient Member States designate a contact point that has been politically captured'.<sup>29</sup> Fourth, instead of insisting on a certain follow-up, the Commission rather encourages inter-parliamentary debates within Parliament and discussions within Council. A further legislative own-initiative report, directly making use of Parliament's right to propose an interinstitutional agreement, is currently being [considered](#) by the LIBE committee (rapporteur: Michal Šimečka, Renew, Slovakia).<sup>30</sup>

## DRF monitoring by the European Parliament and national parliaments

Irrespective of whether an interinstitutional agreement may be agreed upon in the future, citizens [expect](#) effective action from the European Parliament and national parliaments to uphold EU common values. In this context, it should be underlined that the European Parliament has its own [competences](#) to monitor compliance with EU values, in order for it to effectively exercise its right to trigger the Article 7(1) TEU procedure aimed at determining a 'clear risk of a serious breach' of common values, when necessary. Furthermore, the European Parliament and national parliaments can contribute towards trust in compliance with EU common values by exercising their Lisbon Treaty [mandate](#)<sup>31</sup> in the area of evaluation of the implementation of EU policies, notably in the [area of freedom security and justice](#) (AFSJ).<sup>32</sup> The tools available to the European Parliament and national parliaments, including inquiries, country visits and parliamentary research, can also enhance the knowledge base related to DRF compliance in the Member States.

In particular, the European Parliament and national parliaments could decide to launch an annual [inter-parliamentary debate](#) on the state of DRF in the Union, thereby provisionally implementing their part of the DRF pact. This initiative could profit from the practical experience gained in related areas, such as the [joint parliamentary scrutiny of Europol](#), which proves that parliamentarians can also organise joint scrutiny via electronic means. For such an inter-parliamentary debate to be effective it would need to be properly prepared both within the European Parliament and national parliaments.

It should also be understood that DRF violations are often only the tip of the iceberg of ordinary infringements of secondary EU law aimed at concretely fulfilling the EU's promises towards its citizens. As discussed, a good entry point for enhanced cooperation with national parliaments on DRF monitoring could be the evaluation of the implementation of EU legislation more generally. A recent EPRS study on [better regulation practices in national parliaments](#)<sup>33</sup> found that with regard to ex-post evaluation, six EU-27 parliaments have developed structures for substantial involvement. Moreover, the research services of the two additional parliaments carry out ad hoc evaluations upon request, albeit in low numbers. Four further EU-27 parliaments engage in evaluation activities at a smaller scale. The study proposes a 'community of practice' involving the European Parliament and national parliaments, aimed at mutual learning through the exchanges of best practices. This idea can certainly be transposed to monitoring compliance with EU values in the Member States.

Furthermore, the legal analysis of DRF violations needs to be robust and provide an independent, inclusive and holistic assessment, in the sense that information from relevant sources and stakeholders is triangulated to provide a proper context of individual violations, both within the Member State concerned and as regards the transnational connections and implications, notably for the AFSJ. The involvement of a network of academic experts, similar to the one that was active in the area of [fundamental rights](#) between 2002 and 2006, could ensure that these criteria are met. Beyond fundamental rights studies and information tools such as the European Fundamental Rights Information System ([EFRIS](#)), Fundamental Rights Agency reports could potentially also discuss DRF compliance in the Member States more generally, either within its current mandate or subject to a [revision](#) of its mandate in accordance with Article 352 TFEU, which does however require unanimity among Member States.<sup>34</sup>

## DRF investigations by the European Parliament and national parliaments

Once the European Parliament decides to further investigate an issue either in the context of Article 7 TEU related to a specific Member State or in the context of a horizontal investigation, it will need to be equipped with the right tools to obtain information, including witness statements. Past investigations, notably into [CIA rendition](#) and [electronic mass surveillance of EU citizens](#), have encountered difficulties in obtaining access to relevant information, including through the hearing of evidence, also during country visits. As indicated in studies related specifically to the [European Parliament's right of inquiry](#),<sup>35</sup> this is related to the fact that the Parliament currently [lacks](#) the ability to apply sanctions for groundless refusals to provide information or to participate in its hearings.<sup>36</sup> Here, close cooperation with national parliaments could be beneficial as they often have a [stronger mandate](#) to obtain the relevant information and hear evidence.<sup>37</sup> Obviously, this also depends on the willingness of the (majority within) the national parliament in question to make use of this mandate. Finally, in case there are indications that the DRF violation also contains criminal elements, these should be further investigated by [European Anti-Fraud Office](#), the [European Public Prosecutor's Office](#) (EPPO) and/or national law enforcement authorities together with [Europol](#) and [Eurojust](#).

Despite the difficulties which European Parliamentary investigations into DRF violations have faced, one should highlight their intrinsic value for DRF enforcement. For instance, the evidence collected through the CIA rendition inquiry contributed to [European Court of Human Rights](#) (ECHR) judgments<sup>38</sup> against various Member States, notably for their complicity in the torture on individuals on their territory. Similarly, the evidence collected by the ECHR can build the case for (systemic) infringement procedures by the European Parliament as well as parliamentary and judicial accountability at national level, as long as the process of constitutional capture has not been completed. Again, the rigour of the investigation conducted will be determinate for its ability to fulfil these functions. This is where the analytical support of the Fundamental Rights Agency, academic experts and research services within the Parliament and national parliaments could be of crucial assistance.

## Strengthening DRF enforcement

Agreeing on a DRF pact will not resolve a number of outstanding institutional issues related to the enforcement of EU values. The first problem concerns the [majorities required](#) for establishing a 'clear risk of a serious breach' (Article 7(1) TEU), or 'serious and persistent breach' (Article 7(2) TEU) of common values. The [Treaty would have to be changed](#) for lesser majorities to be required. The second problem is that the ultimate sanction for a breach of EU values is the [suspension](#) of a Member State's voting rights in Council. Here the power of the purse might be more effective. In this context, the European Commission has proposed a mechanism on [protecting the EU budget against generalised rule of law deficiencies](#).<sup>39</sup> This measure would introduce a general rule of law conditionality into the EU's financial rules. Any Member State where a generalised rule of law deficiency is found could be subject to sanctions, including the suspension of payments and commitments, reduced funding and a prohibition on concluding new commitments. Negotiations on this proposal are also still ongoing, with Parliament and Council positions [wide apart](#) in terms of scope and procedure. Its adoption remains an [absolute priority](#) for the European Parliament. Given the close connection with the protection of the financial interests of the Union, a further proposal could be to tie participation in the EPPO, or a finding of equivalent protection of the Union's financial interests in the Member State concerned, to the allocation of EU funding. Currently [22 out of the 27 Member States participate in the EPPO](#),<sup>40</sup> which was agreed under enhanced cooperation. Denmark, Hungary, Ireland, Poland and Sweden do not participate. This option could become even more interesting were the competence of the EPPO to be extended to other types of serious crime in accordance with Article 86(4) TFEU.<sup>41</sup> Obviously, beyond effective prosecution one would also need the accused to be tried by an independent and impartial court.

## Potential initiatives

	Project	Likely lead actor	What should be done?	
1	EU funding to support civil society, independent media as well as ensuring access to justice	EP, Council, Commission	EU funding, notably under the <a href="#">Rights and Values</a> , <a href="#">Creative Europe</a> and <a href="#">Justice</a> programme, part of the 2021-2027 multiannual financial framework (MFF) currently <a href="#">under negotiation</a> , is one way to strengthen these aspects.	
2	Whistle-blower protection	EP, Council, Commission, Member States	Protect whistle-blowers reporting DRF breaches <a href="#">within</a> and outside the scope of EU law.	
3	EU pact on DRF	EP, Council, Commission	Adopt a <a href="#">pact</a> on DRF based on an interinstitutional agreement among EU institutions. This pact would integrate and align the existing DRF monitoring and dialogue mechanisms developed by EU institutions	
4	Annual inter-parliamentary debate on the state of DRF in the Union	EP, national parliaments	The European Parliament and national parliaments could decide to launch an annual <a href="#">inter-parliamentary debate</a> on the state of DRF in the Union, thereby provisionally implementing their part of the proposed EU pact on DRF	
5	A European Parliament/national parliaments 'community of practice' on DRF monitoring	EP, national parliaments	The EP and national parliaments could establish a 'community of practice' on DRF monitoring aimed at mutual learning and the exchange of best practices.	

6	A network of academic experts on DRF compliance in the Member States	EP	Pending agreement on an EU pact on DRF, the European Parliament could launch a network of academic experts reporting on DRF compliance in the Member States and the implications for (secondary) EU law	
7	Extend the mandate of the Fundamental Rights Agency to democracy and the rule of law.	EP, Council, Commission	The Fundamental Rights Agency could issue regular reports on DRF compliance in the Member States, either within its current mandate or subject to a <a href="#">revision</a> of its mandate in accordance with Article 352 TFEU, which does however require unanimity among Member States.	
8	Enhance cooperation between European Parliament and national parliaments in DRF investigations	EP, national parliaments	The European Parliament currently <a href="#">lacks</a> the ability to apply sanctions for groundless refusals to provide information or to participate in its hearings. Here, close cooperation with national parliaments could be beneficial as they often have a <a href="#">stronger mandate</a> to obtain the relevant information and hear persons.	
8	Tie participation in the EPPO, or equivalent protection, to EU funding	EP, Council, Commission	Given the close connection with the protection of the financial interests of the Union, a further proposal could be to tie participation in the EPPO, or a finding of equivalent protection of the Union's financial interests in the Member State concerned, to the allocation of (future) EU funding.	
9	Freeze European Arrest Warrant procedures pending the resolution of a threat to EU values	European Court of Justice, national courts	Building on previous <a href="#">CJEU case law</a> and in order to avert a complete breakdown, the suggestion to <a href="#">freeze</a> judicial cooperation pending a political resolution of a threat to EU values might be worth reconsidering, certainly for the CJEU to signal that it is not up to courts in individual Member States to remedy systemic breaches of EU values, even if they are <a href="#">obliged to secure the rights of individuals</a> appearing in front of them.	
10	Make use of systemic Infringement Proceedings	Commission	<a href="#">Systemic infringement action</a> under Article 2 TEU and 258 TFEU entails bundling several infringement cases together	
11	Adopt budgetary conditionality regulation	EP, Council, Commission	The European Commission has proposed a mechanism on <a href="#">protecting the EU budget against generalised rule of law deficiencies</a> . This measure would introduce a general rule of law conditionality into the EU's financial rules. Any Member State where a generalised rule of law deficiency is found could be subject to financial sanctions, including the suspension of payments and commitments, reduced funding and a prohibition on concluding new commitments.	
12	Revise the majorities required under Article 7 TEU	EP, national parliaments, European Council, Commission, Member States	The <a href="#">majorities required</a> for establishing a 'clear risk of a serious breach' (Article 7(1) TEU) or 'serious and persistent breach' (Article 7(2) TEU) of common values could be changed in accordance with a <a href="#">Treaty revision</a> procedure for lesser majorities to be required.	

## REFERENCES

- Anglmayer I., [Better regulation practices in national parliaments](#), EPRS, European Parliament, 2020.
- Bárd P., van Ballegooij W., '[Judicial independence as a precondition for mutual trust? The CJEU in Minister for Justice and Equality v. LM](#)', *New Journal of European Criminal Law*, 2018/3, pp. 353–365.
- Bassot E., [Ten opportunities for Europe post-coronavirus, exploring potential for progress in EU policy-making](#), EPRS, European Parliament, 2020.
- Binder K., Diaz Crego M., Eckert G., Kotanidis S., Manko R. and Del Monte M., '[States of emergency in response to the coronavirus crisis: Situation in certain Member States](#)', EPRS, European Parliament, 2020.
- Atanassov N., Dalli H., Dumbrava C., Eckert G., Jurviste U., Radjenovic A., Voronova S., '[States of emergency in response to the coronavirus crisis: Situation in certain Member States II](#)', EPRS, European Parliament, 2020.
- Bentzen N., Boström A., Del Monte M., Odink I., Prpic M., Tuominen M., '[States of emergency in response to the coronavirus crisis: Situation in certain Member States III](#)', EPRS, European Parliament, 2020.
- Alexandre Z., Del Monte M., Eckert G., Kotanidis S., Langova V. and Rakovska V., '[States of emergency in response to the coronavirus crisis: Situation in certain Member States IV](#)', EPRS and Unit for Legislative Quality, DG Presidency, European Parliament, 2020.
- Carrera S., Guild E., Hernanz N., [The Triangular Relationship between Fundamental Rights, Democracy and the Rule of Law in the EU, Towards an EU Copenhagen Mechanism](#), CEPS, 2013.
- Debié F. (coordinator), [Towards a more resilient Europe post-coronavirus: An initial mapping of structural risks facing the EU](#), EPRS, European Parliament, 2020.
- Diaz Crego M., Maňko R., van Ballegooij W., 'Protecting EU common values within the Member States, An overview of monitoring, prevention and enforcement mechanisms at EU level', EPRS, European Parliament, 2020 (forthcoming).
- Hillion C., [Overseeing the rule of law in the European Union, legal mandate and means](#), Swedish Institute for European Policy Studies, European Policy Analysis 2016/1.
- Manko R., [Protecting the EU budget against generalised rule of law deficiencies](#), EPRS, 2020.
- Müller J.W., [Rising to the challenge of constitutional capture, Protecting the rule of law within EU member states](#), Eurozine, 21 March 2014.
- Scheppele K.L., 'Enforcing the Basic Principles of EU law through Systemic Infringement Actions', in C. Closa and D. Kochenov (eds.), *Reinforcing the Rule of Law Oversight in the European Union*, Cambridge University Press, 2016.
- van Ballegooij W. and Evas T., [An EU mechanism on democracy, the rule of law and fundamental rights: European Added Value Assessment accompanying the Parliament's Legislative Initiative Report](#), EPRS, European Parliament, 2016; Annex I, [The establishment of an EU mechanism on democracy the rule of law and fundamental rights](#)' (by L. Pech, E. Wennerström, V. Leigh, A. Markowska, L. De Keyser, A. Gómez Rojo and H. Spanikova); Annex II, [Assessing the need and possibilities for the establishment of an EU scoreboard on democracy, the rule of law and fundamental rights](#)' (by P. Bárd, S. Carrera, E. Guild and D. Kochenov, with a thematic contribution by W. Marneffe).
- van Ballegooij W., [Area of freedom, security and justice: Cost of Non-Europe](#), EPRS, European Parliament, 2019.
- van Ballegooij W., [European added value of an EU mechanism on democracy, the rule of law and fundamental rights Preliminary assessment](#), EPRS, European Parliament, 2020.
- van Ballegooij W., [European Arrest Warrant, European Implementation Assessment](#), EPRS, 2020.
- [Inquiries by Parliaments, the political use of a democratic right](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2020.
- [Strengthening the Fundamental Rights Agency, the Revision of the Fundamental Rights Agency Regulation](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2020.
- [The European Parliament's Right of Inquiry in context, A comparison of the national and European legal frameworks](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2020.
- [The impact of Covid-19 measures on Democracy, the Rule of Law and Fundamental Rights in the EU](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2020.

## ENDNOTES

- <sup>1</sup> C. Hillion, [Overseeing the rule of law in the European Union, legal mandate and means](#), Swedish Institute for European Policy Studies, European Policy Analysis 2016/1, p.2: 'The values of the Union are "common to the Member States", and as such they must be respected for states to keep their membership rights intact.'
- <sup>2</sup> Cf. E. Bassot, [Ten opportunities for Europe post-coronavirus, exploring potential for progress in EU policy-making](#), EPRS, European Parliament, 2020, section 9 (championing European values and multilateralism).
- <sup>3</sup> W. van Ballegooij and T. Evas, [An EU mechanism on democracy, the rule of law and fundamental rights: European Added Value Assessment accompanying the Parliament's Legislative Initiative Report](#), EPRS, European Parliament, 2016; Annex II, [Assessing the need and possibilities for the establishment of an EU scoreboard on democracy, the rule of law and fundamental rights](#) by P. Bárd, S. Carrera, E. Guild and D. Kochenov, with a thematic contribution by W. Marneffe, section 4.9.
- <sup>4</sup> Ibidem.
- <sup>5</sup> [European Parliament resolution of 17 April 2020 on EU coordinated action to combat the COVID-19 pandemic and its consequences](#) P9\_TA(2020)0054, paragraph 46.
- <sup>6</sup> Ibidem, paragraph 47.
- <sup>7</sup> [European Parliament resolution of 10 October 2013 on alleged transportation and illegal detention of prisoners in European countries by the CIA \(2013/2702\(RSP\)\)](#), P7\_TA(2013)0418 with further references.
- <sup>8</sup> [European Parliament resolution of 29 October 2015 on the follow-up to the European Parliament resolution of 12 March 2014 on the electronic mass surveillance of EU citizens](#), P8\_TA(2015)0388, paragraph 3.
- <sup>9</sup> M. Diaz Crego, R. Mańko, W. van Ballegooij, Protecting EU common values within the Member States, An overview of monitoring, prevention and enforcement mechanisms at EU level, EPRS, European Parliament, 2020 (forthcoming).
- <sup>10</sup> CJEU judgment of 27 February 2018 in case C-64/16, *Associação Sindical dos Juizes Portugueses* [ECLI:EU:C:2018:117](#), paragraphs 34, 35.
- <sup>11</sup> e.g. in CJEU judgment of 24 June 2019 in case C-619/18, *European Commission v. Poland* [ECLI:EU:C:2019:531](#), paragraphs 54-59.
- <sup>12</sup> European Parliament resolution of 16 January 2020 on ongoing hearings under Article 7(1) of the TEU regarding Poland and Hungary, [P9\\_TA\(2020\)0014](#), paragraph 3.
- <sup>13</sup> W. van Ballegooij, [Area of freedom, security and justice: Cost of Non-Europe](#), EPRS, European Parliament, 2019.
- <sup>14</sup> W. van Ballegooij, C. Navarra, [An EU mechanism on democracy, the rule of law and fundamental rights: European Added Value Assessment accompanying the Parliament's Legislative Initiative Report](#), EPRS, European Parliament, 2020 (forthcoming).
- <sup>15</sup> e.g. CJEU judgment of 5 June 2018 in case C-673/16, *Coman* [ECLI:EU:C:2018:385](#), paragraph 36.
- <sup>16</sup> e.g. CJEU judgment of 21 December 2011 in joined cases C-411/10 (*M.S.*) and *M.E.* (C-493/10) [ECLI:EU:C:2011:865](#), paragraph 86.
- <sup>17</sup> e.g. CJEU judgment of 5 April 2016, in joined cases C-404/15 (*Aranyosi*) and C-659/15 PPU (*Căldăraru*) [ECLI:EU:C:2016:198](#), paragraph 88.
- <sup>18</sup> CJEU judgment of 25 July 2018 in case C-2016/18 PPU (*L.M.*) [ECLI:EU:C:2018:586](#), paragraph 60.
- <sup>19</sup> [IRK legt alle overleveringen naar Polen voorlopig stil](#) (District Court of Amsterdam suspends all surrenders to Poland for the moment), District Court of Amsterdam, 3 September 2020.  
W. van Ballegooij, [European Arrest Warrant. European Implementation Assessment](#), EPRS, European Parliament, 2020, section 2.2.6. (relationship with fundamental rights and EU values).
- <sup>20</sup> District Court of Amsterdam of 31 July 2020, Case [13/751021-20](#); [Dutch court: Polish judiciary no longer independent](#), Politico, 31 July 2020.
- <sup>21</sup> P. Bárd, W. van Ballegooij, [Judicial independence as a precondition for mutual trust? The CJEU in Minister for Justice and Equality v. LM](#), *New Journal of European Criminal Law*, 2018/3, pp. 353–365.
- <sup>22</sup> For a more extensive overview of the structural risks challenging the Union's resilience see F. Debié, (coordinator), *Towards a more resilient Europe post-coronavirus: An initial mapping of structural risks facing the EU*, EPRS, European Parliament, 2020.
- <sup>23</sup> Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, OJ L 305, 26.11.2019, p. 17–56.
- <sup>24</sup> CJEU judgment of 16 July 2020, Case C-311/18 (Schrems II), [ECLI:EU:C:2020:559](#), paragraphs 104, 137; K. Irion, [Schrems II and Surveillance: Third Countries' National Security Powers in the Purview of EU Law](#), *European Law blog*, 24 July 2020.
- <sup>25</sup> European Parliament resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights, [P8\\_TA\(2016\)0409](#).

- <sup>26</sup> K.L. Scheppele, 'Enforcing the Basic Principles of EU law through Systemic Infringement Actions', in C. Closa and D. Kochenov (eds.), *Reinforcing the Rule of Law Oversight in the European Union*, Cambridge University Press, 2016.
- <sup>27</sup> European Commission communication, [Strengthening the rule of law within the Union- A blueprint for action](#), COM (2019) 343 of 17 July 2019.
- <sup>28</sup> W. van Ballegooij, [European added value of an EU mechanism on democracy, the rule of law and fundamental rights Preliminary assessment](#), EPRS, European Parliament, 2020.
- <sup>29</sup> L. Pech, D. Kochenov, B. Grabowska-Moroz and J. Grogan, [The Commission's Rule of Law Blueprint for Action: A Missed Opportunity to Fully Confront Legal Hooliganism](#), Reconnect blog, 4 September 2019.
- <sup>30</sup> The Establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights; [Draft Report on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights](#) (2020/2072(INL)) Rapporteur: Michal Šimečka, 1 July 2020.
- <sup>31</sup> Consolidated version of the Treaty on the Functioning of the European Union, Protocol No 1. on the role of national parliaments in the European Union, OJ C 202, 7 June 2016, p. 203–205; Relations between the European Parliament and national parliaments under the Treaty of Lisbon European Parliament resolution of 7 May 2009 on the development of the relations between the European Parliament and national parliaments under the Treaty of Lisbon (2008/2120(INI)), OJ C 212E, 5 August 2010, p. 94–99.
- <sup>32</sup> Article 70 TFEU.
- <sup>33</sup> I. Anglmayer, [Better regulation practices in national parliaments](#), EPRS, European Parliament 2020.
- <sup>34</sup> Cf. [Strengthening the Fundamental Rights Agency, the Revision of the Fundamental Rights Agency Regulation](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2020.
- <sup>35</sup> European Parliament resolution of 18 April 2019 on the negotiations with the Council and Commission on the legislative proposal for a regulation on the European Parliament's right of inquiry [P8\\_TA\(2019\)0440](#).
- <sup>36</sup> [The European Parliament's Right of Inquiry in context. A comparison of the national and European legal frameworks](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2020, section 2.3.3.
- <sup>37</sup> [Inquiries by Parliaments, the political use of a democratic right](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, 2020, chapter 2.
- <sup>38</sup> European Court of Human Rights, [Factsheet: Secret detention sites](#), Press Unit, March 2019.
- <sup>39</sup> For an overview, including the academic debate regarding the pros and cons of this proposal see R. Manko, [Protecting the EU budget against generalised rule of law deficiencies](#), EPRS, European Parliament, 2020.
- <sup>40</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), OJ L 283, 31 October 2017, p. 1–71.
- <sup>41</sup> Article 86(4) TFEU: 'The European Council may, at the same time or subsequently, adopt a decision amending paragraph 1 in order to extend the powers of the European Public Prosecutor's Office to include serious crime having a cross-border dimension and amending accordingly paragraph 2 as regards the perpetrators of, and accomplices in, serious crimes affecting more than one Member State. The European Council shall act unanimously after obtaining the consent of the European Parliament and after consulting the Commission.'

## DISCLAIMER AND COPYRIGHT

This document is prepared for, and addressed to, the Members and staff of the European Parliament as background material to assist them in their parliamentary work. The content of the document is the sole responsibility of its author(s) and any opinions expressed herein should not be taken to represent an official position of the Parliament.

Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy.

© European Union, 2020.

[eprs@ep.europa.eu](mailto:eprs@ep.europa.eu) (contact)

[www.eprs.ep.parl.union.eu](http://www.eprs.ep.parl.union.eu) (intranet)

[www.europarl.europa.eu/thinktank](http://www.europarl.europa.eu/thinktank) (internet)

<http://epthinktank.eu> (blog)

