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on Democracy, Rule of Law and Fundamental Rights Monitoring Group
(DRFMG) Report (LIBE/9/02808) Report

Committee on Civil Liberties, Justice and Home Affairs

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I. Setting up and mandate

The Democracy, Rule of Law and Fundamental Rights Monitoring Group (DRFMG) of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) was set-up upon recommendation of the LIBE Coordinators adopted on 5 September and endorsed by the full LIBE Committee on 12 September.

The Committee decided thus to renew and expand the mandate of its working group on rule of law issues which had been formed in June 2018 in the aftermath of the murders of the Maltese journalist Daphne Caruana Galizia, and the Slovakian journalist Jan Kuciak and his fiancée Martina Kusnirova, to 'monitor the situation as regards rule of law and fight against corruption within the EU and address specific situations, in particular Malta and Slovakia'. Work carried out under the previous term had led to the adoption of a Parliament Resolution with recommendations towards the Governments of the two countries and the EU institutions, drawn up on the basis of fact-finding missions, exchanges of views and hearings.

Based on a broader mandate, the DRFMG is to address threats to democracy, the rule of law and fundamental rights, as well as the fight against corruption within the EU, across all Member States. Specific situations in one or more EU Member States may be tackled by the Working Group if deemed necessary by a majority of its Members, weighted according to the number of full Members of their group within the LIBE committee. In case of objection by a political group, the question should be referred to the LIBE coordinators for decision.

Broader in scope, the working group has also enlarged its membership. The DRFMG is constituted of 2 standing Member per political group. Members of other Committees can be invited, when needed, to specific meetings (see appended "Mandate, working methods and composition"). The Chair of the working group, Sophie in 't Veld (Renew Europe) was nominated and elected at the constitutive meeting of the working group.

As a LIBE working group, the DRFMG is meant to carry out preparatory and complementary work on DRF issues and on this basis recommend specific actions to the LIBE Committee, such

as meetings with stakeholders, hearings and missions, as well as to make suggestions for proposals for resolutions and reports. In addition, the DRFMG Chair is due to report back to the LIBE committee on a regular basis. Eventually, the Group's mandate will remain in force until 31 December 2021, at which point a mid-term review will be carried out.

The DRFMG started to meet on a monthly basis. With the coronavirus outbreak though, it had to cancel its regular monthly meeting in March due to confinement restrictions. It swiftly resumed meetings as of 2 April, accelerating then their rhythm to a weekly basis.

This report presents an overview of the work carried out by the DRFMG under those special COVID-19 crisis circumstances.

II. Summary of meetings

Since its set up, the monitoring group has held 13 meetings, in camera, dedicated to several topics agreed by their Members. Beyond a focus on developments in Malta and Slovakia, following on from work carried out since the murder of journalists in both countries, the Group has also devoted particular attention to several horizontal themes such as:

- shrinking space for civil society (exchanges of views with the Director of FRA, the Commission, the Chairman of the Financial Mechanism Committee for the Norway/EEA grants, and representatives of Civil Society Europe, European Civic Forum and OSI);
- residence and citizenship investment schemes (exchanges of views with representatives of DG Justice and DG Home);
- developments in Member States concerning the independence of judiciary (exchanges of views with Members of the Venice Commission and the Secretary of the Venice Commission, the Council of Europe Secretariat, exchanges of views with representatives of European Network of Councils for the Judiciary).

Regarding Malta and Slovakia, regular exchanges are held with authorities and the Group could note the developments from a rule of law perspective. In this view, Members also had the opportunity to exchange with representatives of the different competent bodies of the Council of Europe on the reports published by MONEYVAL and GRECO, with representatives of Europol on the latest developments in Malta, with representatives of DG HOME on the latest developments in Slovakia as well as with representatives of the Slovak media on media freedom and safety of journalists. Given that the mission to Slovakia that was initiated by the DRFMG did not take place due to COVID-19 outbreak, the Members had also an exchange of views on the latest developments in Slovakia with Ambassador Peter Javorčík, Permanent Representative of Slovakia to the EU (see Annex with feedback note of the meeting of 2 April 2020).

Recently, with the developments in Member States linked to the virus outbreak, the monitoring group has focused its attention on the impact of emergency measures on democracy, fundamental rights and the rule of law. The DRFMG undertook so far a very close monitoring

of those measures, turning to a rhythm of weekly web-meetings supported by weekly overviews of the situation in the Member States provided by the Policy Department on Citizens' Rights and Constitutional Affairs¹.

To this purpose, several meetings via remote means have been organised weekly from April to June, that allowed Members to exchange views on this topic with the Commissioner for Justice and representatives of the Commission and EEAS, with the Director of the EU Agency for Fundamental Rights, with the Director General for Human Rights and Rule of Law at the Council of Europe and other representatives of different Council of Europe bodies,, with the representatives of the Croatian Presidency of the Council, with representatives of civil society, of journalists, of national authorities and of other relevant stakeholders in this field (see Annex for full feedback notes of those meetings).

In these meetings, discussions focused on the shift in the balance of powers to the benefit of the executive, the reduced activities of Parliaments and constraints on the judiciary; the reduced space for democratic debate and scrutiny; limitations to freedom of expression and access to information, as well as to freedom of assembly; the impact of disinformation on democracy and rule of law during this period and data protection issues notably with "contact-tracing" applications.

A reporting on the activities of DRFMG by the Chair and the other Members represented in this Working Group took place in the LIBE committee meeting of 23 April 2020 and a follow up reporting is planned for early July in a LIBE meeting. This report by the Chair also serves as written input for that meeting. The report has been drawn up in consultation with and on behalf of the DRFMG Members, noting that some political groups may have reservations on individual issues.

III. Conclusions on the impact of COVID-19 related measures on the state of democracy, the rule of law and fundamental rights

General observations

Exceptional powers may be temporarily justified for the executive at times of crisis. Member states have a duty to protect the right to life and the right to health. But as democratic checks and balances are severely weakened, and as a great number of fundamental rights are drastically restricted during a period when exceptional powers are applicable, it is essential that it does not go beyond what is necessary and proportionate, and that we go back to normal as soon as the situation allows. It is important that effective (parliamentary and judicial) scrutiny, the predictability of emergency legislation and loyal co-operation among state institutions is guaranteed. To some extent, it will only be possible to assess the necessity and proportionality of the measures after the crisis, but a number of observations can be made nevertheless.

¹ For a summary of its main contents, see [The Impact of Covid-19 Measures on Democracy, the Rule of Law and Fundamental Rights in the EU](#)

As the national sanitary measures vary widely throughout the EU, so do the measures conferring exceptional powers on the executive, the restriction of rights, and enforcement methods. The choice for a particular approach may depend on epidemiological and practical considerations, like the severity of the outbreak and the capacity of the public health system. The divergences between member states suggest that other considerations can play a role as well. Although both public health policies and constitutional arrangements for exceptional powers are strictly national competences, it must be ensured that democracy, the rule of law and citizens' rights are protected equally across the EU, and that national measures do not constitute unnecessary or disproportional obstacles to rights and freedoms, to the internal market and to the Schengen Area.

There are several internationally agreed principles and standards applicable during a period when exceptional powers are applicable, for example in legally binding conventions such as the UN International Covenant on Civil and Political Rights. Various international organisations have also issued guidelines, such as the toolkit of the Council of Europe and the specific document of the Venice Commission, which identify European standards on the matter.² In addition, civil rights violations may be challenged in international courts, like the CJEU or the European Court of Human Rights, and have binding effect on all member states. In the context of the development of a joint EU crisis response, it is therefore important to consider how such common European guiding principles and standards are applied in the EU and its Member States in periods when exceptional powers are applicable.

COVID-19 measures have a serious impact on democracy, the rule of law and fundamental rights in the European Union. It is the first time that exceptional government powers have been applied to almost the entire territory of the European Union, and all countries and all citizens are affected. It is therefore also a common European challenge to ensure the swift return to normal governance and restore all regular checks and balances and full civil rights.

Moreover, many measures touch directly or indirectly upon EU law and EU policies, and they have therefore to be compliant with the EU Treaties, including Article 2 TEU, and the Charter of Fundamental Rights. For example: the closing of borders affects the freedom of movement within the EU and passport free travel in Schengen. Contact tracing and monitoring the spread of the virus impact the right to privacy and data protection. Lockdown, confinement, and contact restriction measures affect EU asylum policies, but also the EU laws on non-discrimination. Many measures also affect the rules of the internal market and of the Eurozone. When governments make use of exception clauses in EU laws, the Charter of Fundamental Right still applies. All EU countries and the UK are also bound by the European Convention on Human Rights and relevant international conventions.

² Council of Europe, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis - A toolkit for member states (SG/Inf(2020)11), 7 April 2020; European commission for democracy through law (Venice commission), Respect for democracy, human rights and the rule of law during states of emergency - reflections (CDL-PI(2020)005rev), 26 May 2020.

Many fundamental rights and freedoms are at stake: the right to life, the right to health care, the respect for private and family life, the right to the protection of personal data, the right equality before the law, non-discrimination, the rights of the child, the individual right to asylum, the right to an effective remedy and to a fair trial, legal principles like transparency and predictability of laws, the freedom of expression and information, and many more.

The rule of law and democracy are affected in terms of weakening of parliamentary and judicial scrutiny, checks and balances, the separation of powers, local democracy, freedom of information, freedom of assembly and more.

There are likely to be legal challenges and complaints of citizens who feel their rights have been violated, and some may well end up before the EU Court of Justice in Luxemburg, or the European Court of Human Rights in Strasburg. Measures that are manifestly in breach of EU law shall meet with infringement procedures by the European Commission.

So even when it appears the response to COVID-19 is strictly national, there is a strong European dimension, both political and legal. The EU must ensure that EU law, including fundamental rights, are applied fully and evenly throughout its territory. In a deeply integrated and interconnected European Union, the exceptional measures affect the entire territory of the European Union, and all its citizens and residents.

Moreover, a thorough analysis of the situation may provide guidelines for a coordinated exit strategy, as well as for any future pandemic related measures, including lockdowns, in case of recurring outbreaks.

Throughout this report, examples of specific member states are used to illustrate particular issues that have arisen or may arise in the context of the fight against the pandemic. The report provides a general overview and analysis, not an exhaustive list.

Period when exceptional powers are applicable

Exceptional powers have been given to the executive in almost all countries monitored. The term used may vary from state of emergency, state of catastrophe, state of alarm or state of danger, but in all cases powers are given to the executive allowing it to act swiftly to tackle the pandemic³. The authority for triggering these exceptional powers may lie with the parliament, or with the government or the head of state, in which case the parliament is immediately called to approve it. Some countries foresee further ex ante or ex post parliamentary scrutiny of decrees issued during the state of exception.

³ The work of the Monitoring Group has focused on all legal statuses that have extended powers of the executive, including various legal and constitutional arrangements and effects on individual freedoms.

Most Member States have a constitutional framework for the exceptional powers, and/or specific laws detailing their implementation, offering a specific legal base for restrictive measures, but that is not the case everywhere. A few Member States have used ordinary legislation to adopt restrictive measures. In addition, the power balance between national, regional and local authorities is often also affected, as well as democracy at local and regional level. For example, national COVID-19 measures have to be implemented by local authorities on the basis of local emergency ordinances. These are not meant for that purpose, so emergency legislation may be needed to provide a legal base. In some countries, regional authorities have shared or exclusive competences, and a national approach has to be negotiated by national and regional governments, or - inversely - regional powers will be temporarily limited and exceptional powers are given to the national government.

The Venice Commission has very recently clarified that emergency measures shall be temporary, issued for a specific period of time and that "declarations with no specific time limit, including those whose suspension is made conditional upon overcoming the exceptional situation, should not be considered as lawful"⁴. An extension usually requires a parliamentary approval or there may be a sunset clause. Periods mainly range from two weeks to six months, but one country (UK) has a period of two years with a sunset clause. Only in one country (Hungary) no specific end date had been set to the "state of danger",⁵ which was considered to be "totally incompatible with European values" by the European Parliament⁶. The Council of Europe Secretary-General also indicated similar concerns⁷. Since then the government has introduced bills ending the state of danger. These bills amend the rules governing the situation of a health crisis. Other than under the state of danger, the Government may not suspend or amend laws and restrictions on fundamental rights must be necessary and proportional. Such a crisis situation can be declared by the Government based on the suggestion by the National Chief Medical Officer and the proposal of the minister responsible for public health. The Parliament is merely informed of such decisions.

Some member states chose not to call the state of emergency or similar arrangement. However, that does not necessarily mean the COVID-19 measures were less intrusive or a lesser risk to democracy, the rule of law and fundamental rights. Arrangements for exceptional powers usually contain various safeguards against abuse, as described above. By introducing exceptional measures outside such an arrangement, as for example the PL government chose to do, citizens' rights are being restricted but the necessary safeguards may not apply. In the NL,

⁴ See points 13 and 78 of European commission for democracy through law (Venice commission), Respect for democracy, human rights and the rule of law during states of emergency - reflections (CDL-PI(2020)005rev), 26 May 2020.

⁵ See [States of emergency in response to the coronavirus crisis: Situation in certain Member States](#) (Belgium, France, Germany, Hungary, Italy, Poland, Spain) and [States of emergency in response to the coronavirus crisis: Situation in certain Member States II](#) (Bulgaria, Estonia, Latvia, Malta, Austria, Romania, and Slovenia).

⁶ See European Parliament resolution of 17 April 2020 on EU coordinated action to combat the COVID-19 pandemic and its consequences (2020/2616(RSP)), par. 46

⁷ See for example the following statement by the Secretary-General of the Council of Europe: <https://www.coe.int/en/web/portal/-/secretary-general-writes-to-victor-orban-regarding-covid-19-state-of-emergency-in-hungary>; see also the

social distancing and confinement measures were decided mainly based on local emergency ordinances, which is problematic. Early June the government introduced a draft law seeking to create a new legal base for exceptional powers, but the law is likely to face headwind in Parliament as it contains insufficient time limits and allows the government to act with limited Parliamentary scrutiny.

In several countries, the crisis measures are being progressively relaxed, or the termination of the regime of exceptional powers has been initiated or announced.

The legal regime of exceptional powers means that democratic checks and balances and citizens' rights are restricted. In this respect, it is important to note that three EU member states have actually requested a derogation from the European Convention of Human Rights, invoking article 15. Member States have also notified derogations from the International Covenant on Civil and Political Rights.⁸ In many member states, citizens have a right in principle to seek legal remedy for the violation of their rights. But whether that right is meaningful in practice varies significantly. In one country, the Czech Republic, the Constitutional Court deemed itself not to be competent to deal with complaints and referred the complainants to Parliament. In another Member State (RO), a case was brought by the Ombudsman to the Constitutional Court, which declared the fines unconstitutional.

Functioning of parliaments

In almost all countries the work of Parliaments is severely affected, both by legal and physical constraints. On the one hand parliamentary powers are limited by the exceptional powers granted to the executive, on the other hand sanitary measures are a major practical obstacle to holding parliamentary meetings and assemblies.

Although parliamentary scrutiny is inherently limited in the case of exceptional executive powers, most parliaments control executive action through e.g. the duty of the executive to inform parliament immediately of measures taken and/or *ex ante* or *ex post* voting or scrutiny on the measures taken by the executive. Parliaments have also requested legal opinions on the exceptional measures taken, such as from constitutional bodies or courts such as the Council of State⁹. Many parliaments thus try to continue their work in a limited way, responding to both legal and sanitary restrictions. The agenda is often limited to the pandemic and other urgent matters, the number of sessions is limited, and the number of members participating may be limited as well. Some parliaments resort to electronic voting for a limited number of votes, and videoconferencing and distance working have been introduced rapidly by parliaments in many countries. However, in some cases, the rules do not foresee remote voting and it also underlines the need for the improvement of secure digital infrastructure for parliaments in Europe.

⁸ These Member States include Estonia, Latvia and Romania.

⁹ The Dutch Parliament requested such an opinion, especially regarding the use of emergency ordinances. The Council of State concluded that the government's measures do affect democratic checks and balances and individual rights, and that these are not always firmly anchored in a legal basis, but that this is for the short term a course of action that can be justified in light of the emergency.

The measures also lead to frictions and discussions. In the European Parliament a group of members has complained about the fact that only MEPs who are physically present are allowed to speak in plenary. In the UK MPs have protested against the resumption of parliamentary sessions, as they consider the sanitary measures inadequate and working conditions unsafe.

In many countries, the state of exception is supported unanimously by all parliamentary parties, or in any case a very broad majority. In some cases, governments have opted for cooperation with opposition parties, either ad hoc or on a structural basis, like a quasi "government of national unity". In other cases however, relations between majority and opposition are strained, with divisions over the aim, scope and justification of emergency measures and powers.

Local and regional democracy is affected as well. The state of exception may affect their powers directly, or they are called upon to enforce the national measures. In many countries, local government is also responsible for hospitals and other care sectors.

Enforcement

One of the key measures in all member states, albeit to different degrees, is restricting freedom of movement, including self-confinement, bans on any non-essential movement and imposing social distancing rules. Other measures concern the closing down of shops, offices, and public spaces like parks and playgrounds. The differences between member states lie not only in the restrictions themselves, but certainly also in the enforcement thereof. Whereas some countries rely mainly on recommendations and guidelines, or minimum administrative fines, encouraging a responsible attitude of citizens, other countries resort to more repressive measures, such as the criminalisation of the violation of lockdown and quarantine rules, including by creating new crimes.

Concerning the criminal offences aimed to tackle COVID-19, while some Member States did not consider any criminal sanctions (Estonia, Sweden), others used provisions already in their Criminal Codes (Austria, Belgium, Croatia, Czech Republic, Finland, Italy, Lithuania, Slovakia, Spain) and some others introduced new crimes or increased the sanctions (Bulgaria, France, Hungary). For instance, in Hungary two new crimes have been introduced: Obstructing epidemic containment (Section 322/A (1) - up to 8 years of prison) and Scaremongering (Section 337 (1) - up to 5 years of prison).

Sanctions may consist of fines of up to 25.000 euros and prison sentences of up to 10 years. In some countries, fines can thus be higher than the minimum income, disproportionately affecting people with lower salaries. The differences between the member states are huge, and cannot be explained by the impact of the pandemic in each member state. The table attached to this report provides an overview.

It matters a great deal whether sanctions are actually being enforced. In May ES reported 7380 cases of detention and over 800.000 fines for breach of the state of alarm. The BE government indicated in mid-May that 72000 crime reports had been filed for infringements of the rules. In May the NL police reported some 18000 violations, resulting in 7400 fines imposed. Roughly half the cases reported by the police are rejected or referred back by the prosecutor's office. In MT, where some 1600 fines had been given, a call by the Prime Minister for an amnesty for persons who had violated the social distancing rules or the lockdown rules, met with anger from the police who felt this made it more difficult for them to enforce the rules.

In Hungary, 87 proceedings had been initiated by the police on suspicion of fear mongering by 15 May, and two under suspicion of "endangering the public". In three cases, it concerned members of the opposition party. Two specific cases, including one involving a member of an opposition party, were highly publicized as they concerned citizens taken into custody for merely sharing critical thoughts on Facebook. While they were arrested and subsequently freed, the chilling effect on freedom of expression is difficult to overlook.

Often there is uncertainty about the correct interpretation of the rules, which leads to legal challenges. Some citizens may get a criminal record that will continue to exist for several years. In deprived urban areas in several countries many youngsters are particularly hard hit by fines for breaching the confinement rules. Many of them have no (safe) space at home, and community centres are closed, so they have few alternatives to being out on the streets. Many of them have been fined repeatedly, so they have built up debts.

Some governments are resorting to far-reaching surveillance to monitor and enforce whether the public was observing the lockdown, confinement and distancing rules, using drones, police surveillance cars with cameras, tracking of location data of telecommunications providers, police and military patrols, monitoring of mandatory quarantine by house calls by the police or mandatory reporting via an app. Some countries, such as Cyprus, are considering mandatory tracking ankle bracelets for quarantine enforcement or mandatory tracing apps.

Differences in national measures may be justified by specific circumstances relating to the pandemic. However, differences in enforcement should not lead to unjustified differences in treatment of European citizens. In other words: restrictions and infringements of fundamental rights vary widely between member states, with solid epidemiological or medical evidence not always underpinning the need for such differentiation. This is contrary to the notion that the rights of EU citizens and residents will be upheld equally throughout the territory of the Union, regardless of national legislative specificities. There is much indignation at the differences in mortality and access to medical services and equipment between member states. The right to life (Art. 2 of the Charter) and the right to health care (Art. 35 of the Charter)¹⁰ must be upheld

¹⁰ This Article reads: 'Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.'

equally throughout the EU. The same applies to all other fundamental rights. Differences in national legislation should not affect the very essence of those rights.

Freedom of movement

The majority of Schengen countries have reintroduced border controls or closed the borders altogether. Closing of borders within the Schengen area and within the EU led to long queues at the border in March. Policies allowing only nationals to enter the country, and not residents of another EU nationality, were also deemed unlawful as discriminating on grounds of nationality. Several Member States have now eased restrictions.

Many EU citizens were caught by the pandemic measures outside the EU, and unable to come home. Many of them were repatriated, including several via a joint EU repatriation operation. Others are still stuck outside the EU.

So far, mandatory 14-day quarantine measures were imposed both on non-Schengen, non-EU citizens as well as on EU citizens coming from the Schengen Area.¹¹ In addition, some Schengen countries now require proof of testing negative for COVID-19 as precondition for entering the country. A general closure of external borders for non-EU nationals has been in force since March, and is extended until 15 June 2020. The UK government has announced mandatory quarantine for some travellers arriving in the UK by air. It is key that any travel ban, entry ban or mandatory quarantine should be based on objective facts and not discriminate. A proposed partial opening of the borders of one member state exclusively to nationals of another member state was quickly criticised as unlawful as discriminating on the basis of nationality. Some countries, like DK or BE, at some point decided to allow border crossings for relatives and partners. However, the type of information requested to prove the relationship or the purpose of the visit is highly personal and sensitive. For example, people are asked to show private messages to and from their partner. All of this raises questions over the degree to which these restrictions are always necessary, coordinated and proportional.

Freedom of assembly

In most countries social distancing is imposed, and gatherings are banned. However, where some countries allow no more than two people to meet, other countries may allow gatherings of up to 50 people. Governments are now relaxing the restrictions to the freedom of assembly.

The ban on gatherings affects the freedom of assembly, which is an important cornerstone of democracy. It means during the period of restrictions, no demonstrations are allowed. However, several court rulings have underlined that a ban on peaceful demonstrations must always be well justified. The German Constitutional Court struck down a ban on demonstrations by the city of Stuttgart, arguing that a general reference to public health concerns was insufficient

¹¹ This included for example Belgium and Latvia, albeit with exceptions for certain categories of travelers, such as frontier workers.

justification, and that the city has to make efforts to find solutions to preserve the right to assembly. Several demonstrations have taken place in Germany. In some cases, participants voluntarily respected the physical distancing rules, but not always. Since early June, in many places in Europe massive anti-racism demonstrations took place, as well as a number of counter demonstrations. In some cases, the authorities authorised the gatherings, while imposing conditions like a maximum number of participants, full respect of the distancing rules, and an appropriate venue. In other cases, demonstrations were not allowed. There was much debate not just on the topic of the demonstrations, but also on a "hierarchy" of fundamental rights: is the right to health more important than freedom of assembly, or vice versa?

Concerns were expressed in relation to the fact that some governments and parliaments examined and adopted controversial laws and measures - even unrelated to the emergency - in this period, without proper democratic debate and without the possibility for citizens to properly demonstrate. For instance the controversial bills on abortion and sexuality education and the so-called "car protest" by entrepreneurs to express dissatisfaction with the proposed anti-crisis measures and financial support provided by government in Poland,¹² or the legislation banning the legal recognition of transgender and intersex citizens in Hungary. Other examples include measures to expel some foreign workers (e.g. MT), or measures with a long-term budgetary impact such as retroactive changes to the pensions law (BE).¹³

The Venice Commission has recently recalled that "emergency decrees or other emergency measures should not be (ab)used to introduce permanent changes in legislation or administration" and that it has "criticized on several occasions the adoption of legislation without a proper opportunity for discussion in either the parliament or civil society".¹⁴

Privacy and data protection

EU privacy and data protection legislation allows for exceptions in special circumstances, such as a pandemic. But basic rules still apply. Such as the necessity and proportionality test, the requirement of a solid legal base, purpose limitation, and the temporary nature of the measures. Many COVID-19 measures risk affecting privacy and data protection, in particular measures involving tracking and tracing, or surveillance.

In several countries, governments require telecommunications service providers to share traffic data, and the European Commission is looking into the possibility of doing the same (although it is not clear on what legal basis). Governments claim traffic data are anonymous, but it is

¹² The Polish government stated that this debate was part of a legal procedure initiated by a citizen's initiative and was therefore subject to a deadline; equally takes note of the fact that earlier opportunities have not been used to put this on the agenda.

¹³ The proposals for restrictions to the abortion law and changes to the law on sex education that were on the agenda of Parliament in Poland, condemned by the EP in its resolution of 17 April 2020 (par. 48), were finally sent to committee.

¹⁴ See points 13 and 77 of of European commission for democracy through law (Venice commission), Respect for democracy, human rights and the rule of law during states of emergency - reflections (CDL-PI(2020)005rev), 26 May 2020.

unclear if and how data can truly be anonymised. If data are not anonymous the GDPR applies. It is not legally sound to collect identifiable data without clarity about purpose limitation, rules on access, data security and more. Using these data for the purpose of monitoring mandatory isolation of individuals, without judicial authorisation, is highly problematic.

Surveillance measures are highly intrusive. For example, surveillance for the purpose of quarantine enforcement, by way of police home calls or a mandatory app with the obligation of uploading pictures and allowing location tracking. Some countries are considering mandatory use of ankle bracelets for the purpose of surveillance.

In most countries manual contact tracing is being used widely, for a variety of diseases. Several member states have now rolled out such manual and human contact tracing at large scale for the COVID-19 virus. Although in principle it may pose privacy and data protection risks as well, the risk of function creep, or leaks, hacks or abuse is in general more limited than with the use of digital means. Many member states are considering the introduction of "contact tracing apps". Such apps may be a very helpful tool for contact tracing. However, for the time being, there is little consensus in Europe about their effectiveness, the most privacy-friendly system, acceptable providers or interoperability standards. The European Commission has issued a recommendation to the Member States on this matter, as well as a toolbox and guidance on the use of such applications.¹⁵

In several countries the relaxation of lockdown measures and re-opening of shops, restaurants, pubs and other public spaces, has been accompanied by mandatory temperature checks, mandatory questionnaires and the obligation to share contact details, for example with pub or restaurant owners. There does not seem to be any regulation of this massive gathering of data by actors who are most probably unaware of their obligations under GDPR. It is very unclear how, by whom and for how long these data will be stored. Nor is there any clear purpose definition. HU has even suspended certain articles of the GDPR, referring to the pandemic.

Disinformation

The rule of law is a prerequisite for the protection and promotion of the rights and freedoms of citizens. Member States have to protect these also in the digital space by creating an environment which should be facilitated by a strong commitment and effort of internet platforms. However, resorting to measures such as content take-downs and censorship may result in limiting access to important information for public health and should only be undertaken where they meet the standards of necessity and proportionality. Disinformation sometimes targets particularly vulnerable groups in society; especially refugees and migrants, or ethnic minorities; inciting violence, discrimination or hostility. False or misleading

¹⁵ European Commission, Recommendation on a common Union toolbox for the use of technology and data to combat and exit from the COVID-19 crisis, in particular concerning mobile applications and the use of anonymised mobility data (C(2020) 2296 final), 8 April 2020; European Commission, eHealth Network, Mobile applications to support contact tracing in the EU's fight against COVID-19 - Common EU Toolbox for Member States, 15 April 2020; European Commission, Communication - Guidance on Apps supporting the fight against COVID 19 pandemic in relation to data protection (2020/C 124 I/01), 17 April 2020.

disinformation about health can also lead to serious risks for human health and even has the potential to undermine the fairness of elections. The EEAS highlighted that disinformation around COVID-19 had real world consequences. Disinformation is an evolving challenge, with high potential to negatively influence democratic processes and societal debates, affecting all policy areas, undermining citizens' trust in democracy and discouraging European cooperation and solidarity.

Freedom of expression, media freedom, freedom of information

In most countries, no legislative restrictions of the freedom of expression have been introduced. However, a few member states have legislated to criminalise "spreading false information". While it is true that false information about coronavirus has been circulated during the pandemic - offline and especially online - and foreign and domestic actors alike are abusing the crisis to spread disinformation, the criminalisation can also create distrust in institutional information, delay access to reliable information and have a chilling effect on journalists and freedom of expression. Indeed there are cases of persons arrested and charged under these laws, such as in Hungary. This may also have a chilling effect on health care workers criticising their government's handling of the pandemic.

HU adopted at the end of March as part of an emergency bill put forward in light of the coronavirus outbreak, criminalising the spreading of false information or "distorted" facts with a penalty of up to five years of imprisonment. In RO, the decree declaring the state of emergency allows the Minister of Interior to suspend access to online media, or the license of traditional media, if outlets are found to be spreading disinformation on the COVID-19 outbreak. This new power has already been used against one website for "publishing disinformation". In BG, the President, due to concerns around freedom of expression, vetoed two provisions of the law after its initial adoption. These provisions were subsequently not adopted during a second vote in parliament. One of them incriminated the dissemination of incorrect information on the spread of infectious disease, which, according to the President, was not in compliance with human rights standards on freedom of speech. In CZ criminal complaints were filed against the publication of a letter by a front line health care worker, criticising the lack of protective equipment at her station. In Bulgaria a person who worked for a pharmaceutical company, publicly criticised the shortages of medical materials, and was arrested but subsequently freed. Such arrests are considered intimidating.

In some countries, governments have limited media access to decision makers, for example by cancelling live press conferences and instead answering only to written questions submitted in advance. In some countries there are limits on access to public health information for journalists, or limitations on what they can publish about public health policies or even law enforcement operations. In several countries, deadlines for answering to freedom of information requests and access to documents requests have been extended or cancelled. Health care workers may be banned from speaking to the media. In some countries there are hate campaigns against journalists or health care workers, sometimes even resulting in death threats and violent attacks. Governments may abuse their exceptional powers to classify information which is not

necessarily related to COVID-19. In addition, public scrutiny by journalists is made more difficult as lockdown measures prevent them from having physical meetings and encounters essential for their journalistic work.

The economic fall out of the crisis also affects the media sector. Many independent media and journalists may not survive the crisis, a fact that will fatally undermine pluralism of the media landscape.

Functioning of the Judiciary

In most member states there are no specific restrictions on the judiciary, but the lockdown measures have made it near to impossible for courts to operate in a normal manner. Many courts had to close down temporarily, or drastically reduce their activity. Many courts are facing a huge backlog now. Courts are seeking to resolve the problem by resorting to innovative ways for e-justice applications. Judicial cooperation in criminal matters among the Member States has also been impacted, such as in the context of the European Arrest Warrant and the European Investigation Order.

Procedural rights of suspects and the right to a fair trial are under pressure as well. Access to a lawyer has become more difficult due to the restrictions, and as a result of the backlog in courts, waiting times for a hearing (and pre-trial detention) have become longer. Online hearings may offer a solution, and lawyers consider that even after the Corona crisis it may be an alternative to hearings in court or to the transfer of suspects to another EU member state under the European Arrest Warrant. At the same time, online hearings can also constitute a limitation of the right to a fair trial. Lawyers warn against a general use of the instrument.

Asylum and migration

The lockdown measures and closing of borders had a serious impact on the situation of migrants and asylum seekers. In many countries, the processing of asylum requests had been limited or put on hold, with interviews suspended, such as in Greece and the Netherlands. In some countries even registration was effectively impossible, for example due to the fact that only online registration in the official language of the country is possible, which is impracticable for many asylum seekers. Many of them ended up living in the streets as reception centres are not taking in new residents. Most Member States have also suspended Dublin transfers, returns as well as resettlement. The Commission issued guidance on these matters, pointing out alternatives to a full suspension of all procedures.¹⁶ Several Member States have now restarted procedures, including through digital means.

The situation on the Greek islands is particularly dramatic. So far, no major outbreaks of COVID-19 have taken place, and transfers from the islands to the mainland, as well relocations

¹⁶ European Commission, Communication, COVID-19: Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement (C(2020) 2516 final), 16 April 2020.

of unaccompanied minors from Greece to other Member States, have taken place in limited numbers. However, the situation remains extremely worrisome. In reception centres in other countries, COVID-19 outbreaks are being reported, and physical distancing and hygiene rules can hardly be applied. In some countries migrants are being kept in detention under pretext of the pandemic.

On the other hand, most Member States have extended the validity of residence permits and postponed the deadlines for asylum procedures and there are examples of countries where asylum seekers have been granted access to the labour market, or they have been employed as health care workers in the fight against the pandemic. In one country, migrants have all been temporarily granted citizens' rights, so as to allow them to get access to basic services like housing or health care.

In some countries, third country workers have been expelled, with reference to the crisis. Inversely, Eastern-European workers were flown into some Member States and into the UK with charter flights to help save the harvest.

Prisons

Prisoners are particularly at risk during the epidemic, as social distancing is often impossible and hygienic and medical conditions are worrisome. This is even more so the case for vulnerable categories of prisoners, such as those suffering from health conditions. There have also been tensions in some prisons, in some cases also erupting into riots and even leading to deadly incidents. This was mostly related to the limitation of air time and not allowing any visitors, which undermines the prisoners' right to communicate with their families. On the other hand, in some Member States, some specific categories of prisoners have also been released. In the meantime, several Member States have begun to reinstate visitor hours and air time, albeit in a limited fashion. Prison guards and their unions have also warned that the situation of lockdown in the prison system is untenable. Medical assistance should also be strengthened as recommended by the WHO and the Council of Europe Committee for the Prevention of Torture. The Council of Europe Commissioner for Human Rights has also expressed her concerns about the prison population being at risk¹⁷, while the Secretary General called States to resort to alternatives to deprivation of liberty to protect both the prison population and prison staff.¹⁸

Lawyers point out that in some countries prisoners have been released, in order to have more space in prisons to be able to respect distancing and confinement rules. It concerns mainly prisoners who had committed relatively trivial offences.

Discrimination

¹⁷ <https://www.coe.int/en/web/commissioner/-/covid-19-pandemic-urgent-steps-are-needed-to-protect-the-rights-of-prisoners-in-europe>.

¹⁸ See <https://www.coe.int/en/web/portal/-/new-survey-europe-s-rate-of-imprisonment-remained-stable-in-2019>.

In several Member States, reports about discrimination of people of a certain background (most notably Asian background, but also Roma people) or nationality (such as Italians in the early days of the pandemic) emerged. In Latvia, someone was charged with incitement to racial violence as he was calling for killing the Chinese.¹⁹ Roma communities have been particularly used as scapegoats and have been subject to attacks and hate speech in several countries. Specific groups are also at risk of domestic violence during the quarantine measures being in force, notably women, children and LGBTI+ persons, as they can be exposed to abusers for long periods of time and cut off from social and institutional support. Some countries have already provided initial figures showing a spike in domestic violence during lockdown. France saw a 32% jump in domestic violence reports in just over a week, Lithuania observed 20% more domestic violence reports over a three-week lockdown period than over the same period in 2019.²⁰ It underlines the need for ratification of the Istanbul Convention by all EU Member States. Discrimination may also hamper the access to health care and other services, in particular for vulnerable groups such as Roma, persons with disabilities, homeless persons, undocumented migrants and persons of age.

Other issues with relevance for Art. 2 TEU

In some countries religious organisations sought to be exempt from lockdown measures or restrictions on gatherings, for example for religious services, weddings or funerals. The situation is now going back to normal with the progressive relaxation of restrictive measures. In most cases no exemptions were initially granted, or only limited. However, in France, the Council of State has struck down the COVID-19 related restrictions affecting religious gatherings, as a result of which such gatherings will again be possible under certain conditions.

Media and law enforcement enquiries have revealed an increased risk of corruption in emergency public procurement and in the administration of funds, which requires improved surveillance, at national and European level²¹.

In France the first round of the municipal elections took place in France on March 15, but the second round has been postponed to 28 June 2020. Municipal elections have also been held in the German region of Bavaria for the second ballot. The Presidential elections in Poland were scheduled to take place on May 10th, but following considerable controversies, the leaders of the coalition parties announced at the last moment that they would be postponed and the government halted their organisation: on the set day of elections, no elections took place, which is an unprecedented event in recent democratic history. Elections have been postponed to 28 June. The Venice Commission and the OSCE (specifically in the context of the situation of

¹⁹ <https://bnn-news.com/charges-raised-against-scandalous-latvian-blogger-for-invitation-to-liquidate-the-chinese-213539>

²⁰ See <https://eige.europa.eu/covid-19-and-gender-equality/gender-based-violence>

²¹ See, among others, the enquiries by OCCRP.

Poland) have recently recalled the principles to be applied when determining whether to hold elections in emergency periods²².

Concluding observations

The price of the pandemic in the loss of human lives and economic fallout will be massive. The focus is rightfully on containing the pandemic and the economic crisis.

But the impact on democracy, the rule of law and fundamental rights will be on a scale unprecedented in recent history of this continent. Those values are not accessory, but the very essence of European integration. Therefore safeguarding democracy, the rule of law and fundamental rights must be integral part of the exit strategies. The observations can also be used to draw up guidelines for any future lockdowns, in case of recurring outbreaks, to ensure a more coordinated approach and better compliance with EU standards on democracy, the rule of law and fundamental rights.

The DRFMG intends to further monitor the impacts of the COVID-19 related measures on democracy, the rule of law and fundamental rights. The President of the Commission also stated that it would monitor the application of emergency measures across the EU. The DRFMG will follow up on how the Commission has executed this monitoring. The European Parliament, as well as other EU institutions and agencies, have an important role to play in safeguarding the values of Article 2 TEU across the Union, including, and all the more so, in times of crisis.

IV. ANNEXES

ANNEX I - MANDATE

Mandate adopted by LIBE Coordinators on 5 September 2019

Mandate, working methods and composition

The mandate of this working group is to monitor 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 will be addressed by the Working Group if deemed necessary by a majority of its Members, weighted according to the number of full Members of their group within the LIBE committee. In case of objection by a political group, the question should be referred to the LIBE coordinators for decision.

²² See OSCE [Opinion on the Draft Act on Special Rules for Conducting the General Election of the President of the Republic of Poland Ordered in 2020 \(Senate Paper No.99\)](#) and Venice Commission [Report - Respect for Democracy Human Rights and Rule of Law during States of Emergency, Reflections](#), 26 May 2020, CDL-PI(2020)005rev-e

- The task of the working group is to recommend specific actions (such as meetings with stakeholders, propose to organise hearings and missions, make suggestions 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 2 standing Member per political group. Members of other Committees could be invited, when needed, to specific meetings.
- The Chair of the working group is nominated and elected at the constitutive meeting of the working group.

Duration of the mandate: until 31 December 2021 (mid-term). A mid-term review will be carried out on the functioning and tasks of the working group.

ANNEX II - TABLE OF SANCTIONS (tentative)

Sources: press articles, questionnaires ECPRD, institutional websites, FRA country reports

* = no info available (yet)

yellow = sanction above the average monthly salary

Member State	Nr of controls? Time period	Fines individuals	Fine restaurant s	Criminal sanctions	Prison	Averag e monthl y salary
AUSTRIA	*	Up to 3,600€	Up to 30,000€	Sections 178-179 of Criminal Code	Up to 3 yrs	1.994,34 €

BELGIUM	As of 11 May: 3651 judicial reports and 2243 administrative fines. 47% of disputes cancelled As of 4 June, 110.000 people received a report for violating of the measures: more than 30.000 cases are estimated before the courts.	250€	Closure and fine	Art. 10 § 1 of the ministerial decree of March 23, 2020 (reference to Art. 187 of the law of 15 May 2007 on civil security)	From 8 days to 3 months + fine 26 up to 500€	2.013,41 €
BULGARIA	As of 23rd March: +120 instituted proceedings	BGN 500 (250€) to BGN 5.000€ (2.500€)	*	Article 335 Criminal Code	Up to 5 yrs + 10.000 BGN (5000 euros) > 50,000 lev (25,000 Euros) Misinformation through broadcast tools: up to 3 yrs + BGN 10.000 (5.000€) to BGN 50.000 (25.00€)	568,31 €
CROATIA	*	HRK 8,000 (€1,060) > HRK 120,000 (€16,000)	*	Article 180 Criminal Code	Up to 3yrs	769,07 €
CYPRUS	*	150€ > 450€	Up to 800€	yes	6 months	1658 €
CZECH REPUBLIC	*	Up to 3 million CZK (107.000€)	*	Para 152 of the Czech criminal code	Up to 12 yrs	955,37 €

DENMARK	*	1.500 DKK (201,00€) up to 2.500 DKK (335,286€)	3.000 DKK (402,316€) > 10.000 DKK (1.341,05€) >	*	*	3.024,11 €
ESTONIA	At 22 March +6.000 checks	Up to 2.000€	Up to 20.000€	*	*	1147,70 €
FINLAND	From 28march to 15 April +549.450 checks From the 1st June: The police will not intervene unless a threat to public order and security. Face masks: recommended	10-20 day-fine (“day fine” system that is calculated on the basis of an offender’s daily disposable income)	*	*	*	2363,72
FRANCE	800.000 fines	135€ > 3.750€	*	yes	Up to 6 months	1972,05 €
GERMANY	* Social distancing rules until the 29th June	€25 > €10,000	*	*	*	2333,85 €
GREECE	*	Up to 150€ for not wearing the mask. 5000€ to potential infected violating the quarantine	*	*	*	739,50 €

HUNGARY	As of 23 march: + 100 breaches Police had initiated 83 proceedings on suspicion of fear-mongering and 26 on suspicion of threatening public danger since the pandemic started	150.000 HUF (425€) up to 5000.000 HUF (1429,81€).	*	Act C of 2012 on the Criminal Code: Section 322/A (1); Section 337 (1)	up to 8 yrs	616,73 €
IRELAND	*	Up to £5,000 (5.610 €) From 28th May to 18 June (when it will be revised): passengers arriving to Ireland must stay in quarantine and fill the passenger location form: fine € 2.500	*	*	*	2306,21 €
ITALY	From the 10 March to 26 April: 1 million police checks	400€ to 3000€	*	Art. 260(decre 1265\1934) Art. 483 Criminal Code Art. 438, 452 Criminal code	3 months up to 18 months + fine 500 up to 5.000€ (260) Up to 2 yrs (483) 1 up to 5 yrs (452) Life imprisonment (438)>never applied to COVID-19	1415,40 €

LATVIA	As of 19 march: 388 checks and 38 administratives cases	As of the 23 March: fine up to 350€ 10€ > 2000€	145€ > 5000€	*	*	781,77 €
LITHUANIA	*	500 > 1,000 €	1,500 > 6,000 €	Article 277 of Criminal Code	Up to 3yrs	835,99 €
LUXEMBOURG	*	€500 > €10,000	4000€	yes	1 month to 2 yrs	3.416 €
MALTA	As of the 1st June, 1604 fines	From €100 fine for groups with more than 6 people to €10.000 fine for people infected breaking the quarantine. MP Farruggia proposed to convert the fines to community work.	*	*	*	1140,59 €
THE NETHERLANDS	*	From the 1st June for not wearing a mask: 95€ Not maintaining 1.5 meter distance: up to 400€ fine	Up to 4.000€ and possible closure	*	*	2449,38 €

POLAND	*	500 > 5000 zlotys (110€ > 1107€) 6 may: fines (1000 zlotys): imposed on a group of artist accused of breaking social distancing rules who were protesting against presidential elections	*	*	*	724,48 €
PORTUGAL	*	120€ > 350€	*	*	*	849,15 €
ROMANIA	As of 6 May: 300.000 fines = RON 600 mln(120 mln €) Romania's Constitutional Court on May 6, ruled that the Government's emergency ordinance that increased fines the state of emergency was unconstitutional	RON 2,000 and RON 20,000 (412€ > 4,120€) Original sanctions:from 100 to 500 lei, equal to about 20 to 1,000 euros.	*	*	*	556,72 €
SLOVAKIA	*	Up to 1659€	*	Art.163 and 164 of Criminal Code	Up to 10 yrs	860,48 €
SLOVENIA	*	400€	*	*	*	1.132,73 €

SPAIN	89 detained and 13.810 sanctioned of 5 May; since the beginning of the state of alarm: 7.381 detained and 836.726 sanctioned	<p>During the state of alarm:</p> <p>100 € > 600.000€</p> <p>After the state of alarm:</p> <p>Fines up to € 100 for not wearing masks</p> <p>Up to 10.400 € for not respecting the quarantine period</p>	*	Art. 550 to 556 Criminal Code	Up to 6 yrs	1.335,46 €
SWEDEN	*	no	no	no	no	2350,68 €
UK	As of 29th May: police issues 17.000 fines	<p>From the 1st June: an instant £100 fine for a first offence (£50 if paid promptly). Repeat offences: up to £3,200. Penalties are lower in the rest of the UK.</p> <p>From the 8th June: Travellers could be fine £ 1000 if failing the self-isolation, or prosecution with an unlimited fine</p>	*	yes	Up to 6 months prison	2.101,07 €

ANNEX III - TABLE EXIT EMERGENCY
MONITORING THE EXIT FROM STATE OF EMERGENCY OR EMERGENCY POWERS

Explanation:

- Eleven MSs have **never** been in a State of emergency nor a similar state of emergency powers: AU, BE, CY, DK, DE, EL, IR, MT, NL, SL, SE
- One MS was and still is in a **State of emergency**: LU
- Four MSs were and are still in a state of **emergency powers**: HR, FR, IT, PL
- Five MSs **exited** the State of emergency to enter a **lower** state of emergency powers: BG, PT, RO, SK, HU
- Four MSs has definitively **exited** the State of emergency: CK, FI, LT, LV
- Two MSs **exited** another state of **emergency powers**: EE, ES
- Of the ten MSs still in a State of emergency or emergency powers situation, **3 are expected to exit it in June** (BG, LU, PT), **3 in July** (FR, IT, RO), HU in December, while **for the remaining 3 no precise date could be found** (HR, PL, SK).
- **In the last week**, ES exited emergency powers (State of alert) and HU changed type of emergency powers (from State of danger to state of medical crisis).

Situation as of 22 June 2020

State	State of Emergency or similar used for COVID-19?	Entry	Exit
AU	NO	/	/
BE	NO	/	/
BG	(now) OTHER: epidemic situation (but YES initially)	- 13 March- 13 May: State of Exception - 14 May - June 14: epidemic situation; <u>prolonged</u> to end of June	30 June
HR	OTHER: declaration of outbreak of the epidemic disease	11 March	-
CY	NO	/	/
CK	YES	12 March	17 May
DK	NO	/	/
EE	OTHER: Emergency situation	12 March	17 May
FI	YES	16 March	16 June
FR	OTHER: State of sanitary emergency	23 March	exit in process: 10 June law on exit tabled, is being discussed in the National Assembly and Senate, possible exit before 10 July (some measures might remain in place until 10 November)

DE	NO (only at Länder level)	/	/
EL	NO	/	/
HU	OTHER: State of danger, now State of medical crisis	- 11 March - 18 June: State of danger - 18 June - 18 December: State of medical crisis	18 December
IR	NO	/	/
IT	OTHER: State of (sanitary) emergency	31 January	6 months expire on 31 July
LV	YES	12 March	9 June
LT	YES	25 February	16 June
LU	YES	18 March	24 June; loi COVID-19 being discussed
MT	NO	/	/
NL	NO	/	/
PL	OTHER: State of epidemic	20 March	-
PT	Now OTHER: Situation / State of calamity (but YES initially)	- from 8 May - mid-June - <u>prolonged</u> to end June: State of calamity - from 18 March to 8 May: State of emergency	end of June (then State of contingency, followed by and State of Alert?)
RO	Now OTHER: State of alert (but YES initially)	- 15 May - 14 June : State of alert; <u>renewed</u> from 17 June for 30 days - 16 March - 15 May: State of emergency	mid-July
SK	YES, and now OTHER	- 16 March - 13 June: State of emergency - 11 - 16 March and 13 June on: Extraordinary situation	13 June: end state emergency, extraordinary situation remains in place
SL	NO	/	/
ES	OTHER: State of alarm	14 March	21 June
SE	NO	/	/

ANNEX IV - FEEDBACK NOTES

Feedback note of the meeting of Thursday 2 April 2020

Participating

Members:

Sophie IN 'T VELD (Chair, Renew), Roberta METSOLA (EPP), Vladimír BILČÍK (EPP), Katarina BARLEY (S&D), Sylwia SPUREK (S&D), Ana DONÁTH (Renew), Nicolaus FEST (ID), Sergey LAGODINSKY (Greens/EFA), Malin BJÖRK (GUE/NGL).

The Chair, Sophie In't Veld welcomed participants and referred them to the working document prepared by the Policy Department upon request of the LIBE Committee on "The impact of COVID-19 on Democracy, Rule of Law and Fundamental Rights". Circulated to Members ahead of the meeting, the document presents an overview of measures taken in the 27 Member States and in the UK due to the COVID-19 outbreak. The document is a dynamic work in progress, meant to be supplemented and updated as the coronavirus crisis develops, in order to support the Group in monitoring the rule of law situation in this extraordinary context.

The meeting turned then to its main agenda items, i.e. exchange of views first on the implications on democracy, rule of law and fundamental rights of the measures taken in the framework of the COVID-19 outbreak with the Director of the EU Agency for Fundamental Rights, Michael o' Flaherty, then on latest developments in the Slovak Republic, with Ambassador Peter Javorčík, Permanent Representative of Slovakia to the EU, as well as with Gianluca Esposito, Head of Action against Crime Department of the Council of Europe, Executive Secretary of GRECO, accompanied by Igor Nebyvaev Executive Secretary of MONEYVAL, and Gerald Dunn, Administrator at GRECO.

The FRA Director announced the publication for 8 April of the first report on COVID-19 implications on fundamental rights. The publication is to be issued on a monthly basis. He then focused on three main points: the right to life and to health which requires public health responses from our authorities; the public response needs to respect the fundamental principle of equality as equal access has to be assured to the society, and the need to respect the principles of necessity, proportionality and non-discrimination.

Mr O'Flaherty drew then Members 'attention to four areas:

- Implication on daily life: i.e. freedom of assembly, religious gatherings, education (access to school, online classes and distance learning), unemployment - FRA welcomes the initiatives of MSs to support employees who risk to lose their job and to relaunch the economy - and delivery of social services;

- Implication on certain groups and society: older people -to whom media attention is particularly dedicated -, the suspension of necessary services for the disabled, people living

institutional setting such as prisons and migration facilities, the suspension of asylum seekers' procedures, homeless, Roma people, domestic violence against women and children.

- Implication on discrimination, racism and xenophobia: FRA expresses its deep concern about the arising of hate speech and hate crime taken place since the early February against Chinese community, migrants and Roma people in many Member States. Moreover, FRA outlines politicians' role in spreading misinformation and hatred through political speech.

- Implication on disinformation, the right to privacy and its breach: FRA observes the difficult problematic of accessing health data of individuals in order to properly fight the COVID-19 outbreak and respecting of the principle of privacy. Mr O'Flaherty insisted that there is not a conflict between public health and human rights protection.

Members shared their concerns about the very future of the EU at stake in this crisis. They affirmed their will to closely look into measures taken in the Member States, in particular what is happening in the national Parliaments, for instance in Poland and Hungary, echoed the call for strict observance of the principles of necessity, proportionality and stressed the EU's mission to facilitate, as much as possible, integrated responses. They raised also issues of disinformation, data protection breaches and the need for EU standards for how Member States may collect and share data, non-discrimination (in particular against Roma people) and domestic violence (in particular against women and children). Mr O'Flaherty indicated that the next FRA report would be focused on geolocation data and further called on the Data Protection Supervisor to lead the efforts for assuring that data are anonymised and treated under the GDPR Regulation.

As for latest developments in the Slovak Republic, the exchange of views took place against the background of the recent parliamentary elections and the institution of a new Government, with which the DRFMG looks forward to working and continuing the monitoring exercise.

Ambassador Peter Javorčík, focused his intervention on what he saw as three key recent developments in Slovakia:

- The change brought by the Parliamentary elections with a new four-party coalition government strongly committed to improve the democracy and the Rule of Law in the country, and to fight corruption. The Government is preparing its Manifesto which should be adopted after Easter.

- Developments around the murders, with the police investigation now over six months after the suspects have been identified and presentation of the formal charges by the Prosecutor to the Specialised Criminal Court. The trial started in January and the sentence is at this point envisaged for the end of April, beginning of May. Data from suspects' mobile phones were also analysed and separate investigations are on the way. A number of judges were arrested, some being in custody, following authorisation of the Constitutional Court.

- The Systemic reform adopted in December 2019 which extends the ground for temporary suspension of judges and strengthens the legal framework, and is aimed at re-building public confidence towards the judiciary affected by the murders. Also to be noted is that the Constitutional Court is now fully functional.

Gianluca Esposito followed by giving an update of GRECO and MONEYVAL's activities in relation to the Slovak Republic. He recalled that the latest GRECO evaluation on Slovakia, following a visit in November 2018, was adopted in June 2019 and published in August 2019.

It focussed on the prevention of corruption in Government and in the national police, and provided recommendations to the executive, with a specific concern on the application of whistle-blowers protection. As for MONEYVAL, the latest evaluation was held in 2011 but the situation is followed very closely since 2018 and the 5th evaluation about Slovakia is being completed.

Members raised questions about corruption in the judiciary and the need for structural rebuilding of public trust, the situation at the Supreme Court, the position of journalists and the need for protection of media freedom, as well as the independence of the FIAU, particularly with regard to the police.

Feedback note of the meeting of Wednesday 8 April 2020

Participating Members:

Sophie IN 'T VELD (Chair, Renew), Roberta METSOLA (EPP), Vladimír BILČÍK (EPP), Katarina BARLEY (S&D), Sylwia SPUREK (S&D), Ana DONÁTH (Renew), Nicolaus FEST (ID), Sergey LAGODINSKY (Greens/EFA), Patryk JAKI (ECR), Malin BJÖRK (GUE/NGL).

The meeting was dedicated to an exchange of views with Commissioner for Justice Didier Reynders. The Chair, Sophie In 't Veld, welcomed participants and referred them to the update of the working document prepared by the Policy Department upon request of the LIBE Committee on "The impact of CO-VID19 on Democracy, Rule of Law and Fundamental Rights", circulated to Members ahead of the meeting. The Chair recalled the status of this document as a dynamic work in progress aimed at supporting the Group in monitoring the rule of law situation in this extraordinary context. She invited Members to contribute and share information as the coronavirus crisis develops.

As an introduction to the exchange of views, Commissioner Reynders updated Members on the status of Commission's work towards the first Annual Report on Rule of Law to be issued in September. The process involves wide consultations, with the Council Presidency, the European Parliament, national Parliaments and civil society. A targeted consultation is open until 4 May. Consultations on the proposed method are also going on with the Council of Europe the EU Agency for Fundamental Rights (FRA). The Report will be focused on four

main areas: Independence of the judiciary, Fight against corruption, Media pluralism and Checks & balance in National Constitutional orders.

The Commissioner turned to the Commission's current monitoring of emergency measures taken by Member States to fight the pandemic. In relation to the development of new applications aimed at controlling movements of population, he stressed that the Commission is working in particular with National Officers for Data Protection and the European Data Protection Board to find a pan-European approach and had just issued recommendations to Member States (https://ec.europa.eu/commission/presscorner/detail/en/ip_20_626), notably to ensure the compatibility with EU data protection rules. Although data for such applications are to be anonymised and aggregated, the Commissioner expressed concern as to the possible use of personal data beyond consent.

More generally, regarding emergency measures the Commissioner stated that the Commission is analysing emergency laws taken in all Member States. He referred to the General Affairs Council meeting held the week before in which the Commission had received support from all Member States to carry out such monitoring. He noted that the state of emergency had been announced in 22 Member States, however in different forms regarding the different special powers given to the Government. The Commission is focusing on the new balance among legislative, executive and judiciary powers, in particular regarding the Governments' ability to suspend national and EU laws, and on the respect of the principle to proportionality, looking at the combined effects of measures. Proportionality and necessity should be the guiding principles for these emergency measures.

He referred to concerns in relation to the length and cessation of executive's exceptional powers in Member States, the holding of elections during lockdown, as well as to the adoption of new criminal offences or the suspension of existing laws which could be used to set aside national but also EU law. He acknowledged however that more work is needed to fully understand and assess the potential impact of these measures and new legislations in their constitutional contexts, before any action such as infringement procedures could be initiated.

He recalled the main tools at the Commission's disposal, notably the possibility to continue the debate at the General Council under the Article 7 TEU procedure, the proposal on the rule of law conditionality for EU funds, as well as infringement procedures. On the latter, he referred to the decision of the EUCJ issued on the same day as this DRFMG meeting, to grant interim measures for the provisional suspension of the national provisions on the powers of the Disciplinary Chamber of the Polish Supreme Court with regard to disciplinary cases concerning judges (<https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-04/cp200047en.pdf>).

Members raised questions in relation to data protection issues raised by the geolocalisation apps, upcoming elections and the possibility to organise fair political campaigns under lockdown, and situations in some specific Member States. More generally, they questioned the depth of the monitoring of the Commission, possible reactions - such as the guidelines on the

use of digital technologies, for which transparency in the decision-making is essential - and the timeline for such possible reactions, fearing that these might come too late considering the current standstill of the Article 7(1) procedures. They questioned the possible enforcement of latest EUCJ rulings in existing political frameworks where EU law is already being challenged. They called for a monitoring by the Commission going beyond strict rule of law issues by looking at the broad picture of legislative production in corona-times, as some governments take this opportunity to amend legislation not directly related to the emergency situation. The need to reactivate work on the conditionality was also discussed, against the background of a lack of political will in the Council to tackle rule of law issues.

The meeting concluded on an agreement to continue monitoring these COVID-19 measures adopted by Member States.

The next meeting was to be held on 16 April.

Feedback note of the meeting of Thursday 16 April 2020

Participating Members:

Sophie IN 'T VELD (Chair, Renew), Vladimír BILČÍK (EPP), Katarina BARLEY (S&D), Sylwia SPUREK (S&D), Ana DONÁTH (Renew), Nicolaus FEST (ID), Gwendoline DELBOS CORFIELD (Greens/EFA), Sergey LAGODINSKY (Greens/EFA), Malin BJÖRK (GUE/NGL).

The Chair, Sophie In 't Veld, welcomed participants and drew their attention to the second update of the working document prepared by the Policy Department upon request of the LIBE Committee on “The impact of COVID-19 on Democracy, Rule of Law and Fundamental Rights”, circulated to Members ahead of the meeting. The Chair recalled the status of this document as a dynamic work in progress and invited again Members to contribute and share information as the crisis develops.

The meeting was dedicated to an exchange of views with Director General for Human Rights and Rule of Law at the Council of Europe (CoE), Mr Christos Giakoumopoulos. As an introduction, Mr Giakoumopoulos, informed Members about the recently released CoE toolkit for Member States for respecting democracy, rule of law and fundamental rights in the context of response to the pandemic.

Mr Giakoumopoulos stressed that for the time being, the CoE is working in an advisory mode, and so do the Venice Commission, GRECO, European Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) and the the Council of Europe Commissioner for Human Rights. Moreover, CoE political bodies (Committee of Ministers and Parliamentary Assembly) will also initiate a dialogue with Member States to take the test of necessity and proportionality of measures taken.

Mr Giakoumopoulos recalled the importance of respecting the principles of legality and of proportionality even in situations of emergency, as well as acting in accordance with national constitutions, the ECHR and other European standards. The necessity of actions should also be clear. He further underlined that measures should be time-limited and should not deprive Parliament of its powers of scrutiny. Mr Giakoumopoulos updated Members on the status of CoE's work on the Report on discrimination aspects in the context of COVID-19 which will be released later this year. He also informed Members that the Commissioner for Human Rights was having a specific look at the Roma issue during COVID-19 outbreak.

Regarding Human Rights limitations, Mr Giakoumopoulos stressed that the need to protect life and health is a valid reason for restricting other rights so it could be considered that restrictive measures, in the abstract, would be in accordance with human rights standards. Beyond the ordinary limitations in the exercise of human rights the European Convention on Human Rights (ECHR) allows States Parties to declare that they will derogate from their conventional obligations in times of war or threat endangering the life of the nation. Some States Parties made use of this possibility in the present circumstances. He stressed that this does not prevent the European Court of Human Rights to control, in the framework of applications brought before it, the necessity, legality and proportionality of measures taken. Moreover, some rights enshrined in the ECHR are not subject to derogations. So far, the CoE has not established any abuse of the derogation. In the context of monitoring the respect of human rights standards, Mr Giakoumopoulos recalled that European Court of Human Rights doesn't substitute domestic jurisdictions; the latter are the guardians of the rights at first place. However, the Court can be seized with individual applications and is in power to address interim measures if appropriate. He addressed the issue of interference with the exercise of the right to privacy resulting from tracing and tracking applications and recalled the safeguards that need to be in place in order for such measures to be in line with human rights requirements. He informed Members that many Member States have taken measures against domestic violence. Regarding voting rights in the context of COVID-19, Mr Giakoumopoulos updated Members that the Venice Commission will release a revised report on principles applied in emergency situations, including as regards the role of Parliament and electoral rights, in June 2020.

Members raised questions in relation to amendments to national criminal legislation risking to undermine journalists' freedom of expression; the protection of minorities, including Roma, of migrants, the concerns as regards limitations to the rights of LGBTI people. Members also raised questions as regards constitutional changes proposed under corona-times; different Member States' approaches concerning data protection measures; the raise in domestic violence witnessed in the Member States and as regards the functioning of parliaments and checks and balances in Western Balkans. Moreover, they raised the possibility for the CoE to provide guidelines on the respect of voting rights in emergency situations, considering the indefinite duration of the state of emergency, as well as guidelines to protect the most vulnerable. The need to speed up the procedure of some Turkish political prisoners who are not allowed to get

out of the prison despite the grave risk of COVID-19, particularly referring to the Kavala case²³, was also raised. In the debate it was underlined the necessity for the CoE to move from advisory to political action.

Feedback note of the meeting of Thursday 23 April 2020

Participating Members:

Sophie IN 'T VELD (Chair, Renew), Roberta METSOLA (EPP), Vladimír BILČÍK (EPP), Ana DONÁTH (Renew), Nicolaus FEST (ID), Gwendoline DELBOS CORFIELD (Greens/EFA), Sergey LAGODINSKY (Greens/EFA), Patryk JAKI (ECR), Malin BJÖRK (GUE/NGL).

The meeting was dedicated to an exchange of views with the Croatian Presidency of the Council, represented by Miljenko Petrak (Justice Coordinator at the Permanent Representation of Croatia to the EU), Suzana Drešaj, Višnja Letica (Legal Advisers) and Petra Jurina (Justice Counsellor at the Council Working Party on Fundamental Rights, Citizens Rights and Free Movement of Persons), followed by a short session on internal matters.

The Chair of the DRFMG, Sophie in 't Veld opened the meeting and welcomed participants. Mr Petrak started the exchange of views by a short introduction, by which he recalled the importance of the principles of proportionality and necessity to be respected in situations of emergency and the need to take time-limited measures subjected to the scrutiny of the courts. He expressed the Presidency's support to the European Commission (EC)'s monitoring initiative over the implementation of measures taken by Member States and the respect of the principle of proportionality in the COVID-19 context.

Regarding the informal video conference of Member States' Ministers of Justice held on 6 April 2020²⁴, Mr. Petrak reported that all Member States had agreed on working towards the digitisation of justice of which the E-Justice Portal is already an example. This meeting covered four main areas, i.e. the impact of COVID-19 to work of Judicial bodies, the negative effects of COVID-19 in cross-border cooperation especially in the field of criminal justice, the need to adjust Member States' legal dispositions regarding deadlines in national procedures, and some concerns about the spread of COVID-19 in prison population. He also informed Members about the initiative to create a coordination group on the European Arrest Warrant (the enforcement of which is problematic at the moment due to the impossibility to perform the physical surrender of the person being requested because of the closure of borders). The group includes two members per Member State, as well as representatives from the EC, Eurojust and the European judicial network in criminal matters.

²³ ECtHR *Kavala v. Turkey* (application no. 28749/18), see [https://hudoc.echr.coe.int/eng#{"itemid":\["001-199515"\]}](https://hudoc.echr.coe.int/eng#{)

²⁴ <https://www.consilium.europa.eu/en/meetings/jha/2020/04/06/>

Mr. Petrak further recalled that the hearing at the Council General Affairs meeting planned for 20 March 2020 in order to discuss the Article 7(1) procedure was cancelled due to the COVID-19 outbreak. He informed Members that the Council is planning to continue as soon as physical meetings are again possible.

Members raised questions in relation to digitisation in justice systems and disruption in European Arrest Warrant enforcement, updates on the Article 7(1) procedure and a timeline of actions planned until the end of Council's mandate, conditionality of EU funds to the respect of Rule of Law, the situation of Rule of Law in the Western Balkans neighbourhood countries, judicial cooperation and judicial trust, and disinformation.

To conclude, the Chair proposed to share the overview that the DRFMG is weekly updating with the Croatian Presidency and called on the Council to engage in the same monitoring exercise as the Commission and the EP have undertaken. She also underlined the need for EU institutions to converge towards a single standard to assess the impact on democracy, rule of law and fundamental rights.

Feedback note of the DRFMG meeting of Thursday 30 April 2020

Participating Members:

Sophie IN'T VELD (Chair, RENEW), Roberta METSOLA (EPP), Vladimir BILCIK (EPP), Sylvia SPUREK (S&D), Anna DONATH (RENEW), Nicolaus FEST (ID), Gwendoline DELBOS-CORFIELD, Sergey LAGODINSKY (GREENS), Patryk JAKI (ECR), Malin BJÖRK (GUE).

The meeting was dedicated to an exchange of views on the implications on media freedom of the measures taken in the framework of the COVID-19 outbreak with Tom Gibson, Committee to Protect Journalists, Oliver Money-Kyrle, International Press Institute and Jessica Machacova, Free Press Unlimited:

It was opened by the DRFMG Chair who briefly introduced the speakers and the document "Briefing: Media Freedom Violations in the EU Under COVID-19" published by the International Press Institute on 30 April 2020 which was shared before the meeting.

In the presentations that followed, the three speakers outlined their concerns about the situation of safety of press and media independency during COVID-19 outbreak. It was underlined that the situation had progressively become more worrying for the independent media in the last 2-3 years and nowadays is worsening because of pandemic. They felt that censorship (including self-censorship) is one of the risks encountered during this period and that overall freedom of media is increasingly under threat. It was suggested that the MFF could be a solution to ensure support and funding for media independency.

The speakers stressed the following main areas of concerns:

- Use of disproportionate emergency measures against media and journalists, in particular excessive regulation against disinformation. Concerns were raised over the legislation that criminalises the spread of disinformation such as in Romania where legislation empowers the government to take down websites or in Bulgaria an attempt was finally pushed back. The problem is also to understand how long these measures will be in force. Concerns were also expressed over the respect of the principle of transparency in relation to the measures taken by “tech” companies to take down fake news and the importance of the principle of transparency in relation to editor policy was underlined. The risk is that governments may subsidise some editors in instructing them to take down “particular fake news”. The risk with fighting fake news is to put muzzle critical voices.

- Access to information: IPI detected this issue particularly in Romania and Bulgaria where the time to get an information from the authorities has doubled during this period. M. Money-Kyrle expressed his concerns over the tendency of some governments to limit access for journalists to press conferences which can develop in a long-term problem. A key issue for a journalist is the possibility to access to the story in the frontline, for example by accessing to the points of view and stories of health workers.

It was reported that the Hungarian government is threatening not only journalists but also health workers. This is happening also in other countries. A priority is to guarantee freedom of expression of workers because they sometimes can convey life-saving information.

- Economic survival of media. Survival of small independent media becomes a problem, in particular in countries like Bulgaria, Romania, Slovenia or Hungary. How to provide wide support to media is an ongoing debate at EU level. Some concerns are also related to which criteria and safeguards should be assured when supporting media in order to respect the principles of non-discrimination and of transparency, and the right of the media to express a critic opinion. The risk is that the government could literally “buy positive stories” and influence public opinion.

- Safety of journalists: the IPI reported a number of incidents against journalists for example in Italy, Croatia, Greece or Slovenia.

- Surveillance of journalists: Concerns were raised over the protection of data, the right to privacy and tracking apps. It was underlined that, two weeks ago, the European Commission published the COVID-19 Roadmap where the importance of anonymise data, deleting data after the crisis, the full respect of GDPR regulation was stressed. The IPI is working with human rights and civil rights group to understand this apps’ margin of intrusion because that these apps are likely to be able to detect persons journalists meet.

In the exchange that followed, Members highlighted the following, among others: the problem of funding for independent media, including the suggestions for a permanent funding to

support the media, and in particular quality journalism; concerns linked to safety of journalists and also as regards the use of tracking apps; the importance of fighting disinformation including when supported by third countries without endangering the freedom of expression; and the difficulties in accessing information in certain Member States.

Answers underlined that different Member States have different practices as regards funding for media, but it is important that the funding process to be transparent and checked by an independent body. As regards tracking apps, they should be time-limited, subject to check and balances, and that experts should be involved in the decision making. Several cases where the access to press conferences was limited by national authorities, cases where requests for access to information lead to threats towards journalists or where the time limits have been almost doubled were mentioned. Members expressed the wish to be further informed of such cases. It was further underlined that coronavirus is highlighting some difficulties that already existed in the past for independent journalism; it is therefore important to develop short, medium and long-term measures to protect journalists.

The Chair also noted the importance of emergency funding to prevent independent media disappearing and to preserve pluralism and asked the speakers, if possible, for the Members to be provided with an overview of countries where media actors are experiencing problems, by specific sector and type of problem.

Feedback note of the DRFMG meeting of Thursday 14 May 2020

Participating Members:

Sophie IN'T VELD (Chair, RENEW), Roberta METSOLA (EPP), Vladimir BILCIK (EPP), Katarina BARLEY (S&D), Sylvia SPUREK (S&D), Anna DONATH (RENEW), Nicolaus FEST (ID), Gwendoline DELBOS-CORFIELD, Sergey LAGODINSKY (GREENS), Patryk JAKI (ECR), Malin BJÖRK (GUE).

The meetings was dedicated to an exchange of views on disinformation in COVID-19 time. Patrick Penninckx, Head of Department on Information Society, Council of Europe shared his views on the COVID-19 crisis and its implications on fake news and disinformation. He elaborated the impact of the pandemic on several interconnected areas of the modern information society: freedom of expression and media, cybercrime, data protection and artificial intelligence. He informed Members that the CoE had registered many conspiracy theories and disinformation narratives and noted that during the crisis, this trend had developed, primarily on internet, through social media and individuals 'inboxes. Only in March, an increase of 500% was recorded in COVID-19-related spam mails. Multiple new websites were created overtaking governmental and trusted websites. The lack of reliable and sound information and of independent fact-checkers has influenced negatively on health of population as disinformation spreads more rapidly than real information and requires more

energy to be dismantled. E.g. one report indicates that 60% of disinformation is related to false sanitizers, personal protection equipment, blood cure.

Mr Penninckx stressed that it is important to distinguish between misinformation, which is unintentional mistakes, malinformation, which is unclear or misleading information, and disinformation that is fabricated and deliberately manipulated audio and/or visual content to spread intentionally created conspiracy theories or rumours.

Disinformation has a real impact on the right to free and fair elections, on the right to non-discrimination, the right to health, the right to freedom of expression. Disinformation is facilitated by many factors, including the development of digital technology and the shift of the audience away from mainstream media to social media. The result is a decline of trust in information and media. Most disinformation is created, launched and spread with either political or economic objectives by a range of antidemocratic movements, partisan political actors, economic forces or even third countries. Member States, platforms, journalists and national authorities have to act coordinately together with press and broadcasting management and involve citizens themselves. Citizens must take responsibility and check the reliability of information. Mr Penninckx recalled that, in December 2018, the EC had launched the Action Plan against Disinformation, to which the CoE is contributing.

As a positive development, people consume more news than usually, with a staggering 99% accessing COVID-19 news at least once a day and tend to use more traditional media, especially public broadcasters, to get their COVID-19 news. Disinformation and confusion about COVID-19 are still present but people seem to be more aware of the risks, with some of them cross checking with other sources.

Ágnes Viktória Urbán, Mertek Media Monitor, presented a brief overview of the situation in Hungary. Fake news were in the spotlight in the last years and the situation has become more intense than ever before under COVID-19. She raised the issue is that often there is an overlapping phenomenon between fake news and news from the independent media. A pro-government think-tank published a list of possible fake news sources, including independent media, Facebook posts from opposition politicians but also New York Times. One can talk about an information war launched by the Hungarian government against the opposition politicians.

Another worrying issue is related to access to information: instead of 15 days, public authorities have now 45 days to give answer to data requests, which can be prolonged for another 45 days making the request unuseful. She expressed also concerns over people being retained by the police for opinions or critical comments on Facebook.

Lutz Güllner (Head of Division, Strategic Communications and Information Analysis, EEAS (Stratcom taskforce) noted that there was a clear increase in disinformation during the COVID-19 crisis. In this context, it was very important to distinguish misinformation (unintentional),

disinformation (intentional, coordinated) and foreign influence operations (perpetrated by state and non -state actors).

The EEAS' mandate includes monitoring the third category. During the COVID-19 crisis two main disinformation narratives were deployed: on the one hand, a narrative highlighting that democratic societies and EU are unable to deal with this crisis and, on the other hand, a narrative suggesting that authoritarian ways of leading in this crisis are successful ones. There were also more specific issues and narratives detected, such as COVID-19 and its alleged link to 5G; narratives about alleged plans to install dictatorships in Western Countries; and narratives about an alleged complot of Bill Gates and the Gates Foundation in the crisis.

Since the beginning of May, the EEAS was observing a slight decrease of disinformation from external actors, but it was too early to say if this was a general trend. In the latest EEAS reports, disinformation activities and narratives were described in quite some detail. Also, COVID-19 has been used in some countries as a pretext to restrict media freedom and freedom of expression. One of the more positive elements was the fact that many social media platforms were now doing more to address disinformation.

In the exchange that followed Members underlined that several DRFMG Members addressed a letter earlier in the crisis to both the European Commission and to the EEAS to draw their attention on this issue; mentioned that there is a need to reframe the information context through a structured and strategic shift; asked what can be done actively on the side of EU Institutions to counter the spread of fake news and foreign interference which undermines democratic societies and raised the attention to the importance of freedom of expression, protection of whistleblowers, protection of journalists, independent media, private and public media outlets. The question whether the creation of an EU agency against disinformation would help to step up efforts was raised.

In their replies, the three speakers underlined, among others, that the EC Action Plan against Disinformation had attracted the attention of other countries as an example to be followed. It was mentioned that for example EEAS 'activity is focused on three pillars: (i) proactive strategic communications, (2) work with independent and high quality media and (3) to address and expose disinformation. As regards Hungary, media freedom issues cannot be analysed without paying broader attention to democracy and the respect of the Rule of Law. It was recommended that the CoE and the EU should invest in media literacy and media education to involve citizens as disinformation is a society issue. It was noted that disinformation is linked to media ownership and a possible solution would be to use EU competition law to ensure media pluralism. Moreover, the idea of setting up a specific EU Agency or another appropriate structure could be one of the options to be explored with a view to increase coordination and cooperation as different approaches exist at MS level.

Feedback note of the DRFMG meeting of Thursday 18 May 2020

Participating Members:

- Members of the DRFMG:

Sophie IN 'T VELD (Chair, Renew), Roberta METSOLA (EPP), Vladimír BILČÍK (EPP), Sylwia SPUREK (S&D), Katarina BARLEY (S&D), Anna DONÁTH (Renew), Nicolas BAY (ID), Nicolaus FEST (ID), Gwendoline DELBOS CORFIELD (Greens/EFA), Sergey LAGODINSKY (Greens/EFA), Patryk JAKI (ECR), Malin BJÖRK (GUE/NGL), Konstantinos ARVANITIS (GUE/NGL).

- Standing Rapporteur & Shadow Rapporteurs on the Article 7(1) TEU procedure in relation to Poland that are not also Members of the DRFMG:

Juan Fernando LÓPEZ AGUILAR (S&D), Michal ŠIMEČKA (Renew), Terry REINTKE (Greens/EFA).

The meeting was dedicated to an exchange of views on the state of democracy, rule of law and fundamental rights in Poland. For that reason, the Standing Rapporteur and Shadows on the interim report under the Article 7(1) TEU procedure in relation to Poland were also invited to the meeting. The following speakers were invited: Pieter OMTZIGT, Co-Rapporteur of the Parliamentary Assembly of the Council of Europe; Sebastian KALETA, lawyer, Deputy Minister of Justice, Republic of Poland; Prof. Ewa ŁĘTOWSKA, Professor at the Institute of Law Studies of the Polish Academy of Sciences, member of the Polish Academy of Sciences and Polish Academy of Learning, who previously served as Poland's first Commissioner for Human Rights (1987-1992), judge of the Supreme Administrative Court (1999-2002) and judge of the Constitutional Tribunal (2002-2011).

During the meeting, the effect on respect for the rule of law, democracy and fundamental rights in Poland of the measures taken by the Polish Government in relation to the COVID-19 outbreak was discussed, among other issues. Mr. Omtzigt reiterated that the PACE Rapporteurs, while welcoming the wish of the authorities to ensure the continuation of the democratic process, had called for a postponement of the Polish presidential elections following the outbreak of the COVID-19 epidemic, in order to allow for the election campaign and the vote itself to be fair, free and equal. According to a Member, the calling of an 'emergency state' following the COVID-19 outbreak would have automatically led to a postponement of the elections, but this was not done. Both Mr Omtzigt and Prof. Łętowska denounced the hasty and chaotic changes to the electoral law shortly before the elections, and the way in which the presidential elections were de facto cancelled three days before the vote without parliamentary involvement or clear legal basis, by a declaration of the party leaders of the governing coalition. Prof. Łętowska also questioned the hasty decision to organise the elections by postal vote, in particular the fact that the Polish Post has been given access to the Polish citizens' register without a legal basis. The PACE will ask the Venice Commission for general guidelines on how to deal with elections during a pandemic.

Furthermore, Prof. Łętowska criticized that no 'emergency state' was introduced in Poland following the COVID-19 outbreak, but only an 'epidemiological state', which, other than the

'emergency state', does not provide for specific guarantees of individual rights. In some laws adopted to fight the epidemic, a number of provisions limiting individual freedoms were introduced at the last moment, but unrelated to the fight against the epidemic: for instance, the extension of the power of prison guards to use paralyzers; the deprivation of the Electoral Commission of the power to conduct the presidential elections, in favour of a Minister of the Polish Government; the possibility to impose administrative fines up to 500 EUR (equal to the Polish minimum wage), with weak safeguards. According to the speaker, the latter were effectively used to silence members of the opposition, the media and civil society.

Deputy Minister of Justice Kaleta denounced the assertion that the Polish Government would use the pandemic as a pretext to ban sexual education or abortion. The draft bills in question concern citizens' initiatives submitted to the Polish Parliament, and the Parliament was under an obligation to put them on the agenda in order to respect a legal deadline.

Feedback note of the DRFMG meeting of Thursday 28 May 2020

Participating Members:

Sophie IN 'T VELD (Chair, Renew), Roberta METSOLA (EPP), Katarina BARLEY (S&D), Sylwia SPUREK (S&D), Ana DONÁTH (Renew), Nicolaus FEST (ID), Gwendoline DELBOS-(Greens/EFA), Sergey LAGODINSKY (Greens/EFA), Patryk JAKI (ECR), Malin BJÖRK (GUE/NGL).

The meeting was dedicated to an exchange of views on the civil society space with Michael O'Flaherty, EU Fundamental Rights Agency; Barbara Nolan, DG JUST; Niels Engelschiøn, Norway/EEA Grants and Kersty McCourt, Open Society Justice Initiative. The Chair of the DRFMG welcomed the speakers and noted that the exchange of views would focus on the stakeholders consultations conducted by the Fundamental Rights Agency, the issue of civil society shrinking space and the impact of COVID-19 related measures on civil society space.

The Director of the EU Fundamental Rights Agency shared the main findings of the FRA annual survey on civil society, to which more than 200 organisations from its Fundamental Rights Platform participated. He highlighted four areas in which there had been little improvements in 2019: participation and involvement of civil society in meaningful consultations; threats to civil society organisations and their representatives, including online abuses; challenges posed by regulatory restrictions to freedom of assembly and freedom of expression and financial sustainability of civil society organisations.

FRA is also assessing the impact of COVID-19 related measures on fundamental rights through monthly bulletins; the early data concerning the impact of the crisis measures on civil society show restrictions to freedom of assembly and association, lack of access to decision-makers and to funding, and the need to protect an enabling space for civil society actors.

The following actions were suggested to address ongoing challenges: sharing of Member States best practices to provide effective consultation and participation of civil society in decision-making; avoid political discourse expressing hate and encouraging marginalisation, and ensure adequate follow up to reporting of online hate speech; ensure better auditing on anti-corruption legislation to increase transparency and avoid unintended consequences; make EU funds accessible to civil society, including for advocacy work and core costs for organisations.

Barbara Nolan from DG JUST outlined the actions taken by the Commission: the monitoring of emergency measures; EC support to civil society; and the involvement of civil society in key policy developments concerning the Rule of Law and the new Charter Strategy. She stressed the importance of civil society independence to build an open space for debate and citizens participation in democratic life. Meetings with civil society organisations confirmed the impact of the pandemic on increased discrimination, racism and xenophobia, as well as on access to health care.

The Commission shares the Parliament's concerns regarding the shrinking space for civil society, which has a negative effect on fundamental rights. The Commission is monitoring legislative developments having an impact on civil society organisations, and launched an infringement procedure against national measures restricting donations from abroad to civil society organisations, and against national measures criminalising the support to asylum applicants. Although DG JUST has limited funding, civil society remains one of the beneficiaries in the new MFF. The Commission acknowledged that civil society plays a key role in the implementation of the Charter on the ground. The Commission also undertook a broad consultation with civil society organisations on two key policy initiatives: the new Rule of Law annual report to be published in September 2020, and the new Charter Strategy expected at end of October 2020.

Niels Engelschiøn from the Norway/EEA grants stressed that supporting civil society and independent media was crucial for preserving democracy not only in relation to the COVID-19 outbreak; he also indicated that the financial sustainability of civil society was not strong enough, and noted that recovery funds do not cover civil society organisations enough. Public budget will be redirected to other sectors, with an effect on civil society advocacy work on fundamental rights. In this context, the EEA/Norway grants continue to provide a stable source of funding for activities strengthening civil society. Two hundred million euros are made available through the Active Citizens Funds in 15 Member States, which represents the largest single source of funding for civil society organisations working on democracy, rule of law and fundamental rights. The emphasis is put on smaller organisations, working outside of the metropolitan areas; strong focus is put on the development of long-term capacity building; local actors, independent from national authorities, operate all programs. Additional measures to counter the effect of COVID-19 on civil society organisations were set, such as advance payments in projects, and increasing grants for implementation of projects to cover the extraordinary costs of crisis. It was stressed that political support was as important as financial support to safeguard the EU common values.

Kersty McCourt from the Open Society Justice Initiative stressed that the decline for civil society space in the EU Member States had been going on for many years before the crisis; civil society is reporting many violations regarding the freedom of assembly and the abuse of force against protesters in some Member States; for example in Hungary, there have been numerous attempts to undermine independent civil society organisations. An important ruling of the CJEU on freedom of association and the right to seek funds is expected in a few weeks. The response to COVID-19 has exacerbated the problem and affected Roma Communities, persons with disabilities, minorities. New online platforms have also emerged to fight disinformation. A recommendation of five points for EU action to support civil society was published for 2019-2024 (Civil Society on the Frontline – 5 points for EU action): recognise and speak up for civil society; secure and enabling space for civil society; monitor, document and analyse (with qualitative and quantitative approach); protect civil society from attacks; take legal action to uphold the role of CSOs.

In the exchange that followed, Members highlighted among others: the possibility set up an alternative EU regulatory regime for NGOs and non-profit organisations; the announced approximate 20 per cent cuts in the Values and Justice programme in the next MFF. Questions were raised on the factors contributing to threats and attacks on civil society, including online abuses; whether the Rule of law annual report would cover the shrinking space for civil society; how the values and justice programme budget could be restored, and the possibility for EU funds to be managed by the EC directly rather than channelled through national authorities, in the case of Article 7(1) TEU procedures.

Answers provided underlined that the EU Regulatory Framework depends on EU competencies and binding regulations across Member States; specific groups were the main target of hate speech and attacks, such as LGBTI, faith communities; much more can be done in tackling hate crimes and hate speeches, starting from police investigations, prosecutions, and appropriate penalties. Good practices on civil society consultation were mentioned, such as in Sweden, the UK and Slovenia. The Commission confirmed that certain issues relating to media pluralism would be covered in the rule of law annual report, and mentioned the new Charter Strategy and the Democracy Action Plan as other tools being developed to cover all relevant issues. Niels Engelschiøn confirmed there was no agreement of the Norway/EEA grants with Hungary and that negotiations were being held concerning the essential condition of independence from the government.

The important role of the DRFMG to support civil society was highlighted, as well as the need to encompass a broad definition of civil society; it was noted that monitoring activities should lead to take actions.