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REPORT

on the Commission's 2020 Rule of Law Report
(2021/2025(INI))

Committee on Civil Liberties, Justice and Home Affairs

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the Commission's 2020 Rule of Law Report (2021/2025(INI))

The European Parliament,

- having regard to Article 295 of the Treaty on the Functioning of the European Union (TFEU),
- having particular regard to Article 2, Article 3(1), Article 3(3), second subparagraph, Article 4(3) and Articles 5, 6, 7 and 11 of the Treaty on European Union (TEU),
- having regard to the articles of the TFEU relating to the respect for and protection and promotion of democracy, the rule of law and fundamental rights in the Union, including Articles 70, 258, 259, 260, 263 and 265 thereof,
- having regard to Protocol No 1 on the role of national parliaments in the European Union and Protocol No 2 on the application of the principles of subsidiarity and proportionality, annexed to the Treaties,
- having regard to the Charter of Fundamental Rights of the European Union (hereinafter 'the Charter'),
- having regard to the case law of the Court of Justice of the European Union (CJEU),
- having regard to Article 49 of the TEU, the Copenhagen criteria and the body of Union rules that a candidate country must fulfil if it wishes to join the Union (the *acquis*),
- having regard to the Commission communication of 30 September 2020 on the 2020 Rule of Law Report – the rule of law situation in the European Union (COM(2020)0580),
- having regard to Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget¹ (the Rule of Law Conditionality Regulation),
- having regard to Regulation (EU) 2021/692 of the European Parliament and of the Council of 28 April 2021 establishing the Citizens, Equality, Rights and Values Programme and repealing Regulation (EU) No 1381/2013 of the European Parliament and of the Council and Council Regulation (EU) No 390/2014²,
- having regard to the Universal Declaration of Human Rights,
- having regard to the UN instruments on the protection of human rights and fundamental freedoms and the recommendations and reports of the UN Universal Periodic Review, as well as the case law of the UN treaty bodies and the special procedures of the Human

¹ OJ L 433 I, 22.12.2020, p. 1.

² OJ L 156, 5.5.2021, p. 1

Rights Council,

- having regard to the UN Declaration on Human Rights Defenders of 8 March 1999,
- having regard to the recommendations and reports of the Office for Democratic Institutions and Human Rights, the High Commissioner on National Minorities, the Representative on Freedom of the Media and other bodies of the Organization for Security and Co-operation in Europe (OSCE),
- having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter, the case law of the European Court of Human Rights and the European Committee of Social Rights, and the conventions, recommendations, resolutions, opinions and reports of the Parliamentary Assembly, the Committee of Ministers, the Human Rights Commissioner, the European Commission Against Racism and Intolerance, the Steering Committee on Anti-Discrimination, Diversity and Inclusion, the Venice Commission and other bodies of the Council of Europe,
- having regard to the Memorandum of Understanding between the Council of Europe and the European Union of 23 May 2007 and the Council conclusions of 8 July 2020 on EU priorities for cooperation with the Council of Europe 2020-2022,
- having regard to the UN Convention against Corruption,
- having regard to UN International Convention on the Elimination of All Forms of Racial Discrimination,
- having regard to the Council of Europe’s toolkit for Member States entitled ‘Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis’ of 7 April 2020,
- having regard to the Interim Report on the measures taken in the EU Member States as a result of the COVID-19 crisis and their impact on democracy, the rule of law and fundamental rights, adopted by the Venice Commission at its 124th Plenary Session on 8 October 2020,
- having regard to the 2020 Annual Report by the partner organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists,
- having regard to the Commission’s reasoned proposal for a Council decision of 20 December 2017 on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law, issued in accordance with Article 7(1) of the Treaty on European Union (COM(2017)0835),
- having regard to the Commission communication of 17 July 2019 entitled ‘Strengthening the rule of law within the Union – A blueprint for action’ (COM(2019)0343),
- having regard to the 2020 EU Justice Scoreboard,
- having regard to the opinion of the European Economic and Social Committee of

- 19 June 2019 entitled ‘Further strengthening the Rule of Law within the Union. State of play and possible next steps’, which proposed the establishment of an annual forum on fundamental rights and the rule of law,
- having regard to the report of the European Economic and Social Committee Group on Fundamental Rights and the Rule of Law of June 2020 entitled ‘National developments from a civil society perspective, 2018-2019’,
 - having regard to the EU Agency for Fundamental Rights’ report of 17 January 2018 entitled ‘Challenges facing civil society organisations working on human rights in the EU’, its bulletins published in 2020 on the fundamental rights implications of the COVID-19 pandemic in the EU, and its other reports, data and tools, in particular the European Union Fundamental Rights Information System (EFRIS),
 - having regard to the report of the EU Agency for Fundamental Rights of 10 September 2020 entitled ‘Antisemitism: Overview of antisemitic incidents recorded in the European Union,
 - having regard to the report of the European Institute for Gender Equality entitled ‘Beijing +25: the fifth review of the implementation of the Beijing Platform for Action in the EU Member States’, published on 5 March 2020,
 - having regard to the conclusions of the Council of the European Union and the Member States meeting within the Council on ensuring respect for the rule of law of 16 December 2014,
 - having regard to the EU Gender Equality Strategy for 2020-2025, the EU LGBTIQ Equality Strategy for 2020-2025, the EU Strategy on the Rights of the Child for 2021-2024, and the EU Strategy for the Rights of Persons with Disabilities for 2021-2030,
 - having regard to the EU Anti-Racism Action Plan for 2020-2025 and the EU Roma Strategic Framework for Equality, Inclusion and Participation,
 - having regard to its resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights³,
 - having regard to its resolution of 1 March 2018 on the Commission’s decision to activate Article 7(1) TEU as regards the situation in Poland⁴,
 - having regard to its resolution of 19 April 2018 on the need to establish a European Values Instrument to support civil society organisations which promote fundamental values within the European Union at local and national level⁵,
 - having regard to its resolution of 19 April 2018 on protection of investigative journalists

³ OJ C 215, 19.6.2018, p. 162.

⁴ OJ C 129, 5.4.2019, p. 13.

⁵ OJ C 390, 18.11.2019, p. 117.

in Europe: the case of Slovak journalist Ján Kuciak and Martina Kušnírová⁶,

- having regard to its resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded⁷,
- having regard to its resolution of 13 November 2018 on the rule of law in Romania⁸,
- having regard to its resolution of 14 November 2018 on the need for a comprehensive EU mechanism for the protection of democracy, the rule of law and fundamental rights⁹,
- having regard to its resolution of 13 February 2019 on experiencing a backlash in women’s rights and gender equality in the EU¹⁰,
- having regard to its resolution of 28 March 2019 on the situation of the rule of law and the fight against corruption in the EU, specifically in Malta and Slovakia¹¹,
- having regard to its resolution of 18 December 2019 on the rule of law in Malta following the recent revelations surrounding the murder of Daphne Caruana Galizia¹²,
- having regard to its resolution of 18 December 2019 on public discrimination and hate speech against LGBTI people, including LGBTI free zones¹³,
- having regard its resolution of 15 January 2020 on human rights and democracy in the world and the European Union’s policy on the matter – annual report 2018¹⁴,
- having regard to its resolution of 16 January 2020 on ongoing hearings under Article 7(1) of the TEU regarding Poland and Hungary¹⁵,
- having regard to its resolution of 17 April 2020 on EU coordinated action to combat the COVID-19 pandemic and its consequences¹⁶,
- having regard to its resolution of 19 June 2020 on the anti-racism protests following the death of George Floyd¹⁷,
- having regard to its resolution of 19 June 2020 on the reopening of the investigation against the Prime Minister of the Czech Republic on the misuse of EU funds and

⁶ OJ C 390, 18.11.2019, p. 111.

⁷ OJ C 433, 23.12.2019, p. 66.

⁸ OJ C 363, 28.10.2020, p. 8.

⁹ OJ C 363, 28.10.2020, p. 45.

¹⁰ OJ C 449, 23.12.2020, p. 102.

¹¹ OJ C 108, 26.3.2021, p. 107.

¹² Texts adopted, P9_TA(2019)0103.

¹³ Texts adopted, P9_TA(2019)0101.

¹⁴ Texts adopted, P9_TA(2020)0007.

¹⁵ Texts adopted, P9_TA(2020)0014.

¹⁶ Texts adopted, P9_TA(2020)0054.

¹⁷ Texts adopted, P9_TA(2020)0173.

potential conflicts of interest¹⁸,

- having regard to its resolution of 17 September 2020 on the proposal for a Council decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law¹⁹,
- having regard to its resolution of 7 October 2020 on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights²⁰,
- having regard to its resolution of 8 October 2020 on the rule of law and fundamental rights in Bulgaria²¹,
- having regard to its resolution of 25 November 2020 on strengthening media freedom: the protection of journalists in Europe, hate speech, disinformation and the role of platforms²²,
- having regard to its resolution of 26 November 2020 on the situation of Fundamental Rights in the European Union – Annual Report for the years 2018-2019²³,
- having regard to its resolution of 17 December 2020 on the Multiannual Financial Framework 2021-2027, the Interinstitutional Agreement, the EU Recovery Instrument and the Rule of Law Regulation²⁴,
- having regard to its resolution of 11 March 2021 on the declaration of the EU as an LGBTIQ Freedom Zone²⁵,
- having regard to its resolution of 25 March 2021 on the application of Regulation (EU, Euratom) 2020/2092, the rule-of-law conditionality mechanism²⁶,
- having regard to its resolution of 29 April 2021 on the assassination of Daphne Caruana Galizia and the rule of law in Malta²⁷,
- having regard to its European Added Value Assessment accompanying the legislative initiative report on an EU mechanism on democracy, the rule of law and fundamental rights of October 2016,
- having regard to its Preliminary Assessment on the European added value of an EU mechanism on democracy, rule of law and fundamental rights of 23 April 2020,

¹⁸ Texts adopted, P9_TA(2020)0164.

¹⁹ Texts adopted, P9_TA(2020)0225.

²⁰ Texts adopted, P9_TA(2020)0251.

²¹ Texts adopted, P9_TA(2020)0264.

²² Texts adopted, P9_TA(2020)0320.

²³ Texts adopted, P9_TA(2020)0328.

²⁴ Texts adopted, P9_TA(2020)0360.

²⁵ Texts adopted, P9_TA(2021)0089.

²⁶ Texts adopted, P9_TA(2021)0103.

²⁷ Texts adopted, P9_TA(2021)0148.

- having regard to Rule 54 of its Rules of Procedure,
 - having regard to the opinions of the Committee on Budgetary Control, the Committee on Legal Affairs, the Committee on Constitutional Affairs and the Committee on Petitions,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0199/2021),
- A. whereas the Union is founded on the common values enshrined in Article 2 of the TEU of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities – values common to the EU Member States and to which candidate countries must adhere in order to join the Union; whereas democracy, the rule of law and fundamental rights are mutually reinforcing values which, when undermined, may pose a systemic threat to the Union; whereas respect for the rule of law is binding on the Union as a whole and its Member States at all levels of governance, including subnational entities;
- B. whereas the annual rule of law review cycle is a welcome addition to the tools available to preserve the values enshrined in Article 2 of the TEU by addressing the situation in all EU Member States based on four pillars, with a direct bearing on respect for the rule of law; whereas it is intended as a yearly cycle to ensure the rule of law and to prevent problems from emerging or deepening;
- C. whereas the Commission’s first rule of law report (2020 report) is limited in scope, as it does not cover all EU values as provided for in Article 2 of the TEU;
- D. whereas the Charter became a fully-fledged component of the Treaties when the Treaty of Lisbon came into force, and is therefore now legally binding on the institutions, agencies and other bodies of the EU and on the Member States when EU legislation is applied; whereas a genuine culture of fundamental rights must be developed, fostered and strengthened not only within the EU institutions, but also in the Member States, in particular when they apply EU law domestically and in their relations with non-EU countries;
- E. whereas while the 2020 report raises concerns and awareness, it does not provide a sufficient assessment of the effectiveness of the changes carried out by each country, nor any concrete country-specific recommendations or examination of each country’s adherence to the rule of law over time, which could jeopardise its intended preventive effects;
- F. whereas without effective follow-up through annual monitoring, the 2020 report may fail to prevent, detect and effectively address systemic challenges and backsliding on the rule of law as witnessed in several EU Member States in recent years; whereas upholding the rule of law is an essential precondition for compliance with the principle of sound financial management and for the protection of the Union’s financial interests;
- G. whereas in the last few years, several resolutions adopted by Parliament have identified

serious rule of law issues in a number of Member States²⁸;

- H. whereas backsliding on the rule of law and fundamental rights in some countries is seriously affecting mutual trust in the functioning of the area of freedom, security and justice and threatening the Union objectives as enshrined in Article 3 of the TEU, as illustrated by several cases where the European Arrest Warrant was placed under strain owing to profound doubts about the independence of the judiciary;
- I. whereas ombudsperson institutions and equality bodies in the Member States play a critical role in safeguarding key principles of the rule of law, such as transparency, accountability and due process;
- J. whereas emergency measures taken in response to the COVID-19 pandemic have affected the exercise of EU citizens' fundamental rights, such as the right to free movement, access to justice, access to public information, privacy, the freedom of association and the freedom of assembly, as well as having an impact on democratic checks and balances; whereas it is therefore crucial to ensure that effective checks and balances on governments' actions are in place in defence of EU citizens' rights;
- K. whereas several Member States' international press freedom rankings have declined and violence against journalists has increased; whereas the threats to media freedom include harassment and attacks aimed at journalists, a disregard for journalists' legal protection, as well as media capture and actions motivated by economic or political aims in the media sector; whereas the worrisome developments aimed at stifling free speech and press freedom set a bad example within the EU and EU accession countries;
- L. whereas it is necessary to strengthen and streamline existing mechanisms and to develop an effective EU mechanism on democracy, the rule of law and fundamental rights to ensure that the principles and values enshrined in the Treaties are upheld throughout the Union;
- M. whereas respect for the rights of minorities constitutes one of the political criteria that a candidate country must fulfil upon accession; whereas the Union has an important role to play in ensuring respect for the rights of national and linguistic minorities in candidate countries; whereas Parliament has already called on the Commission²⁹ to adopt a common framework of minimum EU standards for the protection of the rights of persons belonging to minorities, which are strongly embedded in a legal framework guaranteeing democracy, the rule of law and fundamental rights throughout the Union;

1. The 2020 Rule of Law Report: lessons for 2021

- 1. Welcomes the Commission's first annual rule of law report; considers it vital to establish a European rule of law monitoring and enforcement architecture in the Union; reiterates the importance of identifying risks in advance and of preventing violations of fundamental rights and the rule of law, instead of reacting *ex post* when such violations

²⁸ See, for example, its resolutions cited herein of 1 March 2018, 19 April 2018, 13 November 2018, 28 March 2019, 18 December 2019, 19 June 2020, 8 October 2020 and 29 April 2021.

²⁹ Resolution of 13 November 2018 on minimum standards for minorities in the EU (OJ C 363, 28.10.2020, p. 13).

are repeated; encourages, therefore, the further development of this new tool;

2. Welcomes the fact that the functioning of the justice systems, the anti-corruption framework, media pluralism and certain institutional issues related to checks and balances, including civic space to a certain extent, are all part of the Commission's annual overview of the rule of law situation in the Member States; calls, moreover, for the inclusion in the annual reports of certain important elements of the Venice Commission's 2016 Rule of Law Checklist, such as legal safeguards to prevent arbitrariness and abuse of power by public authorities, the independence and impartiality of the legal profession, equality before the law and non-discrimination; encourages the Commission to also highlight positive trends in Member States that could serve as good examples for others to follow;
3. Notes with satisfaction that the report contains country-specific chapters; commends the Commission's efforts to engage with national governments and national parliaments as well as civil society and other national actors; encourages the Commission to devote greater efforts to deepening the country analyses with a view to better assessing the severity of rule of law challenges; believes that more time should be devoted to the Commission's country visits, including on site, in order to achieve broader engagement and dialogue with national authorities and civil society; considers that the Commission should raise greater awareness of these visits in order to foster a rule of law culture at national level;
4. Welcomes the fact that all Member States are scrutinised according to the same indicators and methodology; emphasises, however, that presenting breaches of a different nature equally risks trivialising the most serious breaches of the rule of law; urges the Commission to differentiate its reporting by distinguishing between systemic breaches of the rule of law and individual, isolated breaches; stresses the potential preventive benefits of the annual rule of law report; considers that a more thorough evaluation is needed to assess whether the report has had a sufficient preventive effect; considers that in any event this is clearly not the case as regards the Member States under the Article 7(1) TEU procedure; believes that the 2020 report could have provided more in-depth and transparent assessments, stating whether there were serious deficiencies, a risk of a serious breach or an actual breach of EU values in each of the pillars analysed in the country chapters; considers these assessments necessary to formulate conclusions about the state of the rule of law and to identify follow-up actions and remedial measures and tools; calls for a synthetic approach in future reports in order to clearly identify where the most important risks and problems lie across the Member States; calls on the Commission to update its methodology accordingly and to keep Parliament informed without undue delay;
5. Considers that the 2020 report is overly descriptive and does not provide sufficient analysis; calls on the Commission to make future reports more analytical; considers it necessary that future reports should contain country-specific recommendations on how to address the concerns identified or remedy breaches, including deadlines for implementation, where appropriate, and benchmarks to be followed up on; calls on the Commission to include in the reports indications of the follow-up on the implementation of its recommendations and remedial action;
6. Is concerned by the spillover effects of the erosion of media freedom into other areas

analysed in the report; considers that smear campaigns against academics, journalists, judges, legal professionals, civil society organisations and activists, notably strategic lawsuits against public participation (SLAPPs), serve to limit their independence and ability to act, with chilling effects;

7. Calls, therefore, for a more integrated analysis on the interlinkages between the four pillars included in the report and of how combined deficiencies may amount to systemic breaches of the rule of law or risks thereof, and a signal if those are affecting or risk affecting the financial interests of the Union;
8. Considers that the annual reports should identify cross-cutting trends at EU level; believes that an EU-wide perspective is absent from the 2020 report; asks the Commission to identify instances where certain measures or practices that undermine the rule of law, media freedom, checks and balances, or the fight against corruption in one Member State become blueprints for others, or when the gravity and scope of such practices have the potential to affect the Union as a whole; calls on the Commission to assess how such attacks compromise the quality of democracy in the Union; calls for the reports' analyses to prioritise these trends, including the increasing challenges posed by national constitutional courts to the EU legal architecture, in order to guide remedial action at EU level; calls on the Commission to provide clear illustrations of systematic disinformation and foreign interference campaigns aimed at undermining public trust in state institutions and independent media while pushing Member States towards authoritarian-style governance structures;
9. Regrets the fact that not all rule of law issues were covered in sufficient detail in the 2020 report; invites the Commission to develop its country-specific expertise and capacity so as to react more swiftly to negative developments in the Member States; calls on the Commission to devote sufficient resources to the monitoring and enforcement of the rule of law in the EU;
10. Stresses that the Member States' laws, adherence to the rule of law, checks and balances, and democratic institutions, including the independence thereof, should be functional not only *de jure* but also *de facto*;

Justice systems

11. Welcomes the monitoring of the independence, quality and efficiency of the Member States' justice systems, including the national prosecution services and their capacity to provide for effective judicial protection to ensure compliance with EU law; considers that the enabling environment to ensure access to justice for all should also be monitored, including access to justice at EU level and the efforts and resources devoted to guaranteeing access to justice; is concerned about the lack of a direct redress mechanism available to EU citizens to defend their rights as provided by the Charter; considers that the reports should go beyond a static annual snapshot and include any relevant information in the country chapters about the state of the rule of law, including on relevant antecedents and the political context in which new developments take place, so as to enable an accurate, dynamic and integral assessment of the *de jure* and *de facto* independence of judicial systems, including the independence of lawyers and the legal profession, and should cover a longer period of time than just the previous 12 months; highlights that adequate rule of law standards should be guaranteed for EU citizens and

residents when exercising their right to freedom of movement within the EU; stresses that effective access to justice for all citizens is a cornerstone of the rule of law which, on account of their vulnerability, must be especially guaranteed for seasonal workers and cross-border workers when pursuing a professional activity in another Member State;

12. Stresses that effective, independent and efficient justice systems are essential for upholding the rule of law; recalls that the Union's judicial architecture includes national justice systems; underlines the fact that in order to safeguard EU citizens' fundamental rights and freedoms, justice systems and judges must be independent and thus protected from any kind of pressure, threat or interference – whether direct or indirect – from any quarter, including political authorities; welcomes the fact that the composition of judicial bodies, appointment methods, in addition to mechanisms governing length of service and grounds for rejection and dismissal, career advancement, disciplinary procedures and sanctions, have also been identified as indicators of judicial independence; stresses that the monitoring of these parameters must be constant and embedded in a comprehensive assessment of all checks and balances, while refraining from focusing only on a limited number of parameters, in order to verify the true state of independence of the judiciary in the Member States;
13. Notes that the 2020 report rightly addresses the need to digitalise justice proceedings and training for judges; recalls that significant differences remain between the Member States in the level of participation in training dedicated to legal professions; regrets the fact that the report fails to mention training for lawyers;
14. Is alarmed by the stark deterioration of the independence of some Member States' justice systems and by the increasing and blatant lack of compliance with EU law, including CJEU judgments; notes that judicial independence continues to be an area of serious concern in some Member States, as reflected in some country chapters; calls on the Commission to clearly assess and designate such shortcomings and findings identified as a clear risk of a serious breach of the rule of law; is deeply concerned by the Commission's failure to react promptly and with legal means to the serious risks regarding the rule of law identified in the country chapters, above all once these have materialised into actual breaches of the rule of law; calls on the Commission to provide a meaningful, simple and clear assessment of the different national justice systems and to highlight where best practices for comparable systems might be applied and how similar deficiencies could be addressed;
15. Highlights that in accordance with Article 17(1) of the TEU, the Commission is required to ensure the application of the Treaties and secondary legislation, including in cases where risks of serious breaches of the values laid down in Article 2 of the TEU, as identified in the country chapters, have effectively materialised following the publication of the 2020 report;
16. Decries the political pressure applied in Hungary and Poland to prevent national courts from initiating preliminary ruling proceedings before the CJEU under Article 267 of the TFEU, which is intended to prevent national judges from asking the CJEU questions in relation to EU requirements on judicial independence; considers this practice to be in contravention of the Treaties and the CJEU's established interpretation of the relevant provisions; is appalled by the growing and deliberate lack of compliance with CJEU

rulings; believes that these unlawful developments pose a systemic threat to the unity and consistency of EU law and to the very functioning of the Union; invites the Commission to include in its future reports detailed data on Member States' compliance with CJEU rulings; considers, therefore, that forthcoming annual reports should consider the failure to respect CJEU rulings as serious violations in the assessment; urges the Commission to ensure immediate and adequate legal responses to refusals to implement and respect CJEU rulings, such as court actions under Article 260 of the TFEU; calls on the Commission to closely monitor the rulings of national courts regarding the primacy of EU law over national constitutional norms and to initiate infringement proceedings against Member States that consistently breach this principle; deplores, moreover, the request made by the Prime Minister of Poland to the Constitutional Tribunal to rule on the primacy of national constitutional norms over EU law;

17. Notes that the slowness of civil, criminal and administrative judicial procedures constitute a major danger, not least for the respect for the rule of law; calls on the Commission to include in its future reports an evaluation of prison conditions, judicial backlogs and the average duration of trials for each Member State;

Anti-corruption framework

18. Welcomes the dedication of a specific chapter to anti-corruption efforts in each country chapter, since systemic corruption undermines both the functioning of the rule of law and the trust of EU citizens in the decisions taken by authorities, civil servants and the judiciary; stresses that by diverting public funds away from their intended public use, corruption detracts from the level and quality of public services, thereby undermining fundamental rights; points out that while the existence of national anti-corruption legislation, policies and strategies can be considered progress, their implementation and subsequent effectiveness on the ground are crucial for the rule of law and must also be assessed; underlines that anti-corruption frameworks should cover areas such as ethical rules, awareness-raising measures, rules on asset disclosures, incompatibilities and conflicts of interest, public procurement, internal control mechanisms, rules on lobbying, and revolving doors; calls on the Member States and institutions to devise effective tools to prevent, detect risk, halt and sanction cases of corruption and fraud, as well as mechanisms to recover the profits from those cases, in particular by regularly monitoring the use of both EU and national public funds; notes that an assessment of the resilience of the anti-corruption framework to tackle corruption-related risks in the area of public procurement remains largely absent from the 2020 report;
19. Invites the Commission to place greater emphasis on the misuse of EU funds, particularly in view of the Rule of Law Conditionality Regulation, and to review the proper functioning of investigations and public prosecution services in each Member State in relation to the investigation and prosecution of fraud, including tax fraud, corruption or other breaches of EU law relating to the implementation of the EU budget or the protection of the Union's financial interests; expresses its concern over the potentially increasing risk of the Union's budget being misused as a means to weaken the rule of law in some Member States;
20. Is deeply concerned by the growing threat of corruption-related crimes; calls on the Commission to update and enhance the Union's anti-corruption legislation where

necessary, using the report's findings to better respond to the deficiencies identified, and to enact an appropriate set of policies to combat judicial corruption in the Member States; underlines the dangers of the rise of corruption for the cohesion of the Union's legal order, the effectiveness of its common policies, the protection of fundamental rights, its international credibility and the functioning of its internal market, in which respect for the rule of law plays an important role; calls on the Commission to outline best practices, identify areas that are particularly susceptible to corruption and devise country-specific recommendations for improvements, and to use that knowledge to update and enhance the Union's anti-corruption framework;

21. Recalls the key role of whistleblowers in combating organised crime, corruption and money laundering offences;
22. Warns that the lack of uniform, up-to-date and consolidated statistics across all Member States, coupled with challenges in collecting information on the beneficiaries of EU programmes, hinder the assessment and comparison of data about the investigation and prosecution of corruption offences; calls on the Commission, therefore, to support and promote the harmonisation of the definitions of such offences across the Union, and to ensure a better use of existing data sets and the methodology to develop new data sets in order to obtain comparative data across the EU on the treatment of corruption cases; highlights the importance of supporting and strengthening cooperation between the EU institutions, the Member States, the European Anti-Fraud Office (OLAF) and the European Public Prosecutor's Office (EPPO) in the fight against corruption; is of the opinion that fighting corruption requires not only a strong mandate, but also a far greater budget, resources and any kind of support necessary for the aforementioned institutions and bodies;

Freedom of expression: media freedom and pluralism, artistic and academic freedoms

23. Welcomes the inclusion in the report of a specific chapter on monitoring media freedom and media pluralism; welcomes, in particular, the focus on the safety of journalists; urges the Commission to provide an assessment of the efficiency and effectiveness of the national frameworks for the protection of media freedom and media pluralism; stresses the importance of assessing and monitoring the situation of the media in the Member States, in particular by examining measures taken by any government to silence critical media and/or to undermine freedom and pluralism, in order to prevent the risk of further concentration of information in the hands of a few, which could hamper the spread of free and independent information;
24. Deplores the lack of assessment as regards the public service and private media sector at national level and its *de jure* and *de facto* degree of independence from national authorities, political parties or any other interference, including the lack of an assessment of potential conflicts of interest and of media concentration and transparency of media ownership; highlights the need to ensure the financial independence of and conditions for sustainable activity by private media operators in order to avoid the political capture of the media; highlights the irreplaceable role of the public service media and stresses that it is essential to ensure and maintain their independence and freedom from political interference; deplores the lack of assessment of the *de jure* and *de facto* degree of independence of national media regulatory bodies; believes that proper implementation of Article 30 of the 2018 Audiovisual Media

Services Directive³⁰ should be closely monitored and that, where warranted, infringement procedures should be swiftly initiated following this process; calls on the Commission, in this regard, to examine the attempts to intimidate and defame journalists, in particular by public service broadcasters, including direct attacks on foreign journalists as public enemies for their investigative reports;

25. Is alarmed by the growing deterioration of media freedom and media pluralism in some Member States since the publication of the 2020 report; is deeply concerned at the physical, psychological and economic threats, abuses, crimes and assassinations being committed against journalists and media workers in the Union in response to their activities and recalls that such attacks often lead to self-censorship; calls on the Commission to include in the country chapters of future reports an overview of the attacks against journalists across the Union, with a specific focus on assassinations of journalists, including the effective independence of subsequent criminal investigations and proceedings from political interference, and the responses provided by Member States in this regard;
26. Observes with concern that challenges to media freedom are closely linked to the undermining of artistic freedom and academic freedom; calls, therefore, for this pillar to be expanded to all aspects of freedom of expression, including the fight against hate speech, and for the title of the pillar to be adapted accordingly;
27. Expresses concern at the use of legal measures by governments and powerful individuals to silence critics, such as SLAPPs or laws curtailing the right to freedom of expression in a manner incompatible with individuals' fundamental rights; calls on the Member States to legislate in order to protect journalists from this practice; calls on the Commission to propose EU anti-SLAPP legislation to protect journalists from vexatious lawsuits;
28. Observes that the deterioration of media freedom is leading to an increase in the scapegoating and targeting of minorities, often government-led, such as against LGBTI people, migrants and refugees, resulting in an increase in hate speech against these groups and censorship of media; calls on the Commission to assess in future reports the effect that hate crimes and hate speech have on discrimination;

Other institutional issues linked to checks and balances, including the protection of an enabling civic space

29. Welcomes the report's pillar on checks and balances and its examination of exceptional measures taken to fight the COVID-19 pandemic; recalls that government-led emergency measures that respect the rule of law, fundamental rights and democratic accountability are needed to combat the pandemic and should be the cornerstone of all efforts to control the spread of COVID-19; considers that emergency powers require additional scrutiny to ensure that they are not used as a pretext for changing the balance of powers more permanently; is alarmed by the use of COVID-19 emergency measures as a pretext to fast-track discriminatory legislation; calls on the Commission to continue its monitoring of exceptional measures to ensure that bills are prepared and enacted in a timely and transparent way so that they are necessary, proportionate, socially equitable

³⁰ OJ L 303, 28.11.2018, p. 69.

and temporary and that access to judicial redress is not disproportionately affected by the closure of courts; underlines, in this context, the role of parliamentary scrutiny and consultation with civil society; calls on the Commission to continue to monitor the gradual lifting of measures in a timely manner; encourages the Commission to ensure that the rights of EU citizens are respected, protected and upheld by the Member States during the COVID-19 pandemic and beyond;

30. Recalls the importance of independent national human rights institutions and ombudsperson bodies, in full compliance with the Paris Principles, as well as equality bodies, in preserving EU citizens' rights and being able to defend the rule of law at national, regional and local levels; is deeply concerned by recent attempts in Poland to undermine the independence from the executive of the national ombudsman; welcomes the reference to the role of ombudsperson institutions in the 2020 report; calls on the Commission to pay more attention in the next annual cycle to the activities of national ombudspersons and equality bodies by looking in greater depth at how they function, their degree of independence and their real contribution in ensuring that adequate safeguards are in place; stresses, in particular, the diminishing independence of some Member States' equality bodies since the publication of the 2020 report, which constitutes an immediate threat to the fundamental rights of citizens; reiterates its concern about the increasingly shrinking space for independent civil society in some Member States, notably for women's rights, minorities and human rights defenders, including the criminalisation of activities, unreasonable administrative burdens, restrictions on access to funding, decreasing financial support for advocacy activities, and restrictions on freedom of assembly and organisation;
31. Stresses the importance of a healthy civic space for promoting and monitoring EU values and holding governments accountable with regard to their adherence to these, as well as for counterbalancing the erosion of the rule of law and fostering a rule of law culture; invites the Commission to deepen its assessment of civic space in the 2021 report; considers it beneficial to explore the definition of clear benchmarks on an enabling civic space to further strengthen this area of analysis in the long run, including, among other areas, an enabling legal environment for the exercise of civic freedoms, a framework for civic organisations' financial viability and sustainability, including the issue of government-organised non-governmental organisations (GONGOs), access to and participation in decision-making, the right to access information, safe space, including as regards incidences of and responses to verbal and physical attacks, smear campaigns, and legal, administrative and fiscal harassment including from SLAPPs, the chilling effects they create, and their long-term consequences in terms of active citizenship in another country; reiterates that the EU institutions should maintain an open, transparent and regular dialogue with representative associations and civil society; calls on the Commission to assess in its future reports whether the exercise of political rights by EU citizens is guaranteed in all Member States;
32. Regrets the fact that Hungary's failure to implement a CJEU ruling in relation to the unlawful restrictions imposed on the financing of civil organisations by persons established outside Hungary, which in itself constitutes a serious violation of the rule of law, has served to perpetuate the process of shrinking space for civil society in the country; urges the Commission to refer Hungary to the CJEU and to request dissuasive financial sanctions under Article 260 of the TFEU as a matter of urgency; notes with concern that an increasing number of Member States are adopting legislation which

creates severe constraints on the freedom of association and expression for civil society organisations, thereby contributing to shrinking space for civil society;

33. Regrets the fact that the report fails to clearly recognise the deliberate process of democratic and rule of law backsliding organised by national authorities in some EU Member States and the ensuing progressive establishment of (semi-)autocratic regimes based on the gradual annihilation of all checks and balances; calls on the Commission to acknowledge and take account of the multiple annual reports and indexes by respected and established organisations which assess the Member States' adherence to democracy, the rule of law and human rights over time;

Scope of the report – the missing areas

34. Regrets the fact that the 2020 report fails to encompass fully the Article 2 TEU values of democracy and fundamental rights, which are immediately affected when countries start backsliding on the rule of law;
35. Calls on the Commission to include country chapters of all candidate and potential candidate countries to the EU, including an in-depth analysis of their justice systems, anti-corruption frameworks, media freedom and pluralism situation, and institutional checks and balances;
36. Reiterates the intrinsic link that exists between the rule of law, democracy and fundamental rights and the need to increase awareness of the values enshrined in Article 2 of the TEU and the Charter; calls on the Commission to consider including within the scope of future reports the application of all rights guaranteed by the Charter; stresses that any action taken by a Member State when acting within the scope of EU law must respect the rights and principles of the Charter; insists, therefore, on maintaining the link between upholding the rule of law and equality before the law, the right to an effective remedy before an independent and impartial tribunal, the right to a fair trial, and the right to be advised, defended and represented, as well as the provision of independent legal aid to those who lack sufficient resources, and the right to good administration as set out in Article 41 of the Charter;
37. Strongly denounces the fact that EU and international legislation is not fully respected in some EU Member States, for example in the field of anti-discrimination or asylum, as exemplified by Hungary's failure to implement several rulings of the CJEU and European Court of Human Rights in relation to access to the asylum procedure, including automatic and unlawful detention and the deprivation of food, which violates the rights of migrants and asylum seekers to apply for international protection;
38. Underlines its concern at the fact that people in vulnerable situations, including persons with disabilities, children, religious minorities, particularly at a time of rising antisemitism and islamophobia in Europe, Roma and other persons belonging to ethnic and linguistic minorities, migrants, asylum seekers, refugees, LGBTI+ persons and elderly people as well as women, continue to see their rights not being fully respected across the Union in contravention of Article 2 of the TEU; emphasises the obvious link between deteriorating rule of law standards and fundamental rights and minority rights violations in the Member States concerned; calls on the Commission to assess the persistent violations of democracy and fundamental rights throughout the Union, including attacks against people in vulnerable situations;

39. Welcomes the Commission's announcement of its strategy to strengthen the application of the Charter; considers that focusing on a single pre-defined topic every year would not allow other serious violations of the Charter that take place in a given year to be highlighted; believes that such an annual review should provide input for a comprehensive monitoring mechanism and that its methodology, cycle and scope should therefore be aligned with the annual reports; expresses regret and concern about the Commission's reluctance to initiate infringement proceedings with regard to the violations of the Charter;
40. Calls on the Member States to draw up annual reports on democracy, the rule of law and fundamental rights, including equality and the rights of persons belonging to minorities;
41. Points out that the Union's annual reporting mechanism should consolidate and supersede existing instruments in order to avoid duplication, in particular the annual rule of law report, the Commission's Rule of Law Framework, the Commission's annual reporting on the application of the Charter, the Council's Rule of Law Dialogue, and the Cooperation and Verification Mechanism, while ensuring greater complementarity and consistency with other tools available, including procedures under Article 7 of the TEU, infringement proceedings and budgetary conditionality; considers that the three institutions should use the findings of the annual monitoring cycle in their assessment for the purposes of triggering Article 7 of the TEU and budgetary conditionality; stresses that the roles and prerogatives of each of the three institutions must be respected; commits to combining its annual work on the rule of law and fundamental rights reports into a broader annual monitoring cycle on Article 2 of the TEU, and to start working on it immediately after the Commission has published its rule of law report;
42. Calls for an evaluation to determine whether the scope of the non-discrimination clause in the Charter is broad enough to make the enforcement of the rule of law in the Member States and the Union consistent with Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and what further actions the EU institutions can take to ensure it is adequately applied; recalls that while the Charter is only applied by judicial authorities when implementing EU law, it is important that the rights enshrined in the Charter are always taken into account in proceedings in order to foster a common rule of law culture; calls on the Commission, therefore, to also consider Charter-focused training modules for judges and legal practitioners;

Sources and methodology of the report

43. Calls on the Commission to strengthen the regular, inclusive and structured dialogue with governments and national parliaments, NGOs, national human rights institutions, ombudspersons, equality bodies, professional associations and other stakeholders; calls on the Commission, moreover, to continue to allow for both public and confidential reporting in order to protect and support human rights defenders and rule of law specialists at risk of SLAPPs, prosecution or harassment by national authorities or their proxies; while welcoming the fact that 24 Member States transparently made public their submissions for the 2020 report, regrets the fact that three Member States refused to do so; calls for full transparency in the process and for all Member States' submissions to be made public; considers that civil society organisations should be

closely involved in all phases of the review cycle;

44. Regrets the fact that the Commission did not consult stakeholders, including Parliament, on the development of the methodology and preparation process for the 2020 report, nor did it seek to obtain feedback on their workability;
45. Recalls that the Commission must take into account relevant information from pertinent sources and recognised institutions; recalls that the findings of relevant international bodies, such as those under the auspices of the UN, the OSCE and the Council of Europe, are of crucial importance for assessing the situation in the Member States; believes that EFRIS is a source of information in this regard; calls on the Commission to invite the EU Agency for Fundamental Rights to provide methodological advice and conduct targeted comparative research to plug the gaps and add detail in key areas of the rule of law report; stresses the need to involve a panel of independent experts in cooperation with the EU Agency for Fundamental Rights and the Venice Commission in the rule of law report, in order to help identify the main positive and negative developments in each Member State;
46. Stresses that civil society are key partners to identify rule of law violations and promote democracy and fundamental rights; strongly believes that the Commission should institute a formal and continuous dialogue with civil society representatives on these issues and ensure their meaningful involvement in the elaboration of the annual rule of law report; highlights, in this regard, that based on the experience of NGOs in the 2020 cycle, thematically structured consultations held within the framework of the rule of law debates would increase the efficiency of the process and the amount of valuable feedback provided by civil society; stresses that the consultation questionnaire should allow stakeholders to report aspects beyond the scope envisaged by the Commission, which could serve to further assess whether the constitutional arrangements provide efficient mechanisms to limit the exercise of power;
47. Considers that the timeframes for consultation with civil society could often be perceived as too short and should be suitably adapted and flexible in order to allow for complete and comprehensive input; points out that this has made it more difficult for stakeholders, especially civil society organisations, to prepare and plan their contributions as well as the domestic awareness-raising activities they intend to pursue for the launch of the report; notes that organising consultations before the annual release of public statistics impoverishes contributions; calls on the Commission to allow multilingual submissions; suggests making the framework for stakeholders' contributions predictable and less rigid; notes that consultation can be improved by ensuring, among other endeavours, follow-up with civil society actors on the input they provide;
48. Considers that cooperation in the annual monitoring cycle with the Council of Europe and its Parliamentary Assembly, including through a more structured partnership, is of particular relevance for advancing democracy, the rule of law and fundamental rights in the EU; calls on the Commission to include in the country chapters data on non-compliance with judgments of the European Court of Human Rights as assessed by the Committee of Ministers; recalls that the Union's accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms is a legal obligation laid down in Article 6(2) of the TEU; reiterates the need for a swift

conclusion of the accession process in order to ensure a consistent framework for human rights protection throughout Europe and to further strengthen the protection of fundamental rights and freedoms within the Union;

II. Institutional aspects of the EU mechanism on democracy, the rule of law and fundamental rights

49. Reiterates its calls on the Commission and the Council to insist that they respond positively to Parliament's call in its resolution of 7 October 2020 for a joint EU mechanism on democracy, the rule of law and fundamental rights, which should cover the full scope of Article 2 TEU values; reiterates that such a mechanism is necessary to reinforce the promotion and respect for EU values; recalls that this annual cycle should be comprehensive, objective, impartial, evidence-based and applied equally and fairly to all Member States;

Country-specific recommendations

50. Reiterates its call on the Commission to provide for a true assessment of the situation of each of the Article 2 TEU values in the Member States and to adopt clear country-specific recommendations on how to address the concerns identified and remedy the breaches concerned, including deadlines for implementation, where appropriate, and benchmarks to be followed up on, including timelines, targets and concrete actions to be taken, in order to assist Member States in addressing the weaknesses identified in the report; calls for these initiatives to be followed up on in subsequent annual or urgent reports;
51. Recommends that the Commission align its recommendations with tools that could be applied to remedy the shortcomings identified; calls on the Commission to improve its follow-up of the implementation of the country-specific chapters by the Member States concerned and to activate, when necessary, other rule of law tools to achieve results where recommendations are not implemented; considers that the Commission could make more use of infringement actions before the CJEU; underlines the importance of identifying clear positive and negative trends in each Member State and the need to pay particular attention to comparisons with the report of the previous year;

Interinstitutional agreement

52. Considers that the existing institutional arrangement behind the annual report falls short of Parliament's expectations; expects the three institutions to establish a permanent interinstitutional working group, as proposed in its resolution of 7 October 2020;
53. Calls on the Commission and the Council to immediately enter into negotiations with Parliament on an interinstitutional agreement pursuant to Article 295 of the TFEU in order to complete existing tools with the establishment of a rule of law mechanism, by means of a legal act binding the three institutions to a more transparent and regularised process with more clearly defined responsibilities, involving a panel of independent experts to advise the working group and the three institutions, in close cooperation with the EU Agency for Fundamental Rights, in order to make the protection and promotion of all EU values a permanent and visible part of the Union's agenda; considers that the proposal set out in the annex to Parliament's resolution of 7 October 2020 on the establishment of an EU mechanism on democracy, the rule of law and fundamental

rights constitutes an appropriate basis for such negotiations; considers that in the meantime, a pilot project involving independent experts assessing compliance with EU values could help to build the requisite knowledge and expertise;

Complementarity with other rule of law instruments

54. Reiterates that the mechanism on democracy, the rule of law and fundamental rights must complement and reinforce – but by no means substitute – ongoing and future proceedings under Article 7 of the TEU; strongly regrets the inability of the Council to make meaningful progress in enforcing EU values in ongoing Article 7 TEU procedures; notes that the Council’s hesitance to apply Article 7 of the TEU is in fact effectively enabling a continued disregard for the values provided for in Article 2 of the TEU, including blatant non-compliance with CJEU judgments and the harassment of those seeking to uphold the rule of law in some Member States; regrets the Council’s failure to organise hearings, using COVID-19 as a pretext for this, despite the fact that there is no legal obligation whatsoever to require hearings to be held in person as opposed to via videoconferencing; requests that any legal opinion issued by the Council’s legal service arguing otherwise should be made public; urges the Council to move forward with proceedings under Article 7(1) of the TEU and to ensure that hearings recommence as a matter of urgency and also address new developments; reiterates its call on the Council to address concrete recommendations to the Member States in question, as stipulated by Article 7(1) of the TEU, as a follow-up to the hearings, and to provide deadlines for the implementation of those recommendations; calls for a reflection at the Conference on the Future of Europe on a revision of Article 7 of the TEU, including the voting requirements, in order to render its procedure more effective, with particular regard to overcoming unanimity for the imposition of sanctions; insists that Parliament’s role and competences be respected, in particular the right to be duly informed on the procedures of the rule of law instruments, including Article 7 TEU hearings;
55. Believes that while the annual report is an essential monitoring tool, clear recommendations on the challenges identified and follow-up action required are indispensable; reiterates that in the case of failures to implement the shortcomings and recommendations, the annual report should serve as a basis for deciding whether to activate one or several relevant instruments such as the procedure provided for in Article 7 of the TEU, the conditionality mechanism, whether to activate the Rule of Law Framework or whether to launch infringement procedures, including expedited procedures, applications for interim measures before the CJEU and actions regarding non-implementation of CJEU judgments concerning the protection of EU values; stresses that the report should in any case be accompanied by actionable recommendations, including deadlines for implementation; recalls that infringement actions can be simultaneously launched in respect of issues identified in Article 7(1) TEU reasoned proposals as already established by the CJEU; urges the Commission to make robust use of infringement procedures, where appropriate, to prevent backsliding on the rule of law in national justice systems; considers that the Conference on the Future of Europe should further consolidate in Treaty provisions the well-established legal principle on the primacy of EU law; invites the Conference on the Future of Europe to consider strengthening the role of the CJEU in protecting the Union’s founding values;

56. Welcomes the fact that the Joint Declaration on the Conference on the Future of Europe identifies European rights and values, including the rule of law, as one of the topics for discussion at the conference; calls for the Conference on the Future of Europe to include a reflection on the effectiveness of the Union's existing tools for monitoring, preventing and tackling violations of Article 2 TEU principles and to present concrete proposals for tangible action to strengthen the Union's toolbox;
57. Stresses that the applicability, purpose and scope of the Rule of Law Conditionality Regulation is clearly defined in the legal text of Regulation (EU, Euratom) 2020/2092; stresses that the Rule of Law Conditionality Regulation has entered into force, has directly applied since 1 January 2021 and is binding in its entirety for all commitment appropriations and payment appropriations in all Member States, notably covering the disbursement of the Next Generation EU funds, and that its application by the EU institutions is not subject to the adoption of guidelines or judicial interpretation; considers that the European Council conclusions of 10 and 11 December 2020 on the Rule of Law Conditionality Regulation contravene Articles 15 and 17 of the TEU and Article 288 of the TFEU insofar as they introduce unnecessary legal uncertainty with regard to the additional Commission guidelines and suspended adoption of the regulation, in cases of Article 263 of the TFEU, as is currently the case following the recent actions for annulment lodged by Hungary and Poland; reiterates its call on the Commission to take immediate action under the Rule of Law Conditionality Regulation to make full use of its existing investigation tools without further delay in order to address rule of law deficiencies in Member States that could affect or seriously risk affecting the sound financial management of the EU budget in a sufficiently direct way; calls on the Commission to apply the Common Provisions Regulation³¹ and Financial Regulation³² more stringently in order to tackle the discriminatory use of EU funds, as it did when withholding funds for municipal or local governments proclaiming themselves 'free from LGBTI ideology';
58. Calls for the Commission to use the findings of the annual report in its assessment that forms the basis of the mechanism to protect the budget against breaches of the principle of the rule of law, as well as in any other relevant assessment for the purposes of existing and future budgetary tools; reiterates its call on the Commission to include in its annual rule of law reports a dedicated section with an analysis of cases where breaches of the principles of the rule of law in a particular Member State could affect or seriously risk affecting the sound financial management of the EU budget in a sufficiently direct way, which could then serve as a basis for triggering the conditionality mechanism; urges the Commission to strengthen synergies between its annual rule of law reports and the Rule of Law Conditionality Regulation, using them as distinct but complementary tools;
59. Acknowledges that the Commission must use the annual rule of law report as an important source of information when building cases for the application of the Rule of Law Conditionality Regulation, which should include, *inter alia*, information from reports by the European Court of Auditors, OLAF and the EPPO, audit reports by the Commission and national audit authorities, judgments by the CJEU and national courts, analyses by the EU Agency for Fundamental Rights and information from different

³¹ OJ L 347, 20.12.2013, p. 320.

³² OJ L 193, 30.7.2018, p. 1.

systems such as the Early Detection and Exclusion System for the Protection of the Union's Financial Interests (EDES) and Arachne; calls on the Commission to clarify in the methodology used the link between the rule of law report and the rule of law conditionality mechanism; recalls that it is essential that the legitimate interests of final recipients and beneficiaries are properly safeguarded when measures are adopted in the event of breaches of the principles of the rule of law;

60. Calls on the Commission to promote a culture of respect for the values enshrined in Article 2 of the TEU, including through strengthened efforts to promote education on EU citizenship, including on the rule of law; calls on the Commission to launch a dedicated programme that supports innovative initiatives with the aim of promoting EU citizenship education; urges the Council and the Commission to provide adequate information and funding for EU-wide, national, regional and local civil society organisations and independent journalism, notably by making strategic use of funding opportunities under the Regulation establishing the Citizens, Equality, Rights and Values Programme to help them raise awareness and promote EU values and applicable tools, including the annual report, to counteract threats to the rule of law identified in the annual report, in particular where violations and shortcomings have been identified; calls on the Member States to learn from best practices and to address the gaps identified and adopt measures to improve the situation regarding all four main pillars identified in the rule of law report; highlights the need to raise awareness among EU citizens and residents on the means and procedures available at national and EU level to safeguard respect for the rule of law and to report breaches;

III. Follow-up and impact of the report

61. Calls on the Commission to assess in successive reports how the issues identified in the areas analysed in previous reports have evolved, been solved, risk deteriorating or have deteriorated further, to identify positive and negative trends and cross-cutting issues, notably any systemic or reoccurring patterns of rule of law breaches, and to put forward clear recommendations to remedy any risks or backsliding identified;
62. Stresses the importance of promoting the findings of the annual report at national level; encourages the Commission to foster debate about the report in national parliaments and to engage with civil society organisations in the follow-up to the report;
63. Calls on the Commission to make clear in its annual rule of law reports that not all rule of law shortcomings and violations are of the same nature and/or intensity and that when the values listed in Article 2 of the TEU are being deliberately, gravely, permanently and systematically violated over a period of time, Member States could fail to fulfil all the criteria that define a democracy and become authoritarian regimes; stresses that the Commission's main priority should be to enforce EU law when breaches of Article 2 of the TEU occur and that its annual rule of law reports should mainly contribute to that end; calls on the Commission, therefore, to assess countries under ongoing Article 7 TEU proceedings in depth in order to illustrate how the rule of law has been structurally undermined to facilitate the consolidation of authoritarian-style governance structures;
64. Underlines that this report should serve as a basis for the prioritisation of follow-up actions by the EU regarding those Member States where shortcomings or deficiencies

have been witnessed, and that its contributions should be a key part of the overarching democracy, rule of law and fundamental rights mechanism;

65. Commits to beginning work on the 2021 report as soon as possible after its publication;

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66. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.

EXPLANATORY STATEMENT

The European Union is based on the rule of law, fundamental rights and Union values as enshrined in Article 2 of the Treaty on European Union (TEU). The erosion of these principles not only forsakes the commitment Member States took when joining the Union, but it also challenges the sustainability of the European project as a whole.

For this reason, the strengthened focus on the rule of law by the European Commission, through the publication in 2020 of its first annual rule of law report and its 27 chapters covering all Member States, is a welcomed development.

The annual rule of law report 2020 offers valuable information to understand the state of the justice system, anti-corruption framework, media pluralism and freedom, and other institutional issues linked to checks and balances. However, as all first exercises, it needs to evolve and to be further refined.

The present report is structured in three sections. Firstly, it assesses the main findings emerging from the 2020 annual rule of law report and proposes solutions to the challenges identified regarding its methodology. Second, it identifies areas of concern not covered by the report and makes proposals for the expansion of its scope. Third, it focuses on how the annual rule of law report should significantly contribute to the overarching rule of law architecture.

The 2020 rule of law report: lessons for 2021

The European Commission has opted for a methodological approach that engages with Member States and civil society in fact-finding missions during the preparation of the report and after its publication, in order to discuss findings. Besides the gathering of evidences, these exchanges seek to foster the emergence of a rule of law culture through dialogue. This approach, bringing 'Europe' closer to each Member States through exchange, merits full support.

The 2020 rule of law report offers a valuable synthesis of positive and negative developments in four main areas (justice, anti-corruption, media, institutional checks and balances). The effort to collect information and analyse, in an equivalent manner, all the four areas covered in the report for 27 Member states is commendable. Equivalence in the analysis is fundamental and mainly achieved. However, the report and its country chapters do not take sufficiently in consideration their interplay. For example, smearing of the judiciary or civil society by non-independent media curtails their ability to act independently. A strengthened analysis of the interconnection between the four areas should be carried out in upcoming annual reports to enable a full assessment of the situation of the rule of law in each country.

The dire situation of the rule of law in some Member States, as reflected in the reports, calls for the strengthening of all available tools at the disposal of the Union. The European Parliament expects that subsequent iterations of the report provide clear recommendations to redress identified shortcomings. The description of positive and negative developments has the merit of providing information, but without guidance, the possibility of failing short to remedy shortcomings, or emulate good practices, is high.

In this respect, the inclusion of recommendations, accompanied with clear deadlines, is fundamental to strengthen the repercussion of the report. This would allow assessing the

progress or deterioration of the rule of law in a particular country, which must guide European institutions in taking action, with the adequate remedial tools, in case deficiencies are not resolved or have deepened. Thus, without falling in automatism, a clear link should be established in the report between the level and gravity of shortcomings identified and the range of appropriate tools available within the rule of law toolbox to remedy them. In this way, the annual report would sit firmly at the basis of the European rule of law architecture in an integrated manner, connecting reporting and enforcing, and endowing the report with the deserved weight that its important findings deserve.

The 2020 rule of law report will become the benchmark for its successive iterations. The rapporteur believes that the 2021 report should be less descriptive and more analytic. This must be achieved by devoting greater efforts to country visits, and in particular, deepening consultations and exchanges with civil society. The rapporteur wants to acknowledge the crucial role of civil society in providing essential input to the annual rule of law review. Their contribution should be facilitated, by setting sufficient ample deadlines, flexible frameworks and safe spaces for their submissions. A more transparent process to involve stakeholders during country visits, before and after, as well as the full publication of the annual rule of the law reports, would also contribute to strengthen its content, visibility and impact.

It must be highlighted that equivalence in the analysis should not lead to the false conclusion that all Member States face equivalent perils as regards to rule of law backsliding. The rule of law report must make clear distinctions between countries where the rule of law offer room for improvement in certain areas and those countries where the intentional, permanent and consistent undermining of the rule of law is of systemic nature. It is the view of the Rapporteur that in these cases, monitoring and the will to engage in constructive dialogue has not, and will not, bring about the desired change. The report urges the Commission and Council to make a resolute use of all rule of law tools at their disposal to redress, without delay, any risk of a serious breach or an actual breach of the Union values.

The 2020 report allows forming an understanding of the situation in all four areas covered in each country chapter. However, it leaves too much room for interpretation by the public, governments and stakeholders on the gravity and depth of the shortcomings identified. The rapporteur believes that the reports should clearly state whether there is risk or actual breach of the Union values in each of the pillars under analysis in the country chapters, followed by an in-depth assessment when it can be concluded that such breaches have taken place.

As regards to the horizontal report, the rapporteur believes that an integrated and European approach is necessary. It is urgent to acknowledge that when certain practices undermining rule of law are tolerated in one Member State, they become blueprints for others. Capturing and prioritising these EU-wide trends is fundamental to direct urgent remedial action at EU level. Importantly, the report should place particular attention to the failure to comply with the European Court of Justice rulings, and other shortcomings undermining the legal architecture of the Union, which should be considered an important violation in any European rule of law assessment given the systemic threat they pose to the European project.

Scope

The European approach to rule of law distinguishes itself for requiring compliance with its core principles, guaranteeing that governments are subject to the law and, that national legal systems give full effect to fundamental rights and democratic principles. However, the Union faces

increasing challenges to ensure the respect of its values. The rule of law report should evolve to fully cover them, in order to avoid a hollowing-out of the European project from within of its very founding principles.

There is an intrinsic relation between the rule of law and fundamental values. This co-dependence is apparent when looking at the discrimination and failure to uphold the rights of many people belonging to vulnerable and minority groups in some Member States. Recent developments have highlighted that rule of law backsliding have direct effects on these groups. For example, the Polish Constitutional Tribunal, a body whose independence has been questioned by the European Commission, as well as by other international bodies, ruled on the 22 October 2020 to further limit abortion in cases of severe and irreversible foetal abnormalities, thus, impacting on women's sexual and reproductive rights. Moreover, in Europe, rule of law and fundamental rights apply to all. In recent years, asylum seekers have seen their right to apply for international protection hindered, and sometimes even denied in some Member States. For example, the European Court of Justice ruling of 17 December 2020, established that Hungary failed to fulfil its obligations under EU law in the area of procedures for granting international protection and returning illegally staying third-country nationals. These worrying conclusions are aggravated by the non-compliance of Hungary with such rulings. In addition, increasing allegations of systemic pushbacks across the external borders of the Union manifests the need to clearly strengthen the assessment of compliance with European and international legislation and fundamental rights in the area of asylum and migration.

Ensuring respect for the principles enshrined in Article 2 should be seen as the ultimate goal of the proposed review exercise. From 2021, the Commission will present a new annual report on the application of the Charter of Fundamental Rights in the EU, looking at the Charter's application in the Member States on pre-selected topics. The rapporteur welcomes this intention but believes that such annual review should provide input into a comprehensive monitoring mechanism and, therefore, its methodology, cycle and scope should be aligned with the annual rule of law report.

Interlinkages between democracy, rule of law, fundamental rights, and Union values enshrined in Article 2 TEU must be made evident. When assaults on the rule of law are persistent and pervasive, the traits characterising democracies might cease to exist. To this end, the rapporteur wishes to stress the need for a joint and streamlined framework encompassing democracy, the rule of law and fundamental rights, as the European Parliament has repeatedly highlighted.

Institutional aspects of the EU mechanism on democracy, the rule of law and fundamental rights

The present report reinstates the will of the European Parliament to set up a democracy, rule of law and fundamental rights (DFR) mechanism ensuring effective safeguarding of the Constitutional core of the Union, as expressed by the European Parliament resolution of 7 October 2020. The Rapporteur urges the Council and the Commission to enter without delay into negotiations with Parliament on an interinstitutional agreement to set up an objective and evidence-based monitoring mechanism, enshrined in a legal act, where the three institutions engage in a transparent and regular process, aiming to protect and promote all Union values.

The Rapporteur highlights that the overall architecture of the rule of law mechanism must allow the Union to take impactful action when fundamental values are under serious threat. The report should pave the way to expand or launch Article 7 TEU procedures, when serious breaches of the rule of law have been identified. The Article 7 TEU procedure has proven to be, so far,

ineffective due to the unanimity requirement necessary to trigger the suspension of certain rights. The Conference on the future of Europe must discuss options for Treaty change ensuring that voting requirements do not hinder the defence of our common values, as well as the strengthening of the role of the Court of Justice of the European Union when protecting the Union's values or advancing in making the EU's toolbox more effective.

As regards to the Regulation on a general regime of conditionality, applicable from 1 January 2021, the Commission should establish clear links between the annual rule of law report and the triggering of future action in this area. To this end, the rapporteur gives reflection to the European Parliament resolution 25 March 2021 on the application of the Regulation the rule of law conditionality mechanism calling for a distinctive analytical part in the rule of law report dealing with breaches of the principles of the rule of law in a particular Member State that could affect the sound financial management of the Union budget. Such in-depth assessment should provide input and impulse to the conditionality mechanism, that while a distinct tool, must have clear links to the rule of law report.

27.5.2021

OPINION OF THE COMMITTEE ON PETITIONS
for the Committee on Civil Liberties, Justice and Home Affairs

on the Commission's 2020 Rule of law report - COM(2020)0580

(2021/2025(INI))

Rapporteur for opinion: Margrete Auken

SUGGESTIONS

The Committee on Petitions calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Emphasises the responsibility of the Committee on Petitions (PETI) in identifying and raising the alarm about possible breaches of the rule of law, considering the high number of petitions received from citizens concerned about breaches of the rule of law in their respective countries, and in view of the consequences of such breaches on their lives; stresses that inadequate implementation of rule of law principles jeopardises the correct and timely achievement of EU objectives in different policy sectors; strongly believes that fundamental rights can be effectively guaranteed only if rule of law prevails, and that full protection of Union citizens' rights can be ensured throughout the Union only if all Member States comply with all principles underlying the rule of law; is of the opinion that deficiencies in one Member State have an impact on other Member States and the Union as a whole, and highlights in this regard the responsibility of the EU institutions in the application of the rule of law by Member States;
2. Invites the Commission to provide in its further reports an assessment of the impact of identified deficiencies and breaches on the subsequent allocation of EU funds under the conditionality mechanism; stresses the crucial role of rule of law enforcement tools in achieving effective implementation of the values enshrined in Article 2 of the Treaty on European Union (TEU); calls on the Commission, therefore, to guarantee that the report's findings are effectively implemented in concrete policy actions; calls on the Commission to provide a higher level of visibility for NGOs' contributions and the results of public consultations when drafting its future reports;
3. Highlights that the rule of law includes principles such as legality, implying a transparent, accountable, democratic and pluralistic process for enacting laws; legal certainty; prohibiting the arbitrary exercise of executive power; effective judicial protection by independent and impartial courts, effective judicial review including respect for fundamental rights; separation of powers; and equality before the law;

4. Notes that, despite repeated requests by Parliament, the Commission's 2020 Rule of Law Report fails to encompass the significant areas of democracy and fundamental rights, which should be scrutinised with equal importance, including the rights of persons belonging to minorities, also covering national and linguistic minorities; stresses the need for improvement concerning the application of the EU Charter of Fundamental Rights, as the expectations of EU citizens go beyond the actual scope of the Charter; calls on the Commission to ensure equal treatment of all the Union's founding values as enshrined in Article 2 of the TEU in its next report; believes that the Commission must transparently involve and consult in this annual exercise as many stakeholders as possible, paying particular attention to legal practitioners and fundamental rights experts from external organisations, in order to guarantee greater pluralism and full credibility, and also provide clear indications on follow-up actions for any shortcomings detected;
5. Notes the high number of petitions received from citizens relating to discrimination faced by minorities, especially LGBTIQ people; condemns in the strongest possible terms the fact that many of these petitions also highlight systemic discrimination and encouragement of hate speech against LGBTIQ persons by public authorities and elected officials in some Member States; welcomes in that sense the commitment by the Commission to present an initiative to extend the list of 'EU crimes' under Article 83(1) of the Treaty on the Functioning of the European Union (TFEU) to cover hate crimes and hate speech, including those targeted at LGBTIQ people, by the end of 2021;
6. Underlines the fact that the Union is one of the places in the world with the highest rule of law standards, but that it remains structurally badly equipped to counter rule of law violations; criticises the failure of the Council to make progress by applying sanctions in the ongoing procedures under Article 7 of the TEU; calls on the Commission to improve its comprehensive rule of law methodology by setting more effective, transparent and clear rules to ensure the respect of rule of law in an objective manner in all Member States, taking into account the concerns of all EU citizens; highlights that, in any case, a full and effective use of all tools available at Union level, such as infringement procedures, the procedures enshrined in the Conditionality Regulation, the Rule of Law Framework and Article 7 of the TEU, must be made to address breaches of the rule of law; underlines citizens' high expectations expressed in petitions asking for a proper and rapid Union level response to put an end to such violations; highlights that more frequent fact finding missions would allow for such violations to be better understood, addressed and followed up on;
7. Calls on the Commission to make more effective and timely use of its power to refer a Member State to the Court of Justice of the European Union, asking the Court to order interim measures with a view to preventing the aggravation of serious and irreparable harm inflicted against the rule of law;
8. Calls, with regard to the implementation of the Rule of Law Report and in compliance with the Commission's narrative on this issue, for an end to the Cooperation and Verification Mechanism for Romania and Bulgaria;
9. Regrets that reforms adopted in some Member States have seriously threatened the independence of the justice system, increasing the influence of the executive and legislative branch over its functioning, thus leading the Commission to launch

infringement proceedings and raise concerns in the context of procedures under Article 7 of the TEU;

10. Points out that Parliament's Committee on Petitions has, for over 10 years, been receiving petitions in which a very high number of non-German parents expose systemic discrimination and arbitrary measures taken against them by the German Youth Welfare Office (Jugendamt) in cross-border family disputes involving children, on matters concerning, inter alia, parental responsibility and child custody; believes that discriminatory practices should be deemed violations of the rule of law; calls on the Commission to play an active role in ensuring fair and consistent non-discriminatory practices with respect to parents in the handling of cross-border child custody cases throughout the Union;
11. Condemns political attacks and media campaigns that have occurred in some Member States against judges and prosecutors who have taken public positions denouncing reforms that threaten the independence of the judiciary; emphasises that in a recent decision, the European Court of Human Rights³³ reaffirmed that prosecutors and judges enjoy freedom of expression to participate in public debates on legislative reforms affecting the fight against corruption, the judiciary and, more generally, on issues concerning the independence of the justice system;
12. Stresses the vital importance of ensuring independent and impartial justice systems as key pillars in adequately fighting against corruption, in protecting the financial interests of the Union, with regard to the correct use of EU funds, and in increasing citizens' trust in the judiciary;
13. Calls on the Commission to continue to assess rigorously and objectively whether press freedom is respected in all Member States; highlights that the COVID-19 pandemic has confirmed the importance of strengthening independent journalism, whistleblower protection and access to pluralistic information as key enablers of rule of law and democratic accountability able to provide citizens with fact-checked information, thereby contributing to the fight against disinformation; deplores the fact that in a number of Member States, journalists have increasingly faced physical threats and online harassment, especially female journalists, which has often led to self-censorship undermining citizens' right to information; criticises the deployment against journalists of 'SLAPP' lawsuits (strategic lawsuits against public participation) intended to censor, intimidate, and silence critics by burdening the persons concerned with the costs of legal defence until they abandon their criticism; calls on the Commission to step up its efforts to make sure that Member States comply with their obligations to guarantee an enabling environment for journalists, as well as protecting their safety and pro-actively promoting media freedom and media pluralism;
14. Deplores that in a number of Member States, governments have classified information on public procurement during the COVID-19 pandemic, which has increased the risk of corruption for authorities and mistrust among citizens; calls on these Member States to reverse these abusive measures and ensure full transparency in relation to journalists and citizens;

³³ Judgment of 5 May 2020 of the European Court of Human Rights, *Kövesi v. Romania*, application no. 3594/19, ECLI:CE:ECHR:2020:0505JUD000359419.

15. Notes with concern that the contracts signed by the Commission with COVID-19 vaccine companies have clauses that have not yet been made public;
16. Underlines that the Court of Justice of the European Union recently confirmed that civil society organisations must be able to operate without unjustified interference by the state, acknowledging that the right to freedom of association constitutes one of the essential bases of a democratic and pluralist society; is seriously concerned that some NGOs active in the area of migration, women's right and LGBTI+ rights are subject to smear campaigns and SLAPPs, and face severe restriction of the civic space in which they can operate; calls on the Commission to accelerate the current work of the expert group on SLAPPs, as envisaged in the European Democracy Action Plan, and to ensure that any upcoming legislative proposal also addresses these issues; reiterates that civil society is essential for democracies to flourish and that shrinking space for civil society contributes to violations of democracy, the rule of law and fundamental rights; reiterates that the Union institutions should maintain an open, transparent and regular dialogue with representative associations and civil society; highlights that stronger safeguard measures must be taken to ensure good governance in public procurement and that the activities of NGOs and civil society organisations are also crucial in countering malpractice in this sector;
17. Highlights the need to raise awareness among EU citizens and residents about the means and procedures available at national and EU level to scrutinise decision-makers' actions and hold them accountable, to safeguard respect for the rule of law and to report breaches of it; recalls that petitions to the European Parliament are one such means; underlines that justice and redress for those who have fallen victim to breaches of the rule of law are an essential element of building trust in institutions and must be guaranteed by the Member States; invites the Commission, in this regard, to provide concrete recommendations to the responsible authorities on compensating individuals impacted for breaches of their fundamental rights;
18. Calls for a comprehensive approach to fighting corruption based on prevention and repressive measures, inter alia effective anti-corruption legal frameworks, the highest standards of transparency and integrity in all sectors of society, and independent and impartial justice systems that effectively enforce anti-corruption legislation, as well as effective, proportionate and dissuasive sanctions including the effective recovery of proceeds of corruption;
19. Stresses that in order to prevent foreign interference in the sovereignty and democracy of Member States and meddling with the democratic institutions of the EU, NGOs should be obliged to make their funding sources public; underlines that, in order to respect the transparency principle and European citizens' right to know, all European bodies should be obliged to disclose and publish a list of all the NGOs that they finance and with what amounts;
20. Regrets that the application of Cooperation and Verification Mechanism still prevents some EU citizens from fully benefitting from the area of freedom, security and justice;
21. Highlights that adequate rule of law standards should be guaranteed for EU citizens and residents during their exercise of freedom of movement rights within the EU; stresses that social and medical protection, as well as effective access to justice, must be fully

guaranteed to seasonal and cross-border workers when they pursue their professional activity in another Member State;

22. Highlights that the capacity of the EU and its Member States to uphold the rule of law determines its international image and the credibility of its activities promoting the rule of law, democracy and human rights outside the Union; warns of the risk of the interference of non-EU countries in all democratic processes at EU level through, inter alia, international corruption schemes, which jeopardise the rule of law in the EU; stresses that EU citizens living outside the Union must be treated in accordance with the rule of law in their interactions with the authorities of their Member State of origin, as well as with the EU authorities.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	27.5.2021
Result of final vote	+: 24 -: 7 0: 0
Members present for the final vote	Andris Ameriks, Marc Angel, Margrete Auken, Jordan Bardella, Markus Buchheit, Ryszard Czarnecki, Eleonora Evi, Agnès Evren, Gheorghe Falcă, Emmanouil Fragkos, Mario Furore, Gianna Gancia, Ibán García Del Blanco, Alexis Georgoulis, Radan Kanev, Stelios Kympouropoulos, Cristina Maestre Martín De Almagro, Dolors Montserrat, Ulrike Müller, Emil Radev, Sira Rego, Frédérique Ries, Monica Semedo, Yana Toom, Loránt Vincze, Stefania Zambelli, Tatjana Ždanoka, Kosma Złotowski
Substitutes present for the final vote	Pina Picierno, Domènec Ruiz Devesa, Rainer Wieland

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

24	+
EPP	Agnès Evren, Gheorghe Falcă, Radan Kanev, Stelios Kypouropoulos, Dolors Montserrat, Emil Radev, Loránt Vincze, Rainer Wieland
S&D	Andris Ameriks, Marc Angel, Ibán García Del Blanco, Cristina Maestre Martín De Almagro, Pina Picierno, Domènec Ruiz Devesa
Renew	Ulrike Müller, Frédérique Ries, Monica Semedo, Yana Toom
NI	Mario Furore
The Left	Alexis Georgoulis, Sira Rego
Verts/ALE	Margrete Auken, Eleonora Evi, Tatjana Ždanoka

7	-
ECR	Ryszard Czarnecki, Emmanouil Fragkos, Kosma Złotowski
ID	Jordan Bardella, Markus Buchheit, Gianna Gancia, Stefania Zambelli

0	0
-	-

Key to symbols:

+ : in favour

- : against

0 : abstention

27.5.2021

OPINION OF THE COMMITTEE ON PETITIONS
for the Committee on Civil Liberties, Justice and Home Affairs

on the Commission's 2020 Rule of law report - COM(2020)0580
(2021/2025(INI))

Rapporteur for opinion: Margrete Auken

SUGGESTIONS

The Committee on Petitions calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Emphasises the responsibility of the Committee on Petitions (PETI) in identifying and raising the alarm about possible breaches of the rule of law, considering the high number of petitions received from citizens concerned about breaches of the rule of law in their respective countries, and in view of the consequences of such breaches on their lives; stresses that inadequate implementation of rule of law principles jeopardises the correct and timely achievement of EU objectives in different policy sectors; strongly believes that fundamental rights can be effectively guaranteed only if rule of law prevails, and that full protection of Union citizens' rights can be ensured throughout the Union only if all Member States comply with all principles underlying the rule of law; is of the opinion that deficiencies in one Member State have an impact on other Member States and the Union as a whole, and highlights in this regard the responsibility of the EU institutions in the application of the rule of law by Member States;
2. Invites the Commission to provide in its further reports an assessment of the impact of identified deficiencies and breaches on the subsequent allocation of EU funds under the conditionality mechanism; stresses the crucial role of rule of law enforcement tools in achieving effective implementation of the values enshrined in Article 2 of the Treaty on European Union (TEU); calls on the Commission, therefore, to guarantee that the report's findings are effectively implemented in concrete policy actions; calls on the Commission to provide a higher level of visibility for NGOs' contributions and the results of public consultations when drafting its future reports;
3. Highlights that the rule of law includes principles such as legality, implying a transparent, accountable, democratic and pluralistic process for enacting laws; legal certainty; prohibiting the arbitrary exercise of executive power; effective judicial protection by independent and impartial courts, effective judicial review including respect for fundamental rights; separation of powers; and equality before the law;
4. Notes that, despite repeated requests by Parliament, the Commission's 2020 Rule of Law Report fails to encompass the significant areas of democracy and fundamental rights, which should be scrutinised with equal importance, including the rights of persons belonging to minorities, also covering national and linguistic minorities; stresses the need for improvement concerning the application of the EU Charter of Fundamental Rights, as the expectations of EU citizens go beyond the actual scope of the Charter; calls on the Commission to ensure equal treatment of all the Union's founding values as enshrined in Article 2 of the TEU in its next report; believes that the Commission must transparently involve and consult in this annual exercise as many stakeholders as possible, paying particular attention to legal practitioners and fundamental rights experts from external organisations, in order to guarantee greater pluralism and full credibility, and also provide clear indications on follow-up actions for any shortcomings detected;
5. Notes the high number of petitions received from citizens relating to discrimination faced by minorities, especially LGBTIQ people; condemns in the strongest possible

terms the fact that many of these petitions also highlight systemic discrimination and encouragement of hate speech against LGBTIQ persons by public authorities and elected officials in some Member States; welcomes in that sense the commitment by the Commission to present an initiative to extend the list of ‘EU crimes’ under Article 83(1) of the Treaty on the Functioning of the European Union (TFEU) to cover hate crimes and hate speech, including those targeted at LGBTIQ people, by the end of 2021;

6. Underlines the fact that the Union is one of the places in the world with the highest rule of law standards, but that it remains structurally badly equipped to counter rule of law violations; criticises the failure of the Council to make progress by applying sanctions in the ongoing procedures under Article 7 of the TEU; calls on the Commission to improve its comprehensive rule of law methodology by setting more effective, transparent and clear rules to ensure the respect of rule of law in an objective manner in all Member States, taking into account the concerns of all EU citizens; highlights that, in any case, a full and effective use of all tools available at Union level, such as infringement procedures, the procedures enshrined in the Conditionality Regulation, the Rule of Law Framework and Article 7 of the TEU, must be made to address breaches of the rule of law; underlines citizens’ high expectations expressed in petitions asking for a proper and rapid Union level response to put an end to such violations; highlights that more frequent fact finding missions would allow for such violations to be better understood, addressed and followed up on;
7. Calls on the Commission to make more effective and timely use of its power to refer a Member State to the Court of Justice of the European Union, asking the Court to order interim measures with a view to preventing the aggravation of serious and irreparable harm inflicted against the rule of law;
8. Calls, with regard to the implementation of the Rule of Law Report and in compliance with the Commission’s narrative on this issue, for an end to the Cooperation and Verification Mechanism for Romania and Bulgaria;
9. Regrets that reforms adopted in some Member States have seriously threatened the independence of the justice system, increasing the influence of the executive and legislative branch over its functioning, thus leading the Commission to launch infringement proceedings and raise concerns in the context of procedures under Article 7 of the TEU;
10. Points out that Parliament’s Committee on Petitions has, for over 10 years, been receiving petitions in which a very high number of non-German parents expose systemic discrimination and arbitrary measures taken against them by the German Youth Welfare Office (Jugendamt) in cross-border family disputes involving children, on matters concerning, inter alia, parental responsibility and child custody; believes that discriminatory practices should be deemed violations of the rule of law; calls on the Commission to play an active role in ensuring fair and consistent non-discriminatory practices with respect to parents in the handling of cross-border child custody cases throughout the Union;
11. Condemns political attacks and media campaigns that have occurred in some Member States against judges and prosecutors who have taken public positions denouncing reforms that threaten the independence of the judiciary; emphasises that in a recent

decision, the European Court of Human Rights³⁴ reaffirmed that prosecutors and judges enjoy freedom of expression to participate in public debates on legislative reforms affecting the fight against corruption, the judiciary and, more generally, on issues concerning the independence of the justice system;

12. Stresses the vital importance of ensuring independent and impartial justice systems as key pillars in adequately fighting against corruption, in protecting the financial interests of the Union, with regard to the correct use of EU funds, and in increasing citizens' trust in the judiciary;
13. Calls on the Commission to continue to assess rigorously and objectively whether press freedom is respected in all Member States; highlights that the COVID-19 pandemic has confirmed the importance of strengthening independent journalism, whistleblower protection and access to pluralistic information as key enablers of rule of law and democratic accountability able to provide citizens with fact-checked information, thereby contributing to the fight against disinformation; deplores the fact that in a number of Member States, journalists have increasingly faced physical threats and online harassment, especially female journalists, which has often led to self-censorship undermining citizens' right to information; criticises the deployment against journalists of 'SLAPP' lawsuits (strategic lawsuits against public participation) intended to censor, intimidate, and silence critics by burdening the persons concerned with the costs of legal defence until they abandon their criticism; calls on the Commission to step up its efforts to make sure that Member States comply with their obligations to guarantee an enabling environment for journalists, as well as protecting their safety and pro-actively promoting media freedom and media pluralism;
14. Deplores that in a number of Member States, governments have classified information on public procurement during the COVID-19 pandemic, which has increased the risk of corruption for authorities and mistrust among citizens; calls on these Member States to reverse these abusive measures and ensure full transparency in relation to journalists and citizens;
15. Notes with concern that the contracts signed by the Commission with COVID-19 vaccine companies have clauses that have not yet been made public;
16. Underlines that the Court of Justice of the European Union recently confirmed that civil society organisations must be able to operate without unjustified interference by the state, acknowledging that the right to freedom of association constitutes one of the essential bases of a democratic and pluralist society; is seriously concerned that some NGOs active in the area of migration, women's right and LGBTI+ rights are subject to smear campaigns and SLAPPs, and face severe restriction of the civic space in which they can operate; calls on the Commission to accelerate the current work of the expert group on SLAPPs, as envisaged in the European Democracy Action Plan, and to ensure that any upcoming legislative proposal also addresses these issues; reiterates that civil society is essential for democracies to flourish and that shrinking space for civil society contributes to violations of democracy, the rule of law and fundamental rights; reiterates that the Union institutions should maintain an open, transparent and regular dialogue with representative associations and civil society; highlights that stronger safeguard

³⁴ Judgment of 5 May 2020 of the European Court of Human Rights, *Kövesi v. Romania*, application no. 3594/19, ECLI:CE:ECHR:2020:0505JUD000359419.

measures must be taken to ensure good governance in public procurement and that the activities of NGOs and civil society organisations are also crucial in countering malpractice in this sector;

17. Highlights the need to raise awareness among EU citizens and residents about the means and procedures available at national and EU level to scrutinise decision-makers' actions and hold them accountable, to safeguard respect for the rule of law and to report breaches of it; recalls that petitions to the European Parliament are one such means; underlines that justice and redress for those who have fallen victim to breaches of the rule of law are an essential element of building trust in institutions and must be guaranteed by the Member States; invites the Commission, in this regard, to provide concrete recommendations to the responsible authorities on compensating individuals impacted for breaches of their fundamental rights;
18. Calls for a comprehensive approach to fighting corruption based on prevention and repressive measures, inter alia effective anti-corruption legal frameworks, the highest standards of transparency and integrity in all sectors of society, and independent and impartial justice systems that effectively enforce anti-corruption legislation, as well as effective, proportionate and dissuasive sanctions including the effective recovery of proceeds of corruption;
19. Stresses that in order to prevent foreign interference in the sovereignty and democracy of Member States and meddling with the democratic institutions of the EU, NGOs should be obliged to make their funding sources public; underlines that, in order to respect the transparency principle and European citizens' right to know, all European bodies should be obliged to disclose and publish a list of all the NGOs that they finance and with what amounts;
20. Regrets that the application of Cooperation and Verification Mechanism still prevents some EU citizens from fully benefitting from the area of freedom, security and justice;
21. Highlights that adequate rule of law standards should be guaranteed for EU citizens and residents during their exercise of freedom of movement rights within the EU; stresses that social and medical protection, as well as effective access to justice, must be fully guaranteed to seasonal and cross-border workers when they pursue their professional activity in another Member State;
22. Highlights that the capacity of the EU and its Member States to uphold the rule of law determines its international image and the credibility of its activities promoting the rule of law, democracy and human rights outside the Union; warns of the risk of the interference of non-EU countries in all democratic processes at EU level through, inter alia, international corruption schemes, which jeopardise the rule of law in the EU; stresses that EU citizens living outside the Union must be treated in accordance with the rule of law in their interactions with the authorities of their Member State of origin, as well as with the EU authorities.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	27.5.2021
Result of final vote	+: 24 -: 7 0: 0
Members present for the final vote	Andris Ameriks, Marc Angel, Margrete Auken, Jordan Bardella, Markus Buchheit, Ryszard Czarnecki, Eleonora Evi, Agnès Evren, Gheorghe Falcă, Emmanouil Fragkos, Mario Furore, Gianna Gancia, Ibán García Del Blanco, Alexis Georgoulis, Radan Kanev, Stelios Kympouropoulos, Cristina Maestre Martín De Almagro, Dolors Montserrat, Ulrike Müller, Emil Radev, Sira Rego, Frédérique Ries, Monica Semedo, Yana Toom, Loránt Vincze, Stefania Zambelli, Tatjana Ždanoka, Kosma Złotowski
Substitutes present for the final vote	Pina Picierno, Domènec Ruiz Devesa, Rainer Wieland

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

24	+
EPP	Agnès Evren, Gheorghe Falcă, Radan Kanev, Stelios Kypouropoulos, Dolors Montserrat, Emil Radev, Loránt Vincze, Rainer Wieland
S&D	Andris Ameriks, Marc Angel, Ibán García Del Blanco, Cristina Maestre Martín De Almagro, Pina Picierno, Domènec Ruiz Devesa
Renew	Ulrike Müller, Frédérique Ries, Monica Semedo, Yana Toom
NI	Mario Furore
The Left	Alexis Georgoulis, Sira Rego
Verts/ALE	Margrete Auken, Eleonora Evi, Tatjana Ždanoka

7	-
ECR	Ryszard Czarnecki, Emmanouil Fragkos, Kosma Złotowski
ID	Jordan Bardella, Markus Buchheit, Gianna Gancia, Stefania Zambelli

0	0
-	-

Key to symbols:

+ : in favour

- : against

0 : abstention

28.5.2021

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

on the Commission's 2020 Rule of Law Report
(2021/2025(INI))

Rapporteur for opinion (*): Ilhan Kyuchyuk

(*): Associated committee – Rule 57 of the Rules of Procedure

SUGGESTIONS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Recalls that the Union is founded on the common core values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities, enshrined in Article 2 of the Treaty on European Union (TEU), as a responsibility shared between the Union and the Member States and without prejudice to Articles 4 and 5 of the TEU; recalls that the principles underlying the rule of law are legality, the separation of powers, equality before the law, legal certainty, the prohibition of the arbitrary exercise of executive power, the existence of independent and impartial courts to ensure effective judicial protection, and the existence of judicial control; emphasises that compliance with and implementation of these principles is fundamental in every Member State as they result in the strengthened confidence of citizens in public institutions;
2. Highlights, moreover, that respect for the rule of law is important for the functioning of the internal market as it strengthens confidence in the judicial system and is linked to the protection of the Union's financial interests;
3. Welcomes the Commission's 2020 Rule of Law Report ('the Report') and the importance that it places on the justice system, as well as the country-specific chapters;
4. Stresses, in line with the Report, that effective justice systems which are independent and efficient, both formally and substantially, are essential for upholding the rule of law, notably with a view to guaranteeing effective judicial protection and fair trials for citizens and businesses in all fields of law; highlights, in particular, the need for the judiciary to be able to exercise its functions with full autonomy, without intervention from any other institution or body, including political intervention, in accordance with the principle of separation of powers; stresses, furthermore, that ensuring the independence and impartiality of judges requires the establishment of unequivocal rules on the composition of judicial bodies, the appointment procedure, the length of service, and grounds for rejection and dismissal prior to any decisions taken thereon;
5. Notes that judicial independence continues to be a subject of serious concern in some Member States; takes note of the fact that Hungary and Poland lodged an action for annulment of Regulation (EU, Euratom) 2020/2092 on a general regime of conditionality for the protection of the Union budget³⁵ in March 2021, which aims to address breaches of the rule of law with an impact on the Union's financial interests; stresses, in this context, that Regulation (EU, Euratom) 2020/2092 has entered into force, has been directly applicable since 1 January 2021 and is binding in its entirety for all commitment and payment appropriations in all Member States, notably covering the disbursement of the Next Generation EU funds, and that its application by the EU institutions is not subject to the adoption of guidelines or judicial interpretation;

³⁵ Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget (OJ L 433 I, 22.12.2020, p. 1).

6. Considers that the periodic review of the rule of law is of great significance and commends the efforts of the Commission to encourage structural reforms, including support and guidance for Member States to access structural funds in the areas covered by the Report; believes, however, that while the Report is an essential monitoring tool, clear recommendations on the challenges identified and the required follow-up action is indispensable; urges the Commission to make robust use of infringement procedures, where appropriate, to prevent backsliding on the rule of law in national justice systems, and urges the Council to resume all pending procedures under Article 7(1) of the TEU, including hearings addressing new developments, and to inform Parliament thereof;
7. Calls on the Commission to also support and strengthen cooperation between Member States on the rule of law and to take inspiration from the recommendations of the Venice Commission of the Council of Europe with regard to improving the situation of the rule of law in the Union;
8. Notes with satisfaction that the Report contains separate national chapters attempting to improve the common methodology for all Member States; calls on the Commission, however, to provide a meaningful, simple and clear comparison between the different national justice systems, in order to underline where best practices for comparable systems might be applied and how similar deficiencies could be addressed in an unbiased way, which could assist Member States in building further the effectiveness of their judicial systems; recommends that the Commission suggest potentially applicable tools next to each country-specific recommendation and underlines that hearings must be objective, fact-based and transparent, whereby Member States must cooperate in good faith and in accordance with the principle of sincere cooperation, as enshrined in Article 4 of the TEU;
9. Notes that the Report rightfully addresses the necessary digitalisation of justice proceedings and training for judges; recalls that significant differences remain between Member States in the level of participation in training dedicated to legal professions and, given the importance of such training for the proper implementation and application of Union law, calls on the Commission to analyse and assess the different national strategies in this respect; recalls that decisions informed by artificial intelligence, robotics and related technologies must remain subject to meaningful human review, judgment, intervention and control as those decisions could otherwise impair equal treatment of citizens or the right to access to justice, among other rights; recalls that the Charter of Fundamental Rights of the European Union ('the Charter') is applied by judicial authorities only when implementing European law, but that to foster a common rule of law culture, it is important that the rights enshrined in the Charter are always taken into account in civil and administrative proceedings; calls on the Commission, therefore, to also consider Charter-focused training modules for judges and legal practitioners; regrets that the Report is silent on training for advocates; regrets that the Report does not cover the rights laid down in Article 47 of the Charter, such as the right to be defended and represented and the right to legal aid; calls on the Commission to extend the scope of its next Report to those areas;
10. Calls on the Commission to assess the extension of the scope of the Report to all pillars of the rule of law, including equality before the law, by monitoring the protection of fundamental rights and, more specifically, the rights of minorities, gender and cultural gaps, access to justice, and the instruments employed in the fight against discrimination

and hate speech; calls on the Commission, furthermore, to assess the extension of the scope of the Report to encompass digitalisation in the judiciary and serious breaches of the principles of the rule of law that affect or seriously risk affecting the sound financial management of the Union budget in a sufficiently direct way;

11. Recalls that the rule of law applies at all times, including at times of crisis, and that measures taken in the context of the fight against the COVID-19 pandemic must ensure compliance with the rule of law; stresses that measures taken following the COVID-19 pandemic in several Member States have given further impetus to the use of ICT tools aimed at facilitating the communication of the courts with lawyers and other parties, thereby increasing transparency and allowing for online access to judicial decisions; notes that democracy, access to justice and functioning institutions are the cornerstones of a prosperous society, notably also in exceptional circumstances, and that the court systems and the judiciary need to be able to withstand actions and measures that aim to weaken and undermine the rule of law; calls on the Commission to assess the impact of the digitalisation of justice for the most vulnerable citizens, i.e. those who do not have the means or the necessary skills to access a digital justice system; urges the Commission, furthermore, to continue reviewing whether COVID-19-related emergency measures are subject to judicial oversight, to ensure that they are justified, limited in time, necessary and proportionate, in addition to being socially equitable, and that access to judicial redress is not disproportionately affected by the closure of courts.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	27.5.2021
Result of final vote	+: 19 -: 3 0: 3
Members present for the final vote	Pascal Arimont, Manon Aubry, Gunnar Beck, Geoffroy Didier, Pascal Durand, Angel Dzhambazki, Ibán García Del Blanco, Jean-Paul Garraud, Esteban González Pons, Mislav Kolakušić, Gilles Lebreton, Karen Melchior, Jiří Pospíšil, Franco Roberti, Marcos Ros Sempere, Stéphane Séjourné, Raffaele Stancanelli, Adrián Vázquez Lázara, Marion Walsmann, Tiemo Wölken, Lara Wolters, Javier Zarzalejos
Substitutes present for the final vote	Patrick Breyer, Evelyne Gebhardt, Andrzej Halicki, Heidi Hautala, Ilhan Kyuchyuk, Angelika Niebler, Emil Radev, Luisa Regimenti, Yana Toom, Kosma Złotowski

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

19	+
PPE	Pascal Arimont, Geoffroy Didier, Esteban González Pons, Jiří Pospíšil, Emil Radev, Marion Walsmann, Javier Zarzalejos
Renew	Pascal Durand, Ilhan Kyuchyuk, Stéphane Séjourné, Adrián Vázquez Lázara
S&D	Ibán García Del Blanco, Franco Roberti, Marcos Ros Sempere, Tiemo Wölken, Lara Wolters
The Left	Manon Aubry
Verts/ALE	Patrick Breyer, Heidi Hautala

3	-
ID	Gunnar Beck, Jean-Paul Garraud, Gilles Lebreton

3	0
ECR	Angel Dzhambazki, Raffaele Stancanelli
NI	Mislav Kolakušić

Key to symbols:

+ : in favour

- : against

0 : abstention

27.5.2021

OPINION OF THE COMMITTEE ON BUDGETARY CONTROL
for the Committee on Civil Liberties, Justice and Home Affairs

on the Commission's 2020 Rule of Law Report
(2021/2025(INI))

Rapporteur for opinion: Isabel García Muñoz

(*) Associated committees – Rule 57 of the Rules of Procedure

PA_NonLeg

SUGGESTIONS

The Committee on Budgetary Control calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Underlines that the Union's financial interests are to be protected in accordance with the general principles embedded in the Union Treaties, in particular the values in Article 2 of the Treaty on European Union (TEU), and with the principle of sound financial management enshrined in Article 317 of the Treaty on the Functioning of the European Union (TFEU) and in Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union (the Financial Regulation);
2. Highlights that the rule of law is an essential precondition for compliance with the principle of sound financial management and for the protection of the Union's financial interests, which can only be ensured if public authorities act in accordance with the law, if cases of fraud, tax evasion, corruption, conflicts of interest and other breaches of the law are pursued effectively by investigative and prosecution services, if national courts are independent and the decisions of the Court of Justice of the European Union are respected, and if public scrutiny is maintained by free, independent and pluralistic media; stresses, however, that the above institutions have to be functional not only legally but also in practice;
3. Reiterates its warning that the Union is facing an unprecedented and escalating crisis of its founding values, which threatens its long-term survival as a democratic peace project; is gravely concerned by the rise and entrenchment of autocratic and illiberal tendencies in several Member States; recalls that the Union has been structurally ill-equipped to tackle breaches of rule of law until now; expresses its concern over the potentially growing risk of misuse of the Union's budget as a means to deteriorate the rule of law in some Member States; regrets the inability of the Council to make meaningful progress in enforcing Union values in ongoing Article 7 TEU procedures; notes with concern the disjointed nature of the Union's toolkit in that field and calls for it to be streamlined and properly enforced;
4. Underlines that the annual Rule of Law Report is a separate tool from Regulation (EU, Euratom) 2020/2092 on the general regime of conditionality for the protection of the Union budget and that both serve different purposes: while the annual Rule of Law Report has a preventive and informative character aimed at providing a broader overview of the situation and possible breaches regarding the rule of law in all Member States, the regulation is a conditionality mechanism aimed at imposing sanctions in the event of breaches or the risk of a breach of the rule of law affecting the Union's financial interests in a sufficiently direct way; emphasises the importance of differentiating between their respective legal bases;
5. Acknowledges that the Commission should use the annual Rule of Law Report as an important additional source of information when building cases for the application of the regulation, which requires an ad hoc assessment as enshrined in Article 6 of the regulation; urges the Commission to strengthen the synergy between the annual reports and the regulation; stresses that the analysis and the conclusions of the annual reports

should directly contribute to the conditionality regime in order to identify and act on breaches of the regulation;

6. Underlines the importance of the Commission's Rule of Law Report as the reflection of the European Rule of Law Mechanism, which is designed as a yearly cycle of dialogue and assessment in order to promote this principle and to prevent problems from emerging or deepening in the Member States; welcomes the inclusion among its pillars of the justice system, the anti-corruption framework and other institutional checks and balances, as these are particularly relevant for monitoring the protection of the EU budget; notes that the Rule of Law Report serves as one of the most important tools, but not the only one, for investigating potential cases of breaches of the rule of law; calls on the Commission to ensure a streamlined evaluation process in Member States involved in similar mechanisms such as the Cooperation and Verification Mechanism;
7. Notes that the first Rule of Law Report is mostly descriptive of the situation in the Member States; is of the opinion that the annual report is lacking conclusions on the state of the rule of law in the Member States and in the EU in general, which are essential preconditions to identify follow-up actions; emphasises that the reports should have a more preventive role and go beyond monitoring to be more analytical in the future; calls on the Commission to provide country-specific assessments and recommendations for preventive and corrective actions, and to mention potentially applicable tools for the Commission to use in cases of non-compliance with the recommendations; underlines that these recommendations should include deadlines for implementation, where appropriate;
8. Welcomes the fact that all Member States are being scrutinised against the same indicators and in accordance with the same methodology; appreciates that the Commission includes observations and findings about all Member States; regrets, however, that the current presentation of the report neither differentiates between the severity of the identified rule of law issues nor determines whether these are of a systemic nature or isolated breaches; calls on the Commission to make this distinction in future reports in order to prevent the report from being misused as a tool to relativise and trivialise processes that seriously undermine the state of the rule of law in some Member States; calls on the Commission to update its methodology accordingly and to keep Parliament informed without undue delay;
9. Asks the Commission to provide information in its future reports about the way Member States respect the rule of law and effectively protect the Union's financial interests, for both EU budget revenue and expenditure, taking into account the additional risks to the Union budget due to COVID-19 and the related Union funds available to Member States under the Recovery and Resilience Facility, as well as putting emphasis on cases where breaches of the principles of the rule of law in a particular Member State could affect or seriously risk affecting the Union's financial interests in a sufficiently direct way and which could then serve as a basis for triggering the rule of law conditionality mechanism; asks the Commission to include a follow-up on its previous observations, while highlighting in particular any systemic or reoccurring patterns of breaches of the rule of law, and to monitor the implementation of its recommendations;
10. Recalls that the Commission is to take into account relevant information from pertinent

sources and recognised institutions referred to in Recital (16) of Regulation (EU, Euratom) 2020/2092, with an emphasis on the European Court of Auditors, the EU Justice Scoreboard, the European Anti-Fraud Office (OLAF), and the European Public Prosecutor's Office (EPPO); calls on the Member States to proactively participate in the procedure and engage in meaningful dialogue and cooperation with the Commission in order to improve the state of the rule of law in each Member State and in the EU overall;

11. Welcomes the fact that civil society was consulted during the drafting process; stresses that civil society actors can provide valuable input for the assessment of country-specific situations and provide a more critical view than the government in question; notes, however, that the consultation process could be improved by, inter alia, following up with civil society actors about their input, ensuring sufficiently long timeframes for providing input and reconsidering the format of a one-size-fits-all questionnaire for providing input; encourages the Commission to seek further input from civil society on how to optimise the consultation process for future reports;
12. Welcomes the fact that one of the four selected pillars in the report is the anti-corruption frameworks in place in Member States; notes, however, that their assessment remains mainly descriptive; calls on the Commission to assess not only the existence of national anti-corruption legislation, policies and strategies but also their effectiveness, to outline best practices, to identify areas that are particularly sensitive to corruption and come up with country-specific recommendations for improvement, and to use that knowledge to update and enhance the Union's anti-corruption framework; calls on the Commission to use the information and assessments of the Group of States against Corruption (GRECO) in this process;
13. Underlines that anti-corruption frameworks should cover areas such as ethical rules, awareness-raising measures, rules on asset disclosure, incompatibilities and conflicts of interest, public procurement, internal control mechanisms, rules on lobbying, and revolving doors; also highlights that national strategies should incorporate tools to prevent and detect risks of fraud and corruption and to bring such practices to an end by means of sanctions, as well as mechanisms to recover the profit from such practices;
14. Calls on the Commission, in the spirit of setting a good example, to include in future reports an assessment of the EU institutions' performance in the areas addressed by the report, where applicable, and in particular as regards its anti-corruption framework;
15. Stresses that transparency, access to public information, media freedom and pluralism, investigative journalism, protection of journalists against strategic lawsuits against public participation (SLAPPs), protection of whistleblowers and an overall culture of integrity in public life are indispensable to identify and prevent corruption;
16. Warns that the lack of uniform, up-to-date and consolidated statistics across all Member States, together with the challenges of collecting information on the EU programmes' beneficiaries, hinder the assessment and comparison of data about the investigation and prosecution of corruption offences; calls, therefore, on the Commission to support and promote the Union-wide harmonisation of definitions of such offences, as well as a better use of the existing data sets and methodology in order to develop new ones with a view to obtaining comparative data across the EU on the treatment of corruption cases;

17. Highlights the importance of supporting and strengthening the cooperation between the EU institutions, the Member States, OLAF and the EPPO in the fight against corruption; is of the opinion that fighting corruption requires not only a strong mandate but also a bigger budget, more resources and any other kind of support necessary for the aforementioned institutions and bodies; recalls that Member States receiving grants from the EU budget should be encouraged to join the EPPO;
18. Welcomes the fact that the revised OLAF Regulation promotes a better follow-up of OLAF's recommendations by the Member States and improved admissibility of OLAF reports in national judicial and administrative proceedings; recalls that the revised OLAF Regulation also strengthens the way OLAF can conduct its own investigations, notably by reinforcing rules on the anti-fraud coordination services in the Member States and on cooperation between OLAF and national competent authorities before, during and after an investigation;
19. Believes that the situation as regards respect for the principles of the rule of law in some Member States is extremely worrying and seriously risks affecting the sound financial management of the Union budget, so it demands urgent attention; reiterates that the general regime of conditionality as defined in Regulation (EU, Euratom) 2020/2092 has been in force since 1 January 2021, and is not subjected to the adoption of any guidelines or judicial interpretation; reiterates its call on the Commission to fulfil its obligations under this regulation by 1 June 2021 and to duly inform Parliament, otherwise Parliament will have to consider that the Commission failed to act and will subsequently take action under Article 265 of the TFEU;
20. Regrets that the Commission has not yet made use of this tool despite many breaches of the rule of law identified in the report which have an impact on the sound financial management of the budget; reiterates its calls on the Commission for immediate action under the aforementioned regulation to make full use of its existing investigative tools without further delay in order to address rule of law deficiencies in Member States that could affect or seriously risk affecting the sound financial management of the Union budget in a sufficiently direct way; insists on the role and competences of Parliament, in particular the right to be duly informed by the Commission in the procedures of the rule of law instruments; recalls that it is essential that the legitimate interests of final recipients and beneficiaries are properly safeguarded when measures are adopted in the event of breaches of the principles of the rule of law;
21. Calls for the establishment of a European Parliament Working Group to closely scrutinise developments in relation to Regulation (EU, Euratom) 2020/2092, consisting of Members from the responsible lead committees;
22. Calls for a systemic and structural mechanism for Parliament to communicate its findings to the Commission concerning shortcomings and breaches in the rule of law in the Member States; suggests that Parliament propose such a mechanism to the Commission at its earliest convenience.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	26.5.2021
Result of final vote	+ : 24 - : 5 0 : 1
Members present for the final vote	Matteo Adinolfi, Olivier Chastel, Caterina Chinnici, Lefteris Christoforou, Corina Crețu, Ryszard Czarnecki, José Manuel Fernandes, Luke Ming Flanagan, Daniel Freund, Isabel García Muñoz, Monika Hohlmeier, Pierre Karleskind, Joachim Kuhs, Claudiu Manda, Younous Omarjee, Tsvetelina Penkova, Markus Pieper, Sabrina Pignedoli, Michèle Rivasi, Petri Sarvamaa, Vincenzo Sofo, Michal Wiezik, Angelika Winzig, Lara Wolters, Tomáš Zdechovský
Substitutes present for the final vote	Joachim Stanisław Brudziński, Katalin Cseh, Mikuláš Peksa, Ramona Strugariu, Lucia Vuolo

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

24	+
NI	Sabrina Pignedoli
PPE	Lefteris Christoforou, José Manuel Fernandes, Monika Hohlmeier, Markus Pieper, Petri Sarvamaa, Michal Wiezik, Angelika Winzig, Tomáš Zdechovský
Renew	Olivier Chastel, Katalin Cseh, Pierre Karleskind, Ramona Strugariu
S&D	Caterina Chinnici, Corina Crețu, Isabel García Muñoz, Claudiu Manda, Tsvetelina Penkova, Lara Wolters
The Left	Luke Ming Flanagan, Younous Omarjee
Verts/ALE	Daniel Freund, Mikuláš Peksa, Michèle Rivasi

5	-
ECR	Joachim Stanisław Brudziński, Ryszard Czarnecki, Vincenzo Sofo
ID	Matteo Adinolfi, Lucia Vuolo

1	0
ID	Joachim Kuhs

Key to symbols:

+ : in favour

- : against

0 : abstention

25.5.2021

OPINION OF THE COMMITTEE ON CONSTITUTIONAL AFFAIRS
for the Committee on Civil Liberties, Justice and Home Affairs

on the Commission's 2020 Rule of Law Report
(2021/2025(INI))

Rapporteur for opinion: Giuliano Pisapia

PA_NonLeg

SUGGESTIONS

The Committee on Constitutional Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Welcomes the Commission's first ever Rule of Law Report as a positive addition to the EU's toolbox to monitor, prevent and address rule of law issues in Member States; considers that, while further improvements are needed, this yearly reporting system strengthens the Commission's work and enables the exchange of best practices between Member States; underlines that it is necessary to strengthen and streamline existing tools and develop an effective general mechanism to ensure that the principles and values enshrined in the Treaties, which underpin mutual trust and trust in the EU, are upheld throughout the Union;

Procedures under Article 7 of the Treaty on European Union

2. Recalls that the Commission's Rule of Law Report was a commitment made by President Von Der Leyen in her political guidelines for the 2019-2024 Commission, and was also proposed to address the failures of the procedure under Article 7 of the Treaty on European Union (TEU) in countering serious violations of the rule of law and fundamental rights in Member States; regrets that this is due to the Council's failure to trigger such a procedure, as requested by the Commission in 2017 and Parliament in 2018;
3. Notes with concern that the failure to apply Article 7 of the TEU, also due to the requirement of unanimity for the sanctions mechanism, enables continued divergence from the values enshrined in Article 2 of the TEU and weakens one of the most important instruments of the Union's rule of law toolbox; regrets that no hearings under Article 7 of the TEU have been scheduled since December 2019; urges the Council, therefore, to resume those hearings as soon as possible, and to determine whether there is a clear risk of a serious breach by the Member States concerned of the EU values enshrined in Article 2 of the TEU; underlines that only a qualified majority is required to determine whether there is a clear risk of a serious breach by a Member State of these values and urges the presidency of the Council to take the appropriate steps to move the procedures under Article 7(1) of the TEU further along;
4. Reaffirms the role of Parliament, in accordance with Article 7 of the TEU, in monitoring compliance with Union values; reiterates its call for Parliament to be able to present its reasoned proposal to the Council, to attend hearings, in particular when Parliament has initiated the procedure, and to be kept promptly and fully informed at every stage of the procedure;
5. Believes that a stocktaking exercise on the effectiveness of Article 7 of the TEU is urgently needed and calls on the Commission to include an evaluation of its implementation in future Rule of Law Reports;

EU mechanism on democracy, rule of law and fundamental rights

6. Underlines that the report is a first step in responding to Parliament's resolution of 25 October 2016 on the establishment of an EU mechanism on democracy, the rule of law

and fundamental rights³⁶; considers, however, that the report fails to address all Union values, such as democracy, and all fundamental rights, and should be broadened and fine-tuned; reiterates the need to have a single monitoring system for democracy, the rule of law and fundamental rights, as proposed by Parliament³⁷, and calls again on the Council and the Commission to engage in discussions to set up such a mechanism via an interinstitutional agreement;

Methodology, scope and objectives of the report

Scope of the report

7. Welcomes the methodology of the report, which focuses on several pillars: independence of the judiciary, the anti-corruption framework, media pluralism, and checks and balances; underlines that judicial independence is the foundation upon which mutual trust and judicial cooperation are built, and plays a fundamental role in the protection of the values and legal order of the EU, especially since national judges are judges of EU law and have obligations with regard to its interpretation and application, notes with concern and strongly condemns the growing number of threats towards journalists in the EU and that several Member States' positions in international press freedom rankings have declined, underlining the risks to media pluralism;
8. Invites the Commission to broaden the scope of the report and to include in the next editions an assessment of how the right to a fair trial is guaranteed in Member States, with particular attention paid to the right of defence, the protection of victims of crimes, the fight against impunity, equality between prosecution and defence parties, and the length of court proceedings; calls on the Commission to also include in its next annual reports an evaluation of prison conditions, judicial backlogs and the average duration of trials in Member States; underlines, as the Committee of Ministers of the Council of Europe has previously stated, that the slowness of civil, criminal and administrative judicial procedures constitutes a major danger, in particular to respect for the rule of law;
9. Welcomes the fact that the report assesses the state of the rule of law in every Member State; calls on the Commission to make clear distinctions in future editions of the report between isolated shortcomings and systemic cases of violations of the values enshrined in Article 2 of the TEU, so as also to prevent the risk of the report being potentially misused as a tool to relativise autocratic processes in some Member States;

Objectives of the report

10. Stresses, however, that the report should be seen as a preparatory tool for concrete action to address rule of law deficiencies in Member States; believes, therefore, that the report should go beyond monitoring and include country-specific recommendations regarding preventive and corrective actions that must be adopted by the Member States concerned, with a clear outline of enforcement measures and concrete proposals to tackle violations in the case of non-compliance; asks the Commission to also clearly identify rule of law deficiencies with an impact on the sound financial management of

³⁶ Texts adopted, P8_TA(2016)0409.

³⁷ European Parliament resolution of 7 October 2020 on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights (texts adopted, P9_TA(2020)0251).

the Union budget in the report to be used as the basis for triggering the rule of law conditionality mechanism;

Methodology of the report

11. Notes that an objective of the annual Rule of Law Reports is to secure high rule of law standards based on an objective approach, impartiality and mutual respect; calls on the Commission to therefore invest in tools for the collection and analysis of data, to ensure the diversity of relevant information sources and guarantee the transparency of the methodology so as to further substantiate the findings in future reports; invites the Commission to, for example, include data on the compliance of Member States with rulings of the Court of Justice, signalling cases of serious non-compliance;
12. Regrets that the draft country chapters were only shared with the respective Member States' governments, giving members of national parliaments the chance to provide input only after the final report was published; stresses the importance of consulting a comprehensive spectrum of all democratic parties in assessing a country-specific situation, as governments naturally have an interest in a less critical assessment of the situation; calls on the Commission to provide national parliaments with the draft country chapter at the same time as they are provided to governments;
13. Welcomes the fact that civil society, which can provide valuable input and a more critical view than the government concerned, was consulted during the drafting process; notes, however, that the consultation can be improved by ensuring, inter alia, sufficiently long timeframes for providing input and reconsidering the format of a one-size-fits-all questionnaire for providing input; encourages the Commission, with a view to the next editions of the report, to seek further advice from civil society on how to optimise the consultation process and the follow-up on their input;

Improvements to the EU's rule of law toolbox

14. Calls on the Commission to use all tools at its disposal to counter violations of EU values, such as infringement procedures, including expedited procedures, actions to ensure compliance with the judgments of the Court of Justice and applications for interim measures before the Court; welcomes the entry into force, as of 1 January 2021, of the new rule of law conditionality mechanism and recalls that it is binding in its entirety for all commitment appropriations and payment appropriations in all Member States and on the EU institutions, including Next Generation EU; regrets that the Commission has not yet made use of this tool, despite the many breaches of the rule of law identified in the report, which have an impact on the sound financial management of the budget; asks the Commission to fully and proactively enforce it without delay with regard to all EU funds and programmes;
15. Calls on the Commission to evaluate the effectiveness of rule of law criteria in all EU policies and to further strengthen the rule of law toolbox; underlines that both the European Democracy Action Plan and the strategy to strengthen the application of the Charter of Fundamental Rights complement the Commission's rule of law report and contribute to protecting and promoting EU values; calls, in this regard, for an evaluation to determine whether the scope of the non-discrimination clause in the Charter of Fundamental Rights is broad enough to make the enforcement of the rule of law in Member States and the Union as a whole consistent with Article 14 of the European

Convention on Human Rights, and what further actions the EU institutions can take to ensure that it is adequately applied;

16. Recalls that the accession of the Union to the European Convention on Human Rights is a legal obligation provided for under Article 6(2) of the TEU; reiterates the need for the swift conclusion of the accession process in order to ensure a consistent framework for human rights protection throughout Europe and to further strengthen the protection of fundamental rights and freedoms within the Union; calls on the Commission and the Council to ensure that this obligation is respected as soon as possible, with full transparency, in order to increase the protection of individuals and the accountability of the EU institutions for their acts or omissions with regard to fundamental rights;

Impact of the COVID-19 pandemic

17. Highlights that the COVID-19 pandemic, which led national authorities to take unforeseen measures, has had a deleterious impact on fundamental rights as well as on constitutional checks and balances; insists that any measures restricting the rights and freedoms of EU citizens should be limited to what is strictly necessary, transparent, proportional and temporary; calls on the Commission to further analyse measures taken in response to the COVID-19 pandemic in its 2021 report;
18. Welcomes the reflection on the resilience of the justice system and stresses that an effective justice system is essential for upholding the rule of law; recalls that both access to justice and the efficiency of national courts were negatively impacted in the context of the pandemic with the partial closure of national courts; invites the Commission to include in the Report a recommendation for the Member States to reduce the negative impact of the pandemic on the activity of the national courts and ensure compliance with one of the fundamental elements of the rule of law, the effectiveness of a justice system;

Conference on the Future of Europe

19. Regrets that the Union remains structurally ill-equipped to tackle democratic, fundamental rights and rule of law violations and backsliding in the Member States; believes that the Commission should ultimately be provided with a strong and complete toolbox to prevent breaches of EU values and that the Conference on the Future of Europe provides a good opportunity to address these issues and come up with alternative solutions;
20. Welcomes the fact, therefore, that the Joint Declaration on the Conference on the Future of Europe clearly states that ‘European rights and values including the Rule of Law’ will be one of the topics of discussion at the upcoming Conference³⁸; invites the Conference to engage in a thorough discussion and reflection on the effectiveness of the EU’s existing tools to monitor, prevent and tackle violations of the principles enshrined in Article 2 of the TEU and to present concrete proposals to strengthen the EU’s toolbox; recommends that the Conference, in this context, also discuss the need to facilitate the procedures for the application of Article 7 of the TEU, and in particular

³⁸ Joint Declaration on the Conference on the Future of Europe of 10 March 2021 entitled ‘Engaging with Citizens for Democracy – Building a more resilient Europe’.

address the voting requirements for the application of sanctions.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	25.5.2021
Result of final vote	+: 21 -: 5 0: 0
Members present for the final vote	Gerolf Annemans, Gabriele Bischoff, Damian Boeselager, Fabio Massimo Castaldo, Włodzimierz Cimoszewicz, Gwendoline Delbos-Corfield, Pascal Durand, Daniel Freund, Charles Goerens, Sandro Gozi, Laura Huhtasaari, Giuliano Pisapia, Paulo Rangel, Antonio Maria Rinaldi, Domènec Ruiz Devesa, Jacek Saryusz-Wolski, Helmut Scholz, Pedro Silva Pereira, Sven Simon, Antonio Tajani, Mihai Tudose, Loránt Vincze, Rainer Wieland
Substitutes present for the final vote	Jorge Buxadé Villalba, Othmar Karas, Maite Pagazaurtundúa

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

21	+
NI	Fabio Massimo Castaldo
PPE	Othmar Karas, Paulo Rangel, Sven Simon, Antonio Tajani, Loránt Vincze, Rainer Wieland
Renew	Pascal Durand, Charles Goerens, Sandro Gozi, Maite Pagazaurtundúa
S&D	Gabriele Bischoff, Włodzimierz Cimoszewicz, Giuliano Pisapia, Domènec Ruiz Devesa, Pedro Silva Pereira, Mihai Tudose
The Left	Helmut Scholz
Verts/ALE	Damian Boeselager, Gwendoline Delbos Corfield, Daniel Freund

5	-
ECR	Jorge Buxadé Villalba, Jacek Saryusz-Wolski
ID	Gerolf Annemans, Laura Huhtasaari, Antonio Maria Rinaldi

0	0

Key:

+: in favour

–: against

0: abstentions

INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

Date adopted	3.6.2021
Result of final vote	+: 49 -: 10 0: 4
Members present for the final vote	Magdalena Adamowicz, Konstantinos Arvanitis, Malik Azmani, Katarina Barley, Fernando Barrena Arza, Pietro Bartolo, Vladimír Bilčík, Vasile Blaga, Ioan-Rareş Bogdan, Patrick Breyer, Saskia Bricmont, Joachim Stanisław Brudziński, Jorge Buxadé Villalba, Damien Carême, Caterina Chinnici, Clare Daly, Anna Júlia Donáth, Lena Düpont, Cornelia Ernst, Laura Ferrara, Nicolaus Fest, Jean-Paul Garraud, Maria Grapini, Sylvie Guillaume, Andrzej Halicki, Evin Incir, Sophia in 't Veld, Patryk Jaki, Marina Kaljurand, Assita Kanko, Fabienne Keller, Peter Kofod, Łukasz Kohut, Moritz Körner, Alice Kuhnke, Jeroen Lenaers, Juan Fernando López Aguilar, Lukas Mandl, Nadine Morano, Javier Moreno Sánchez, Paulo Rangel, Diana Riba i Giner, Ralf Seekatz, Michal Šimečka, Birgit Sippel, Sara Skytvedal, Martin Sonneborn, Tineke Strik, Ramona Strugariu, Annalisa Tardino, Tomas Tobé, Dragoş Tudorache, Milan Uhrík, Tom Vandendriessche, Bettina Vollath, Elissavet Vozemberg-Vrionidi, Jadwiga Wiśniewska, Javier Zarzalejos
Substitutes present for the final vote	Damian Boeselager, Nathalie Loiseau, Karlo Ressler, Rob Rooker, Domènec Ruiz Devesa

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

49	+
NI	Laura Ferrara, Martin Sonneborn
PPE	Magdalena Adamowicz, Vladimír Bilčík, Vasile Blaga, Ioan-Rareş Bogdan, Lena Düpont, Andrzej Halicki, Jeroen Lenaers, Lukas Mandl, Paulo Rangel, Karlo Ressler, Ralf Seekatz, Sara Skyttedal, Tomas Tobé, Elissavet Vozemberg-Vrionidi, Javier Zarzalejos
Renew	Malik Azmani, Anna Júlia Donáth, Sophia in 't Veld, Fabienne Keller, Moritz Körner, Nathalie Loiseau, Michal Šimečka, Ramona Strugariu, Dragoş Tudorache
S&D	Katarina Barley, Pietro Bartolo, Caterina Chinnici, Sylvie Guillaume, Evin Incir, Marina Kaljurand, Łukasz Kohut, Juan Fernando López Aguilar, Javier Moreno Sánchez, Domènec Ruiz Devesa, Birgit Sippel, Bettina Vollath
The Left	Konstantinos Arvanitis, Pernando Barrena Arza, Clare Daly, Cornelia Ernst
Verts/ALE	Damian Boeselager, Patrick Breyer, Saskia Bricmont, Damien Carême, Alice Kuhnke, Diana Riba i Giner, Tineke Strik

10	-
ECR	Joachim Stanisław Brudziński, Jorge Buxadé Villalba, Patryk Jaki, Rob Rooker, Jadwiga Wiśniewska
ID	Nicolaus Fest, Jean-Paul Garraud, Annalisa Tardino, Tom Vandendriessche
NI	Milan Uhrík

4	0
ECR	Assita Kanko
ID	Peter Kofod
PPE	Nadine Morano
S&D	Maria Grapini

Key to symbols:

+ : in favour

- : against
0 : abstention