



Plenary sitting

B9-0264/2022

3.5.2022

MOTION FOR A RESOLUTION

to wind up the debate on the statement by the Commission

pursuant to Rule 132(2) of the Rules of Procedure

on ongoing hearings under Article 7(1) TEU regarding Poland and Hungary
(2022/2647(RSP))

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on behalf of the ID Group

B9-0264/2022

European Parliament resolution on ongoing hearings under Article 7(1) TEU regarding Poland and Hungary (2022/2647(RSP))

The European Parliament,

- having regard to Articles 2 and 7 of the Treaty on European Union (TEU),
- having regard to Article 5 TEU, in particular the principles of conferral, subsidiarity and proportionality, which limit the powers of the EU,
- having regard to Articles 31 and 32 of the Vienna Convention on the Law of Treaties of 1969, which give primacy to good faith and a literal approach to treaty interpretation and broadly limit recourse to purpose and other interpretation criteria to cases of manifest absurdity and genuine ambiguity,
- having regard to Opinion No 1/2018 of the European Court of Auditors of 17 July 2018 concerning the proposal of 2 May 2018 for a regulation of the European Parliament and of the Council on the protection of the Union’s budget in case of generalised deficiencies as regards the rule of law in the Member States¹,
- having regard to the opinion of the Legal Service of the Council of 25 October 2018 concerning the compatibility with the EU Treaties of the proposal for a regulation of the European Parliament and of the Council on the protection of the Union’s budget in case of generalised deficiencies as regards the rule of law in the Member States,
- having regard to Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027²,
- 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 budget³ (Rule of Law Conditionality Regulation),
- having regard to the judgments of the Court of Justice of the European Union (CJEU) of 16 February 2022 in Case C-156/21, *Hungary v Parliament and Council*⁴, and in Case C-157/21, *Poland v Parliament and Council*⁵,
- having regard to judgment K 3/21 of the Polish Constitutional Tribunal of 7 October 2021, which was published in Poland’s official gazette, the *Dziennik Ustaw*, on 12 October 2021,
- having regard to the Commission’s reasoned proposal of 20 December 2017 entitled ‘In

¹ OJ C 291, 17.8.2018, p. 1.

² OJ L 433 I, 22.12.2020, p. 11.

³ OJ L 433 I, 22.12.2020, p. 1.

⁴ ECLI:EU:C:2022:97.

⁵ CLI:EU:C:2022:98.

accordance with Article 7(1) of the Treaty on European Union regarding the rule of law in Poland: 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 law’ (COM(2017)0835),

- 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 founded⁶,
 - having regard to the Commission communication of 30 September 2020 entitled ‘2020 Rule of Law Report – The rule of law situation in the European Union’ (COM(2020)0580),
 - having regard to the statement by the Commission of 16 February 2022 on the judgments of the European Court of Justice on the General Conditionality Regulation,
 - having regard to the conclusions of the European Council adopted on 11 December 2020,
 - having regard to its resolution of 10 June 2021 on the rule of law situation in the European Union and the application of the Conditionality Regulation (EU, Euratom) 2020/2092⁷,
 - having regard to the Commission’s decision of 27 April 2022 to send a notification letter to Hungary triggering the rule of law conditionality mechanism for the protection of the EU’s budget,
 - having regard to Rule 132(2) of its Rules of Procedure,
- A. whereas Article 2 TEU states that ‘the Union is founded on the 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. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail’;
- B. whereas Article 5(3) TEU states that ‘under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States’;
- C. whereas Article 7 TEU sets out the procedure for instituting infringement proceedings against a Member State where there is a clear risk of violating the values of the EU set out in Article 2 TEU;
- D. whereas as an international organisation, the EU remains bound by international law and the CJEU, a treaty-based court, and, by virtue of the Member States being signatories to the Vienna Convention on the Law of Treaties, remains bound by the

⁶OJ C 433, 23.12.2019, p. 66.

⁷OJ C 67, 8.2.2022, p. 86.

rules of interpretation and other provisions of the Convention;

- E. whereas there is no general competence in the EU Treaties that allows the EU institutions to enforce its interpretation of the rule of law throughout the EU;
 - F. whereas on 16 December 2020, Parliament and the Council adopted the Rule of Law Conditionality Regulation, which establishes a general regime of conditionality for the protection of the Union budget in the case of breaches of the principles of the rule of law by a Member State; whereas in order to attain that objective, the regulation allows the Council, following a proposal from the Commission, to adopt protective measures, such as the suspension of payments to be made from the Union budget or the suspension of the approval of one or more programmes to be paid from that budget;
 - G. whereas the regulation's alleged objective is to protect the Union budget from the effects resulting from, in a sufficiently direct way, breaches of the principles of the rule of law;
 - H. whereas the CJEU dismissed the actions brought by Hungary and Poland in their entirety; whereas the Court ruled that the EU acted within its powers and that the regulation did not affect legal certainty or circumvent Article 7 TEU;
 - I. whereas there is no EU-wide legal definition of what the concept of 'rule of law' entails; whereas the Commission, on the one hand, seeks to bind the Member States to EU law, putting the Union hierarchically above the Member States, while, on the other hand, it seeks to replace the traditional content of the rule of law by constructing a subjective set of values and principles; whereas the EU has used the process of alleging rule of law violations for political purposes in the past;
 - J. whereas Article 7 TEU proceedings were instituted against Hungary on 12 September 2018;
 - K. whereas there is a real risk that the Commission is instrumentalising the Rule of Law Conditionality Regulation against Hungary, and other states that insist on the supremacy of their traditional values and their own, equally legitimate legal interpretation of the rule of law; whereas this regulation is a powerful political coercion tool that potentially threatens all Member States; whereas the Commission demonstrates different approaches when it comes to other Member States, such as Malta;
1. Reiterates that the EU has acted *ultra vires* in adopting the Rule of Law Conditionality Regulation, in that it has gone beyond the powers conferred upon it by the Member States; further insists that the regulation breaches the principle of legal certainty; rejects, therefore, the Rule of Law Conditionality Regulation in its entirety; further considers that the Rule of Law Conditionality Regulation violates the unanimity principle set out in Article 7 TEU and therefore constitutes a breach of EU law;
 2. Draws attention to the fact that the several different legal jurisdictions of the Member States attach different definitions to the concept of the 'rule of law' and that this divergence in national law should be respected and celebrated rather than ignored or eliminated; emphasises that there is ample academic research on comparative law that shows that there is no unified understanding of the rule of law; considers that this lack

of conceptual consensus at an EU level will give rise to legal uncertainty and opens up the possibility of political interference, which is in itself a violation of the rule of law; calls on all Member States to respect the separation of powers as an essential aspect of the rule of law;

3. Stresses that each Member State has its own national identity and constitutional traditions, which are in line with European values and must always be treated with respect, objectivity and with regard to the principle of equality; underlines that the rule of law is a fundamental value for all the Member States; expresses concern that the abuse of the concept of the rule of law for political aims destroys mutual trust and sincere cooperation between Member States;
4. Underlines that the agreement on the budget cannot be misused for political pressure or to blackmail Member States; considers that any suspension of payments from the Union budget to a Member State, as provided for by the Rule of Law Conditionality Regulation, would amount to unjust enrichment, since Member States contribute to the EU budget with the understanding that they will receive payments from the EU in return; further considers that any suspension of payments by the EU should result in an unfair enrichment claim being brought before a court of law;
5. Argues that conditionality, through the concrete sending of a notification letter to the Hungarian authorities, clearly appears as a sanctioning mechanism in addition to Article 7 proceedings, which enables the circumvention of the strict procedural requirements of unanimity in Article 7; condemns the fact that Hungary will be punished disproportionately in terms of this dual sanctioning mechanism created by the EU;
6. Notes with concern the political timing of triggering the rule of law conditionality mechanism by the Commission against Hungary, just two days after its parliamentary elections in which the political party Fidesz received the highest vote share by any party since the fall of communism in 1989;
7. Expresses its grave concern that the Commission plans to punish Hungarian citizens for voting for the wrong party; emphasises that the Commission has no right to intervene in democratic elections when results are not to its liking;
8. Stresses that the Hungarian parliamentary election were free and fair; notes that the Organization for Security and Co-operation in Europe monitoring mission evaluated that ‘the legal framework forms an adequate basis for democratic elections to be held’, added that the election day passed peacefully and further reported that the elections ‘offered voters distinct alternatives and were well run’, with observers assessing the process as well-organised, orderly, and smooth;
9. Recalls that the concept of the rule of law should not be defined by the Commission’s subjective interpretation; regrets how the Commission’s role as guardian of the Treaties has deteriorated, since the Commission seems to pick and choose which Member States it pursues following alleged violations of Union values and the misapplication of EU primary and secondary law;
10. Calls on the Commission to cease using the Rule of Law Conditionality Regulation and the protection of the rule of law and fundamental rights to put political pressure on

certain Member States to change democratically approved policies within the competence of Member States;

11. Expresses its grave concern that, as is the case with Article 7 proceedings, measures under the Rule of Law Conditionality Regulation will be implemented to further political ideals and delegitimise certain Member States;
12. Notes that the EU is targeting the sovereign Government of Hungary in particular because of its opposition to the EU's migration policy and to policies advocating societal liberalism, and despite the democratic confirmation of these policies following the recent general elections;
13. Reiterates that the Member States are and remain the masters of the Treaties; calls for a reform of the EU towards a Europe that upholds the sovereignty and identity of our European nations and peoples;
14. Calls on the EU institutions and the Member States to abandon their economically and politically disastrous centralising vision of an 'ever closer union', and instead calls for a more restrained form of European cooperation that respects the limitations of the EU as laid down by the existing Treaties and is in accordance with the principles of national sovereignty, democracy, transparency, strict subsidiarity and accountability;
15. Instructs its President to forward this resolution to the Council, the Commission and the Government and Parliament of Hungary.