



**2023/2113(INI)**

29.11.2023

# OPINION

of the Committee on Legal Affairs

for the Committee on Civil Liberties, Justice and Home Affairs

on the Commission's 2023 Rule of Law report  
(2023/2113(INI))

Rapporteur for opinion (\*): Adrián Vázquez Lázara

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

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## 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:

### *General*

1. Recalls that the Union's legal structure is based on the fundamental premise that each Member State shares with all the other Member States a set of common values on which the EU is founded, as stated in Article 2 of the Treaty on European Union<sup>1</sup>; recalls further that the rule of law, as enshrined in EU primary law and further defined in the case-law of the Court of Justice of the European Union (CJEU), is akin to democracy and fundamental rights; recalls that the rule of law and the rules-based international order are key to fighting the spread of authoritarian regimes and the violation of international law and help to consolidate democratic structures and protect human rights; stresses that any backsliding on the rule of law, which is based on the separation and balancing of powers, in any given Member State significantly affects the common area of freedom, security and justice, as well as mutual trust and mutual recognition as leading principles of EU law in this area<sup>2</sup>;
2. Welcomes the Commission's fourth Rule of Law Report ('the Report') and considers that the periodic review of the rule of law is an essential monitoring tool; stresses, in this context, the importance of the use of clear and objective criteria by the Commission when providing its assessment, thereby avoiding claims of unequal treatment of Member States or the use of selective data only; welcomes, in this regard, the Commission's approach to receive Member States' contributions, thereby fostering a common dialogue; welcomes the new classification adopted by the Commission as regards measuring progress on past recommendations, with four categories: (a) no progress, (b) some progress, (c) significant progress, and (d) full implementation; in view of the problems involved in the gathering of statistical data by Member States, points out the usefulness of Council of Europe tools such as the Council of Europe's European Commission for the Efficiency of Justice (CEPEJ) reports<sup>3</sup>, thereby creating, as far as possible, convergence between the different data inputs;

### *Justice*

3. Acknowledges the importance attached to justice systems by the rule of law reporting, particularly as regards the legality, independence and impartiality of judges and judicial appointments, promotions, dismissals and decisions; acknowledges that no common EU system of nomination of judges exists; recalls, however, that all Member States have to adhere to Council of Europe<sup>4</sup> and CJEU<sup>5</sup> minimum standards; stresses, in this context,

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<sup>1</sup> See opinion 2/2013 of the Court of Justice of the European Union (Full Court) of 18 December 2014, ECLI:EU:C:2014:2454, paragraph 168.

<sup>2</sup> Ibid., paragraph 191.

<sup>3</sup> CEPEJ evaluation cycles.

<sup>4</sup> Briefing – 'Council of Europe standards on judicial independence', European Parliament, Directorate-General for Parliamentary Research Services, 25 May 2021.

<sup>5</sup> For example, Judgment of the Court of Justice (Grand Chamber) of 27 February 2018 in Case C-64/16,

the importance of independent councils of the judiciary, which must be composed by a substantial majority of judges elected by their peers and empowered with substantial authority over the selection, advancement and disciplinary procedures concerning judges; deeply regrets that not all Member States have fulfilled their obligations fully in this regard; deplores the devastating effect this has on the independence and integrity of their justice systems;

4. Acknowledges that almost two thirds of the recommendations issued in 2022 related to important reforms have been followed up to some extent; is concerned, however, by the number of issues identified in previous rule of law reports that remain unaddressed; urges the Commission to persist in its diligent monitoring of Member States' legal frameworks in order to assess their alignment with the above-mentioned recommendations, and further calls on the Commission to become more insistent on the implementation of these critical reforms in cases where Member States' systems do not meet the prescribed standards; calls on the Commission to take further steps to fully address the recommendations made by Parliament in its previous resolutions;
5. Welcomes the continuous support which is provided to relevant stakeholders via dedicated programmes, such as the Citizens, Equality, Rights and Values Programme; welcomes the funding through the Justice Programme to support judicial cooperation in civil and criminal matters and to contribute to the further development of European justice, which involves strengthening democracy, the rule of law and fundamental rights;
6. Urges the Commission to invest more in awareness-raising about the Union's values and applicable tools, including the annual report, especially in countries where there are serious concerns;
7. Acknowledges that a certain degree of progress can be seen in the last report in a number of different Member States as regards judicial independence; welcomes, in this regard, the withholding of EU funds, if necessary, under the conditionality mechanism<sup>6</sup>, as confirmed by the CJEU<sup>7</sup>, or under the Recovery and Resilience Facility<sup>8</sup>; points out, however, that infringements of judicial independence are still a concern in some Member States, such as ongoing disciplinary procedures against judges for the content of their decisions, problems with the composition of councils of the judiciary and with the composition of the highest national courts in view of the principle of a court established by law, etc.;

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*Associação Sindical dos Juizes Portugueses v Tribunal de Contas*, ECLI:EU:C:2018:117, or Judgment of the Court of Justice (Grand Chamber) of 19 November 2019, *A.K. v Krajowa Rada Sądownictwa*, Joined Cases C-585/18, C-624/18 and C-625/18, ECLI:EU:C:2019:982. See also Briefing – 'European Court of Justice case law on judicial independence', European Parliament. Directorate-General for Parliamentary Research Services, 19 July 2021.

<sup>6</sup> 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).

<sup>7</sup> See judgment of the Court of Justice (Full Court) of 16 February 2022, *Hungary v the European Parliament and the Council of the European Union*, C-156/21, ECLI:EU:C:2022:97 and judgment of the Court of Justice (Full Court) of 16 February 2022, *Poland v the European Parliament and the Council of the European Union*, C-157/21, ECLI:EU:C:2022:98.

<sup>8</sup> Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (OJ L 57, 18. 2. 2021, p. 17).

8. Recalls that an efficient and fair justice system ensuring access to justice for all requires an appropriate budget and financing of judiciary bodies; regrets that the report still reveals the existence of serious deficiencies in this regard, specifically hampering, it would appear the adjudication of high-profile corruption cases; stresses, however, that sufficient legal aid and remedies have to be available also to citizens; calls, in this context, on the Commission to include in the next rule of law report assessments of the application of the EU *acquis* on legal aid in civil and criminal matters, such as Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes<sup>9</sup>, as CJEU case-law reveals that there are still questions about its interpretation;
9. Recalls that also prosecution services, regardless of their place in the national system of the division of powers between three branches of government, have to be independent of undue political pressure; notes that a certain degree of progress has been achieved in some Member States; regrets, however, that systems still exist where the government can issue binding decisions to prosecutors in particular cases, where the term of office is bound to a political process, or where the functions of minister and prosecutor general are combined, thus allowing for undue political influence and creating problems for mutual recognition<sup>10</sup>;
10. Underlines, in particular, that the issue of ‘revolving doors’ is not confined solely to concerns about former ministers transitioning into the private sector after their tenure in public office, but extends to situations where individuals may assume critical roles within the judiciary or the prosecutor’s office immediately following their service as ministers or affiliation with a political party;
11. Calls on the Commission to give due consideration to such examples in its forthcoming reports addressing the rule of law within the European Union; urges the Commission to strongly call on Member States to refrain from these practices, specifically, by implementing legal provisions that proactively prevent former ministers and high-ranking political figures from assuming leadership positions within the high courts of justice or the prosecutor’s office, thereby safeguarding the independence and integrity of these vital institutions;

### ***Fight against corruption***

12. Recalls that the fight against corruption is essential to maintaining the rule of law and preserving and fostering citizens’ trust in public institutions; recalls, further, that to be effective, it requires a robust legal and administrative anti-corruption framework based on integrity, transparency and accountability, namely in public life, stressing the disclosure of declarations of interests and the protection of whistle-blowers where applicable;
13. States that corruption is a menace that can destroy democracies and undermine citizens’ trust in institutions, and has to be combated in all its forms; points out that corruption is the most common avenue by which organised crime infiltrates and controls the

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<sup>9</sup> OJ L 26, 31.1.2003, p. 41, and the corrigendum thereto (OJ L 32, 7.2.2003, p. 15).

<sup>10</sup> For example, Opinion No.9 of 17 December 2014 of the Consultative Council of European Prosecutors on European norms and principles concerning prosecutors.

economy; is worried that the latest Report shows either no or only very slow progress in relation to anti-corruption prevention measures in several Member States; is extremely worried about the reluctance to establish registers of lobbyists, transparency registers and proper systems of asset declarations by public office holders and senior officials, as well as about the lack of political will to introduce strict rules within revolving doors policies; highlights, in this context, the importance of a transparent legislative procedure with far-reaching access to documents, and rules to ensure the highest degree of transparency and accountability in public administrations and public decision-making with a view to preventing corruption<sup>11</sup>;

14. Calls, in this context, also for all EU institutions to adhere to the highest possible standards with a view to the prevention of corruption, such as, inter alia, the creation of an effective EU Ethics Body, the full application of Regulation 1049/2001<sup>12</sup> on access to documents, and the full application of the conditionality principle as regards the EU Transparency Register; calls on the Member States to try to reach an agreement as soon as possible on the proposed directive on combating corruption with a view to establishing a common, homogeneous framework of codes of conduct, standards preventing conflicts of interest and rules ensuring the transparency of procedures;
15. Recognises the substantial increase in recent years in the quantitative significance of funds allocated by the European Union, including the NextGenerationEU funds; acknowledges that, as a result, the presence of legal provisions within Member States' legislation designed to prevent the misuse of these funds has assumed the utmost importance;
16. Recalls that no sector is corruption-risk safe, including those that manage significant public funds or access to critical infrastructures and services, such as healthcare and construction; stresses that organised crime groups play an increasingly important role in activities which include counterfeiting, piracy and infringements of intellectual property rights, and which have skyrocketed in the digital environment; recalls that the criminal groups involved in these illegal activities often use the profits to finance other illegal activities;
17. Calls on the Commission, as part of its upcoming rule of law reports, to incorporate an evaluation of the evolution of Member States' legislation in recent years pertaining to the oversight of the appropriate utilisation of public funds, as well as the legal mechanisms in place to address any improper use of public funds;
18. Recalls Parliament's strong support for the establishment of the European Public Prosecutor's Office (EPPO); acknowledges the important role of the EPPO as an independent EU body in investigating, prosecuting and bringing to judgment crimes affecting the financial interests of the Union; highlights that since starting its operations on 1 June 2021, EPPO has registered more than 4 000 crime reports from participating

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<sup>11</sup> See, in this context, Article 3 of the proposal for a directive of the European Parliament and of the Council of 3 May 2023 on combating corruption, replacing Council Framework Decision 2003/568/JHA and the Convention on the fight against corruption involving officials of the European Communities or officials of the Member States of the European Union and amending Directive (EU) 2017/1371 of the European Parliament and of the Council (COM(2023)0234).

<sup>12</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

EU Member States and private parties and over 929 investigations have been opened (as of June 2022);

19. Urges the Commission, furthermore, in cases where the level of safeguards for public funds is found to have been lowered, to promptly engage with the affected Member State or Member States, requesting the expeditious implementation of the necessary measures to rectify this situation;

### *Civil society*

20. Recalls its resolution of 11 November 2021 on strengthening democracy and media freedom and pluralism in the Union where it called on the Commission to propose a package of both soft and hard laws to address the increasing number of strategic lawsuits against public participation, or SLAPPs; welcomes the Commission legislative proposal and recommendation to the Member States of 27 April 2022 addressing Parliament's call in this respect; stresses that SLAPPs are a particular form of harassment used primarily against journalists to prevent them from or penalise them for speaking up on matters of public interest by subjecting them to lengthy, burdensome and expensive lawsuits; calls on the Member States to keep up with the ambitions in the proposed measures and step up efforts to improve the safety and protection of journalists;
21. Notes with deep concern the overall shrinking of space for civil society in some Member States, which represents a serious threat to the rule of law, democracy, fundamental rights and other EU values; calls on the Commission to monitor the challenges and attacks faced by civil society as part of its annual rule of law assessment and reporting work and to include conclusions and targeted recommendations in its report; reiterates its call, in this regard, for a separate chapter to be dedicated to the state of civil society in the Member States;
22. Emphasises that the current legal framework at Union and national level is insufficient to establish and support a strong pan-European civil society, whose existence is necessary for democracy; believes, therefore, that a statute for EU cross-border associations and not-for-profit organisations will provide an extra layer of protection to civil society organisations facing undue hurdles to their establishment and operations<sup>13</sup>.

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<sup>13</sup> See, in this regard, its resolution of 17 February 2022 with recommendations to the Commission on a statute for European cross-border associations and non-profit organisations (OJ C 342, 6.9.2022. p. 225).

**ANNEX: LIST OF ENTITIES OR PERSONS  
FROM WHOM THE RAPPORTEUR FOR THE OPINION HAS RECEIVED INPUT**

The rapporteur declares under his exclusive responsibility that he did not receive input from any entity or person to be mentioned in this Annex pursuant to Article 8 of Annex I to the Rules of Procedure.



## INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

<b>Date adopted</b>	29.11.2023
<b>Result of final vote</b>	+: 20 -: 2 0: 0
<b>Members present for the final vote</b>	Pascal Arimont, Ilana Cicurel, Geoffroy Didier, Ibán García Del Blanco, Virginie Joron, Pierre Karleskind, Sergey Lagodinsky, Gilles Lebreton, Karen Melchior, Sabrina Pignedoli, Jiří Pospíšil, Raffaele Stancanelli, Adrián Vázquez Lázara, Axel Voss, Marion Walsmann, Tiemo Wölken, Javier Zarzalejos
<b>Substitutes present for the final vote</b>	Daniel Buda, Pascal Durand, Heidi Hautala
<b>Substitutes under Rule 209(7) present for the final vote</b>	Sylvie Guillaume, Pedro Marques, Anne-Sophie Pelletier

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

20	+
NI	Sabrina Pignedoli
PPE	Pascal Arimont, Daniel Buda, Geoffroy Didier, Jiří Pospíšil, Axel Voss, Marion Walsmann, Javier Zarzalejos
Renew	Ilana Cicurel, Pierre Karleskind, Karen Melchior, Adrián Vázquez Lázara
S&D	Pascal Durand, Ibán García Del Blanco, Sylvie Guillaume, Pedro Marques, Tiemo Wölken
The Left	Anne-Sophie Pelletier
Verts/ALE	Heidi Hautala, Sergey Lagodinsky

2	-
ID	Virginie Joron, Gilles Lebreton

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Key to symbols:

+ : in favour

- : against

0 : abstention