DRAFT 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
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; 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; stresses that any backsliding on the rule of law 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;

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, 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 and CJEU minimum standards; stresses, in this context,

---

1 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.
2 Ibid., paragraph 191.
3 CEPEJ evaluation cycles.
5 For example, Judgment of the Court of Justice (Grand Chamber) of 27 February 2018 in Case C-64/16, Associação Sindical dos Juízes 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...
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;

4. 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;

5. 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 mechanism⁶, as confirmed by the CJEU⁷, or under the Recovery and Resilience Facility⁸; 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.;

6. 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 2023 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes⁹, as CJEU case-law reveals that there are still questions about its interpretation;

7. 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

---

⁷ 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.
are combined, thus allowing for undue political influence and creating problems for mutual recognition 10;

8. 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;

9. 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**

10. States that corruption is a menace that can destroy democracies and has to be combated in all its forms; 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 11;

11. 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 12 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;

12. 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

---

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


13. 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;

14. 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.