



**2015/2254(INL)**

5.4.2016

## **DRAFT REPORT**

with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights (2015/2254(INL))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Sophia in 't Veld

(Initiative – Rule 46 of the Rules of Procedure)

**CONTENTS**

	<b>Page</b>
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION .....	3
ANNEX - Detailed recommendations for a draft Inter-institutional Agreement on arrangements concerning monitoring and follow up procedures on the situation of Democracy, the Rule of Law and Fundamental Rights in the Member States and EU institutions .....	9
EXPLANATORY STATEMENT.....	18

## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

**with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights  
(2015/2254(INL))**

*The European Parliament,*

- having regard to Article 225 of the Treaty on the Functioning of the European Union,
- having regard to the preamble to the Treaty on European Union (TEU), in particular the second, fourth and seventh recitals thereof,
- having regard in particular to Article 2, Article 3(1), the second subparagraph of Article 3(3) and Articles 6 and 7 TEU, and to the articles of the TFEU relating to respect for, and promotion and protection of democracy, rule of law and fundamental rights (DRF) in the Union, including Articles 70, 258, 259, 260, 263 and 265 TFEU,
- having regard to Article 4(3) TEU, Article 295 TFEU and Protocol No 1 on the role of national parliaments in the European Union,
- having regard to the Charter of Fundamental Rights of the European Union of 7 December 2000 ('the Charter'), proclaimed on 12 December 2007 in Strasbourg, which entered into force with the Treaty of Lisbon in December 2009,
- having regard to the Copenhagen criteria, in particular Chapters 23 and 24,
- having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the case law of the European Court of Human Rights, the conventions, recommendations, resolutions and reports of the Parliamentary Assembly, the Committee of Ministers, the Human Rights Commissioner and the Venice Commission of the Council of Europe,
- having regard to the Rule of Law Checklist adopted by the Venice Commission at its 106th Plenary Session, 18 March 2016, CDL-AD(2016)007,
- having regard to the Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948,
- having regard to the UN treaties on the protection of human rights and fundamental freedoms and the jurisprudence of the UN treaty bodies,
- having regard to the publications of the European Union Agency for Fundamental Rights (FRA), including the proposed European Fundamental Rights Information System (EFRIS) in the FRA paper 'Fundamental rights in the future of the European Union's Justice and Home Affairs', 31 December 2013<sup>1</sup>,
- having regard to the letter of the Ministers of Foreign Affairs of Germany, Denmark,

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<sup>1</sup> [http://fra.europa.eu/sites/default/files/fra\\_submission\\_on\\_the\\_future\\_of\\_eu\\_justice.pdf](http://fra.europa.eu/sites/default/files/fra_submission_on_the_future_of_eu_justice.pdf)

- Finland and the Netherlands to the Commission President of 6 March 2013<sup>1</sup>,
- having regard to the Italian presidency note on 'Ensuring respect for the rule of law in the European Union' of 15 November 2014<sup>2</sup>,
  - having regard to the conclusions of the Council of the European Union and the Member States meeting within the Council of 16 December 2014 on ensuring respect for the rule of law,
  - having regard to the 'Guidelines on methodological steps to be taken to check fundamental rights compatibility at the Council preparatory bodies' of 19 December 2014, 5377/15<sup>3</sup>,
  - having regard to the existing monitoring mechanism and periodic assessment tools by the Commission, including the Cooperation and Verification Mechanism (CVM), the Justice Scoreboard, Anti-Corruption reports and the Media Monitor,
  - having regard to the European Commission's Communication 'A new EU Framework to strengthen the Rule of Law' of 11 March 2014 (COM(2014)0158),
  - having regard to the Interinstitutional Agreement on Better Regulation (COM(2015)0216),
  - having regard to the statement by First Vice-President Timmermans on the situation in Hungary of 19 May 2015, SPEECH/15/5010,
  - having regard to the statement by First Vice-President Timmermans and Commissioner Oettinger on the situation in Poland of 19 January 2016, SPEECH/16/114,
  - having regard to the Commission's launch of a dialogue with the Polish government under the Rule of Law Framework, announced 13 January 2016,
  - having regard to its resolutions of 7 July 2013 on the situation of fundamental rights: standards and practices in Hungary, in particular paragraph 79<sup>4</sup>, 27 February 2014 on the situation of fundamental rights in the European Union (2012)<sup>5</sup>, 8 September 2015 on the situation of fundamental rights in the European Union (2013-2014)<sup>6</sup>, and 10 June 2015 on the situation in Hungary, in particular paragraph 12<sup>7</sup>,
  - having regard to the assessment of the European added value of Union measures

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1 <http://www.rijksoverheid.nl/bestanden/documenten-en-publicaties/brieven/2013/03/13/brief-aan-europese-commissie-over-opzetten-rechtsstatelijkheidsmechanisme/brief-aan-europese-commissie-over-opzetten-rechtsstatelijkheidsmechanisme.pdf>

2 <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2015206%202014%20INIT>

3 <http://data.consilium.europa.eu/doc/document/ST-5377-2015-INIT/en/pdf>

4 Texts adopted, P8\_TA(2013)0315.

5 Texts adopted, P8\_TA(2014)0173.

6 Texts adopted, P8\_TA(2015)0286.

7 Texts adopted, P8\_TA(2015)0227.

concerning Democracy, the Rule of Law and Fundamental Rights, carried out by the European Added Value Unit of the European Parliament,

- having regard to Rules 46 and 52 of its Rules of Procedure,
- having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Constitutional Affairs (A8-0000/2016),
- A. whereas the European Union is a community of values, based on democracy, the rule of law and fundamental rights, enshrined in its core principles and objectives in the first articles of the Treaty on European Union (TEU), and in the criteria for Union membership;
- B. whereas, in accordance with Article 2, Article 3(1) and Article 7 TEU, the Union avails itself of the possibility to act in order to protect its "constitutional core", reflected by the common values it shares with its Member States;
- C. whereas all Member States, the institutions of the Union and candidate countries are obliged to uphold those principles and values, and they have the duty of loyal cooperation;
- D. whereas respect for the rule of law within the Union is a precondition for mutual recognition and trust, key factors for policy areas such as the internal market, police and justice cooperation, the Schengen area, and asylum and migration policies, and as a consequence, the erosion of the rule of law, democratic governance and fundamental rights are a serious threat to the stability, security and prosperity of the Union;
- E. whereas the definition of core values and principles is a living and permanent process, and while those values and principles may evolve over time, they must be protected against short termism and ad hoc changes as a result of different political majorities;
- F. whereas respect for cultural diversity and national traditions may not impede a uniform and high level of protection of democracy, rule of law and fundamental rights (DRF);
- G. whereas a high degree of rule of law and effective justice systems play a key role in creating an investment-friendly environment, restoring confidence, providing greater regulatory predictability and sustainable growth;
- H. whereas the improvement of the effectiveness of justice systems in Member States has been identified by the Commission as a key component for structural reforms in the European Semester, the annual cycle for the coordination of economic policies at Union level;
- I. whereas the European Parliamentary Research Service study on The Cost of Non-Europe in the area of Organised crime and Corruption highlights that integrating existing EU monitoring mechanisms into a broader Rule of Law monitoring framework would result in cost savings of € 70 billion annually;
- J. whereas the failure of a candidate country to meet the required standards results in a delay of accession to the Union, while the failure of a Member State or an institution of

the Union to meet those same standards has little consequence in practice;

- K. whereas the obligations incumbent on candidate countries under the Copenhagen criteria continue to apply to the Member States after joining the Union by virtue of Article 2 TEU and the principle of sincere cooperation, and whereas all Member States should therefore be assessed on a regular basis in order to verify their continued compliance with the Union's common values;
- L. whereas there are few instruments to correct legislative and executive policy decisions by the institutions of the Union;
- M. whereas the Court of Justice of the European Union (CJEU) has recently issued various rulings invalidating certain Union laws, Commission Decisions or legislative practices, for being in breach of the Charter of Fundamental Rights or contrary to Treaty principles on transparency and access to documents, but in several cases the institutions of the Union fail to fully comply with the letter and the spirit of the rulings;
- N. whereas the accession of the Union to the European Convention for the Protection of Fundamental Rights and Fundamental Freedom is a Treaty obligation under Article 6(2) TEU;
- O. whereas the need for more effective and binding mechanisms to ensure full application of Treaty principles and values has been recognised by both Commission and Council, and put into practice by the creation of the European Commission Rule of Law Framework and the Council Rule of Law Dialogue;
- P. whereas the Union has at its disposal a multitude of instruments and processes for ensuring full and proper application of Treaty principles and values but in practice they appear limited in scope, inadequate and ineffective, or they are unlikely to be used; while their uneven application is perceived by many as politically motivated, arbitrary and unfairly targeting certain countries;
- Q. whereas the number of CJEU cases quoting the Charter has risen from 43 in 2011 to 210 in 2014;
- R. whereas coherence between the institutions and Member States in DRF compliance will provide obvious benefits, such as less costly court cases, better clarity for Union citizens and their rights, and more certainty for Member States in terms of implementation;
- S. whereas some Member State governments deny that upholding Union principles and values is a Treaty obligation, or that the Union has the authority to ensure compliance;
- T. whereas in situations where a Member State no longer guarantee respect for DRF, the Union and its Member States have a duty to protect the rights of the residents of that Member State;
- U. whereas recent developments have shown it is urgent to revise and integrate existing mechanisms and develop an effective mechanism to ensure Treaty principles and values are upheld throughout the Union;

- V. whereas a new mechanism should be based on the following guiding principles: evidence based; objective; non-discriminatory and assessing on an equal footing; applying to both Member States and institutions of the Union; and based on a graduated approach, including both a preventative and corrective arm;
- W. whereas a new mechanism should aim at offering a single, coherent framework, building on and incorporating existing instruments and mechanisms, and closing any remaining gaps;
- X. whereas the establishment of an EU Pact for DRF is without prejudice to the direct application of Article 7(1) and (2) TEU;
1. Requests the Commission to submit, by the end of 2016, on the basis of Article 295 TFEU, a proposal for the conclusion of an EU Pact for Democracy, the Rule of Law and Fundamental Rights (DRF) in the form of an interinstitutional agreement laying down arrangements facilitating the cooperation of institutions of the Union and its Member States in the framework of Article 7 TEU, integrating, aligning and complementing existing mechanisms, following the detailed recommendations set out in the Annex hereto;
  2. Recommends, in particular, that the mechanisms of the EU Pact for DRF include preventative and corrective elements, and apply to all Member States as well as the three main institutions of the Union;
  3. Calls on the Commission to present, by June 2017 at the latest, a new draft agreement for the accession of the Union to the ECHR, taking into account the Opinion 2/13 of the Court of Justice of the European Union (CJEU) of 18 December 2014;
  4. Invites the European Ombudsman to issue, as part of its annual report, specific recommendations to the institutions of the Union in the field of DRF;
  5. Calls for the creation of a Union Fund, on the basis of a pilot project, for legal assistance to individuals and organisations litigating cases relating to DRF violations by national governments or the institutions of the Union;
  6. Calls on the Commission to develop and implement an awareness raising campaign, providing information about citizens' rights to judicial redress and litigation routes in cases relating to DRF violations by national governments or institutions of the Union;
  7. Invites the CJEU to make proposals in order to speed up its procedures, with a view to improving access to justice for individuals challenging violations of DRF;
  8. Recommends that the DRF expert panel, as per the proposed interinstitutional agreement, also assess access to justice at the European level, applying the same benchmarks to the CJEU and ECtHR, including aspects such as independence and impartiality of courts and judges, length and cost of litigation, implementation of court rulings, scope of judicial control and redress available to citizens, and options for cross border collective redress;
  9. Considers, furthermore, that any future Treaty revision should include the following

changes:

- Article 2 TEU to become a legal base for infringement procedures and legislative measures to be adopted under the ordinary legislative procedure;
  - Enabling national courts under Article 2 TEU to bring before the CJEU actions on the legality of Member States' actions;
  - Enabling individuals to bring actions before the CJEU;
  - Abolition of Article 51 of the Charter of Fundamental Rights, and the conversion of the Charter into a Bill of Rights of the Union;
  - Reviewing the unanimity requirement in areas relating to respect for and protection and promotion of fundamental rights, such as equality and non-discrimination;
10. Confirms that the recommendations respect fundamental rights and the principle of subsidiarity;
  11. Considers that any financial implications of the requested proposals for the budget of the Union should be covered by the existing budgetary allocations; stresses that both for the EU and its Member States, as well as for citizens, the adoption and implementation of those proposals would lead to substantial cost and time savings, and will thus be beneficial both in economic and social terms;
  12. Instructs its President to forward this resolution and the accompanying detailed recommendations to the Commission and the Council, and to the parliaments and governments of the Member States.



**ANNEX - Detailed recommendations for a draft Inter-institutional Agreement on arrangements concerning monitoring and follow up procedures on the situation of Democracy, the Rule of Law and Fundamental Rights in the Member States and EU institutions**

DRAFT INTERINSTITUTIONAL AGREEMENT

EUROPEAN UNION PACT ON DEMOCRACY, THE RULE OF LAW AND  
FUNDAMENTAL RIGHTS

The European Parliament, the Council of the European Union and the European Commission:

Having regard to the preamble to the Treaty on European Union (TEU), in particular the second, fourth and seventh recitals thereof,

Having regard in particular to Article 2, Article 3(1), the second subparagraph of Article 3(3) and Articles 6 and 7 TEU, and to the articles of the TFEU relating to respect for, and promotion and protection of democracy, rule of law and fundamental rights (DRF) in the Union, including Articles 70, 258, 259, 260, 263 and 265 TFEU,

Having regard to Article 4(3) TEU, Article 295 TFEU and Protocol No 1 on the role of national parliaments in the European Union,

Having regard to the Charter of Fundamental Rights of the European Union of 7 December 2000 ('the Charter'), proclaimed on 12 December 2007 in Strasbourg, which entered into force with the Treaty of Lisbon in December 2009,

Having regard to the Copenhagen criteria, in particular Chapters 23 and 24,

Having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the case law of the European Court of Human Rights, the conventions, recommendations, resolutions and reports of the Parliamentary Assembly, the Committee of Ministers, the Human Rights Commissioner and the Venice Commission of the Council of Europe,

Having regard to the Rule of Law Checklist adopted by the Venice Commission at its 106th Plenary Session, 18 March 2016, CDL-AD(2016)007,

Having regard to the Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948,

Having regard to the UN treaties on the protection of human rights and fundamental freedoms and the jurisprudence of the UN treaty bodies,

Having regard to the publications of the European Union Agency for Fundamental Rights (FRA), including the proposed European Fundamental Rights Information System (EFRIS) in the FRA paper 'Fundamental rights in the future of the European Union's Justice and Home Affairs', 31 December 2013,

Having regard to the letter of the Ministers of Foreign Affairs of Germany, Denmark,

Finland and the Netherlands to the Commission President of 6 March 2013,

Having regard to the Italian presidency note on 'Ensuring respect for the rule of law in the European Union' of 15 November 2014,

Having regard to the conclusions of the Council of the European Union and the Member States meeting within the Council of 16 December 2014 on ensuring respect for the rule of law,

Having regard to the 'Guidelines on methodological steps to be taken to check fundamental rights compatibility at the Council preparatory bodies' of 19 December 2014, 5377/15

Having regard to the existing monitoring mechanism and periodic assessment tools by the Commission, including the Cooperation and Verification Mechanism (CVM), the Justice Scoreboard, Anti-Corruption reports and the Media Monitor,

Having regard to the European Commission's Communication 'A new EU Framework to strengthen the Rule of Law' of 11 March 2014 (COM(2014)0158),

Having regard to the Inter-institutional Agreement on Better Regulation (COM(2015) 216),

Having regard to the statement by First Vice-President Timmermans on the situation in Hungary of 19 May 2015, SPEECH/15/5010,

Having regard to the statement by First Vice-President Timmermans and Commissioner Oettinger on the situation in Poland of 19 January 2016, SPEECH/16/114,

Having regard to the Commission's launch of a dialogue with the Polish government under the Rule of Law Framework, announced 13 January 2016,

Having regard to the Parliament resolution of 7 July 2013 on the situation of fundamental rights: standards and practices in Hungary, (2012/2130(INI)), in particular paragraph 79,

Having regard to the Parliament resolution of 27 February 2014 on the situation of fundamental rights in the European Union (2012), (2013/2078(INI)),

Having regard to the Parliament resolution of 8 September 2015 on the situation of fundamental rights in the European Union (2013-2014), (2014/2254(INI)),

Having regard to its resolution of 10 June 2015 on the situation in Hungary (2015/2700(RSP)), in particular paragraph 12,

- (1) Whereas there is a need for a democracy, rule of law and fundamental rights (DRF) mechanism that is objective, evidence-based and applied equally and fairly to all Member States and that includes both the preventative and the corrective dimension;
- (2) Whereas the primary objective of such a mechanism should be to prevent violations and non-respect of DRF, while at the same time providing the tools needed to render both

the preventative and corrective arms of Article 7 TEU operational in practice;

- (3) Whereas the unnecessary creation of new structures or duplication should be avoided and integration and incorporation of existing instruments is to be preferred;
- (4) Whereas elaborating definitions, standards and benchmarks regarding DRF is not a one-off decision but, rather, a permanent and interactive process based on broad public debate and consultation, regular review and the sharing of best practices;
- (5) Whereas only a mechanism that has broad support of Union citizens and allows them to take ownership of the process can be effective;
- (6) Whereas Member States are primarily responsible for upholding common standards but, when they fail to do so, the Union has a duty to intervene to protect its constitutional core and ensure that the values laid down in Article 2 TEU are guaranteed for all Union citizens throughout the territory of the Union;
- (7) Whereas there are several instruments for addressing the risk of a serious breach of Union values but they lack clear and objective benchmarks;

HAVE AGREED AS FOLLOWS

#### Article 1

The core values and foundational principles of the Union, namely democracy, the rule of law and fundamental rights (DRF), shall be upheld throughout the Union in a Union Pact on DRF, which shall consist of the definition, elaboration, monitoring and enforcement of those values and principles, and apply to both the Member States and the institutions of the Union;

#### Article 2

The core elements of the Union Pact on DRF shall consist of the DRF Scoreboard, the DRF Semester, including an annual inter-parliamentary debate on the basis of that Scoreboard, and arrangements for remedying possible risks and breaches and for the activation of the preventative or corrective arms of Article 7 of the Treaty on European Union (TEU), and a DRF policy cycle within the institutions of the Union.

#### Article 3

The DRF Semester shall be expanded to incorporate the Commission's Rule of Law Framework and the Council's Rule of Law Dialogue into a single Union instrument.

### **SECTION I: DRF Scoreboard**

#### Article 4

An annual scoreboard on the state of DRF in the Member States shall be elaborated by an independent panel of experts and adopted by the Commission.

#### Article 5

The DRF Scoreboard shall incorporate, replace and complete existing instruments, in particular the Justice Scoreboard, the Cooperation and Verification Mechanism (CVM) for Bulgaria and Romania, the Media Pluralism Monitor, the anti-corruption report and peer evaluation procedures based on Article 70 of the Treaty on the Functioning of the European Union (TFEU).

#### Article 6

The DRF Scoreboard shall be drawn up using a variety of sources, including:

- contributions from the Member States;
- the European Union Agency for Fundamental Rights (FRA), in particular its European Fundamental Rights Information System (EFRIS) instrument;
- other specialised agencies of the Union, in particular the European Data Protection Supervisor (EDPS), the European Institute for Gender Equality (EIGE), the European Foundation for the Improvement of Living and Working Conditions (Eurofound), and Eurostat;
- experts, academics, non-governmental organisations (NGOs), professional and sectoral associations of, for example, judges, lawyers, and journalists;
- existing indexes and benchmarks developed by international organisations and NGOs;
- the Council of Europe, notably the Venice Commission and the European Commission for the Efficiency of Justice (CEPEJ);
- non-EU international organisations such as the UN and the OECD;
- case law of the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR).

#### Article 7

The DRF Scoreboard shall contain a general part and country-specific reports, including recommendations.

#### Article 8

The Scoreboard shall be based on a set of indicators in three categories, presented in a harmonised format and accompanied by country-specific reports.

##### 8.1. Indicators for Democracy:

- Separation of powers
- The impartial nature of the state
- The reversibility of political decisions after elections

- The existence of institutional checks and balances which ensure that the impartial state is not called into question
- The permanence of the state and institutions, based on the immutability of the constitution
- Freedom and pluralism of the media
- Integrity and absence of corruption
- Transparency and accountability
- Title V of the Charter of Fundamental Rights of the European Union ('the Charter')

## 8.2. Indicators for the Rule of Law:

- Legality
- Legal certainty
- Prevention of abuse or misuse of powers
- Equality before the law and non-discrimination
- Access to justice: independence and impartiality, fair trial, constitutional justice (where applicable)
- Particular challenges to the rule of law: corruption, conflict of interest, collection of personal data and surveillance
- Title V of the Charter

## 8.3. Fundamental Rights:

- Titles I to IV of the Charter

### Article 9

The assessment of the state of DRF in the Member States, as well as the development of country-specific draft recommendations, shall be carried out by a broad and representative panel of independent experts ('DRF expert panel'), on the basis of a quantitative and qualitative review of the data and information available.

#### 9.1. The DRF expert panel shall be composed of the following members:

- one independent expert designated by each Member State;
- ten academic experts designated by the federation of All European Academies (ALLEA);
- ten experts designated by the European Network of National Human Rights Institutions (ENNHRI);

- two experts each designated by the Venice Commission and the Council of Europe Human Rights Commissioner;
- ten former judges designated by CEPEJ;
- two experts each designated by the United Nations (UN) and the Organisation for Economic Co-operation and Development (OECD).

9.2. The DRF expert panel shall be chaired by the President of the FRA Scientific Committee.

9.3. In order to facilitate the development of the draft DRF Scoreboard and draft country recommendations, the Commission shall provide a secretariat to the DRF expert panel, enabling it to function efficiently, in particular by gathering data and information sources to be reviewed and assessed, and by providing administrative support during the drafting process.

#### Article 10

For each of the indicators, a score shall be given by each of the panellists to each of the Member States: satisfactory (green), risk (yellow), breach or violation (red). The final score shall be the average of the DRF expert panel. This scoring exercise shall be carried out on an anonymous and independent basis by each of the panellists in order to safeguard the independence of the DRF expert panel and the objectivity of the DRF Scoreboard. The members of the DRF expert panel may, however, consult with one another with a view to discussing methods and agreed standards.

10.1. The indicators shall be reviewed annually and further elaborated, refined, enriched and modified, where necessary, by common accord between the Commission, the Council and the European Parliament, following consultation with the national parliaments, experts and civil society.

#### Article 11

The DRF Scoreboard shall be adopted as follows:

- The draft DRF Scoreboard, including draft country-specific recommendations, shall be developed annually by the DRF expert panel;
- The DRF expert panel shall assess the data and information available and allocate green, yellow and red scores to each of the DRF indicators for each of the Member States or institutions of the Union under scrutiny;
- The draft DRF Scoreboard and draft country-specific recommendations shall be made publically available;
- The Commission shall formally adopt the DRF Scoreboard and country-specific reports, including recommendations, and refer them to the Member States, the European Parliament and the Council as a basis for the DRF Semester.

### **SECTION II: DRF Semester**

## Article 12

The adoption of the DRF Scoreboard by the Commission shall initiate the DRF Semester, which shall aim at addressing the results of the DRF Scoreboard and recommendations included in country-specific reports, through the following steps:

- the European Parliament shall hold an inter-parliamentary debate on the basis of the DRF Scoreboard, and adopt a resolution;
- the Council shall hold an annual debate, building upon its Rule of Law Dialogue, on the basis of the DRF Scoreboard and adopt Council conclusions, inviting national parliaments to provide a response to the DRF Scoreboard, proposals or reforms;
- on the basis of the DRF Scoreboard, the recommendations of the European Parliament and the Council conclusions, the Commission may decide to launch a "systemic infringement" action under Article 2 TEU and Article 258 TFEU, bundling several infringement cases together;
- on the basis of the DRF Scoreboard, the recommendations of the European Parliament and the Council conclusions, the Commission may decide to submit a proposal for an evaluation of the implementation by Member States of Union policies in the area of freedom, security and justice under Article 70 TFEU.

12.1. On the basis of the DRF Scoreboard, if a Member State has a green score on all indicators, no further action shall be necessary.

12.2. On the basis of the DRF Scoreboard, if a Member State receives one or more yellow scores, the Commission shall commence a dialogue with that Member State, building upon its Rule of Law Framework, taking into account the country-specific report.

12.2.1. Where a Member State has yellow scores on one third of the indicators, it shall be considered that there is a clear risk of a serious breach of the values referred to in Article 2 TEU and that there are sufficient grounds for the invocation of Article 7(1) TEU. The Commission, the Council and the European Parliament shall each discuss the matter and take a reasoned decision, which shall be made public.

12.3. On the basis of the DRF Scoreboard, where a Member State receives one or more red scores, the Commission will start a dialogue with that Member State, taking into account the country specific report.

12.3.1. In case a Member State has red scores on more than one quarter of the indicators, or if it has red scores on one or more indicators over a period of at least two years, or if despite a dialogue with the Commission or an Article 7(1) procedure the number of red scores increases, it will be considered that there is a serious and persistent breach of the values referred to in Article 2 TEU and that there are sufficient grounds for the invocation of Article 7(2) TEU. The Commission, the Council and the European Parliament shall each discuss the matter and take a reasoned decision, which shall be made publically available.

## Article 13.

The DRF Scoreboard shall expire five years after its entry into force, unless the signatories decide to renew it for a period to be determined by them.

### **SECTION III: DRF policy cycle in the institutions of the Union**

#### Article 14

A systematic fundamental rights impact assessment shall be carried out for all legislative proposals by the Commission, in accordance with Article 20 of the Interinstitutional Agreement on Better Regulation;

- 14.1 An independent expert panel, which shall be set up by the Commission, the Council and the European Parliament, shall assess DRF compliance of legislative proposals after the conclusion of interinstitutional negotiations and prior to their formal adoption in accordance with Article 12 of the Interinstitutional Agreement on Better Regulation. The panel shall provide advice during the interinstitutional negotiations.

#### Article 15

An interinstitutional impact assessment working group ('Working Group') shall be set up with a view to improving interinstitutional cooperation on impact assessments, and creating a fundamental rights and rule of law compliance culture. The panel shall consult with national experts at an early stage so as to better foresee the implementation challenges in Member States, as well as to help overcome different interpretations and understandings by the different institutions of the Union as regards the impact of fundamental rights and rule of law on legal acts of the Union. The Working Group shall build upon the "Guidelines on methodological steps to be taken to check fundamental rights compatibility at the Council preparatory bodies", 5377/15, Tool #24 from the Better Regulation Toolbox and Rule 38 of the Rules of Procedure of the European Parliament to ensure DRF compliance and promotion.

#### Article 16

The annual reports of the Commission, the Council and the European Parliament relating to enforcement and compliance with the rule of law and fundamental rights by the institutions of the Union shall be included in the annual DRF policy cycle of the DRF Scoreboard:

- Annual report on the application of the Charter of Fundamental Rights;
- Annual report on the application of EU law;
- Annual report on the application of Regulation (EC) No 1049/2001 of the European Parliament and of the Council<sup>1</sup>.

#### Article 17

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<sup>1</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).



This agreement shall enter into force...

Done at...

For the European Parliament

Its President

For the Council of the European Union

Its President

For the European Commission

Its President

## EXPLANATORY STATEMENT

Europe has a long tradition in the area of democracy, the rule of law and citizens' rights. Running from Athenian democracy, Roman Law, the 1215 Magna Carta, the 1789 Déclaration des Droits de l'Homme et du Citoyen, the European Convention on Human Rights, to the Charter of Fundamental Rights.

The European Union has moreover enshrined democracy, rule of law and fundamental rights (DRF) in its core principles and objectives in the first articles of the Treaties, and in the criteria for EU membership. Attempts to include in the Treaties a reference to the Judeo-Christian roots of Europe did not succeed, but they do affirm the European Union is perceived as a community of values. In its external policies the EU emphasises human rights and democratic governance, and immigrants in Europe are expected to respect and adopt our shared values.

The European Union has a wide range of instruments for the enforcement of its laws and Treaties when it comes to material issues. The European Commission can order Member States to adjust their budgets, public health schemes or tax rulings to make them compliant with EU law. In such cases, Member States do not dispute the fact that they are bound to comply with EU law according to the EU Treaties. Not so when it comes to enforcement of the Treaty obligations regarding democracy, the rule of law and fundamental rights. Attempts by the European Commission, the guardian of the Treaties, to remind a Member State of its commitments, are met with reluctance or a downright refusal to recognise commonly agreed rules and the authority of the EU to enforce those rules. So far, intervention by the Commission has been timid and arbitrary. In addition, EU institutions themselves have sometimes been failing to comply with the key principles of democracy, the rule of law and fundamental rights.

While the EU has several existing instruments at its disposal to ensure the principles on democracy, the rule of law and fundamental rights are upheld, substantial gaps remain and in practice, such instruments are often limited in scope, inadequate and ineffective, or they are unlikely to be used. In some cases, their uneven application is perceived by many as politically motivated, arbitrary and unfairly targeting certain countries. There is no integrated mechanism for the systematic, impartial and complete monitoring of all member states and its Institutions.

Therefore it is imperative to adopt a framework that enables the EU to address not only infringements to specific EU laws, but also (risk of) serious threats to democracy, the rule of law and fundamental rights. European values are given the highest importance in the Treaties, it is high time they also get the highest importance in practice.

The failure of the EU to uphold its own rules, and the perception there are no common European values, are also undermining mutual trust and a reliable, stable legal framework, essential for a well-functioning EU in all policy areas. As per the Treaty, and in particular Articles 2, 3(1) and 7 TEU, the European Union has a duty to protect its constitutional basis and core values, shared among all its Member States.

On the basis of the working documents presented and discussed in Committee, and taking

account the various input provided by external stakeholders as well the two studies commissioned by the Directorate General for Parliamentary Research Services, the rapporteur recommends the adoption of an EU Pact for Democracy, the Rule of Law and Fundamental Rights (DRF) in the form of an inter-institutional agreement.

The proposed inter-institutional agreement aims at laying down arrangements facilitating the cooperation of EU institutions and its Member States in the framework of Article 7 TEU, integrating, aligning and complementing existing mechanisms. In addition, it will provide for an integrated review mechanism, applying to all Member States as well as the three main EU institutions. The flow chart inserted at the end of the explanatory statement details the procedures and responsibilities for the application of the EU Pact on Democracy, the rule of law and fundamental rights, relying on the following three elements: a DRF Scoreboard, a DRF Semester, and a DRF Policy cycle in the EU institutions.

Rather than creating new procedures, the rapporteur recommends that the proposed inter-institutional agreement mainly builds upon and integrates existing instruments, in particular the Rule of Law Framework of the European Commission and the Rule of Law Dialogue of the Council, expanding it with a reporting mechanism (DRF Scoreboard), notification, and sanctions (infringement procedures or ultimately the activation of Article 7). This new single framework to be implemented, should be objective, evidence based, applied equally and fairly to all Member States, and include both a preventative and the corrective dimension.

In addition to the proposed inter-institutional agreement, the rapporteur also recommends a series of additional non-legislative measures to be taken in order to ensure an encompassing approach towards upholding the values on which the EU is founded, in particular when it comes to access to justice at European level.

# EUROPEAN UNION PACT ON DEMOCRACY, THE RULE OF LAW AND FUNDAMENTAL RIGHTS

