



**2020/2072(INL)**

1.7.2020

# **DRAFT REPORT**

on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights  
(2020/2072(INL))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Michal Šimečka

(Initiative – Rule 47 of the Rules of Procedure)

## CONTENTS

	<b>Page</b>
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION.....	3
ANNEX TO THE MOTION FOR A RESOLUTION:.....	9

## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### **on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights (2020/2072(INL))**

*The European Parliament,*

- having regard to Article 295 of the Treaty on the Functioning of the European Union,
- having regard, in particular, to Article 2, Article 3(1), the second subparagraph of Article 3(3) and Articles 6,7 and 11 of the Treaty on European Union,
- having regard to the articles of the Treaty on the Functioning of the European Union relating to the respect for, and the promotion and protection 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 Article 4(3) and Article 5 of the Treaty on European Union, Article 295 of the Treaty on the Functioning of the European Union, and Protocols No 1 on the role of national parliaments in the European Union and No 2 on the application of the principles of subsidiarity and proportionality, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union,
- having regard to the Charter of Fundamental Rights of the European Union,
- having regard to 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 Universal Declaration of Human Rights,
- having regard to the United Nations instruments on the protection of human rights and fundamental freedoms and the case-law of the United Nations treaty bodies,
- having regard to the European Social Charter, in particular Article E thereof,
- having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms, 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 Memorandum of Understanding between the Council of Europe and the European Union of 23 May 2007,
- having regard to the Rule of Law Checklist adopted by the Venice Commission at its 106<sup>th</sup> Plenary Session on 18 March 2016,
- having regard to the Council of Europe’s toolkit for Member States “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 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 communication of 17 July 2019 'Strengthening the rule of law within the Union - A blueprint for action' (COM(2019)0343),
- having regard to the Commission communication of 29 January 2020 containing the Commission Work Programme 2020 (COM(2020)0027) and the adjusted Commission Work Programme of 27 May 2020 (COM(2020)440),
- 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 rights<sup>1</sup>,
- having regards 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 level<sup>2</sup>,
- having regard to its legislative resolution of 17 April 2019 on the proposal for a regulation of the European Parliament and of the Council establishing the Rights and Values programme<sup>3</sup>,
- 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 rights<sup>4</sup>,
- having regard to its resolution of 16 January 2019 on the situation of fundamental rights in the European Union in 2017<sup>5</sup>,
- having regard to its resolution of 28 March 2019 on the situation of rule of law and fight against corruption in the EU, specifically in Malta and Slovakia<sup>6</sup>
- having regard to its resolution of 18 December 2019 on public discrimination and hate speech against LGBTI people, including LGBTI free zones<sup>7</sup>,
- having regard to 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 2018<sup>8</sup>,

---

<sup>1</sup> OJ C 215, 19.6.2018, p. 162.

<sup>2</sup> OJ C 390, 18.11.2019, p. 117.

<sup>3</sup> Texts adopted, P8\_TA(2019)0407.

<sup>4</sup> Texts adopted, P8\_TA(2018)0456.

<sup>5</sup> Texts adopted, P8\_TA(2019)0032.

<sup>6</sup> Texts adopted, P8\_TA(2019)0328.

<sup>7</sup> Texts adopted, P9\_TA(2019)0101.

<sup>8</sup> Texts adopted, P9\_TA(2020)0007.

- having regard to its resolution of 16 January 2020 on ongoing hearings under Article 7(1) of the TEU regarding Poland and Hungary<sup>9</sup>,
  - having regard to its resolution of 17 April 2020 on EU coordinated action to combat the Covid-19 pandemic and its consequences<sup>10</sup>,
  - having regard to the joint civil society organisation recommendations 'From blueprint to footprint: Safeguarding media freedom and pluralism through the European Rule of Law Mechanism' of April 2020,
  - having regard to the report of the European Network of National Human Rights Institutions 'The Rule of Law in the European Union' of 11 May 2020,
  - having regard to the Human Rights and Democracy Network Working Group on EU Internal Human Rights Policy's submission of 4 May 2020 to the European Commission in the framework of the stakeholder consultation for the Rule of Law Report,
  - 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 the Parliament's Preliminary Assessment on the European added value of an EU mechanism on democracy, rule of law and fundamental rights of April 2020,
  - having regard to Rules 47 and 54 of its Rules of Procedure,
  - having regard to the opinions of the Committee on Constitutional Affairs and the Committee on Legal Affairs,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0000/2020),
- A. whereas 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, as set out in Article 2 of the Treaty on European Union (TEU); whereas those values are values which are common to the Member States and to which all Member States have freely subscribed;
- B. whereas the preceding decade has seen brazen attacks against Union values in several Member States; whereas international comparisons and Parliament resolutions have evidenced considerable democratic backsliding in Hungary and Poland in particular; whereas Parliament has been calling since 2016 for a comprehensive, preventive and evidence-based monitoring in this field via an EU mechanism on democracy, the rule of law and fundamental rights;
- C. whereas breaches of the values referred to in Article 2 TEU weaken the cohesion of the European project, the rights of all Union citizens and mutual trust among the Member

---

<sup>9</sup> Texts adopted, P9\_TA(2020)0014.

<sup>10</sup> Texts adopted, P9\_TA(2020)0054.

States;

- D. whereas the Commission is preparing to publish an annual rule of law report, to be followed by a Strategy for the Implementation of the Charter of Fundamental Rights and a European Democracy Action Plan;
  - E. whereas a regulation on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States, once adopted, would become an indispensable tool in safeguarding the rule of law within the Union;
  - F. whereas any monitoring mechanism must closely involve stakeholders active in the protection and promotion of democracy, the rule of law and fundamental rights, including civil society, Council of Europe and United Nations bodies, the European Union Agency for Fundamental Rights, national human rights institutions, national parliaments and local authorities;
  - G. whereas Parliament, the Commission and the Council share political responsibility for upholding Union values, within the limits of the powers conferred on them by the Treaties; whereas an interinstitutional agreement based on Article 295 of the Treaty on the Functioning of the European Union (TFEU) would ensure the necessary arrangements to facilitate the cooperation of the three institutions in that regard; whereas, pursuant to Article 295 TFEU, any of the three institutions may propose such an agreement;
1. emphasises the urgent need for the Union to develop a robust and positive agenda for protecting and reinforcing democracy, the rule of law and fundamental rights for all its citizens; insists that the Union must remain a champion of freedom and justice in Europe and the world;
  2. warns 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, further compounded by the COVID-19 pandemic and economic recession, as well as corruption and state capture, in several Member States; underlines the dangers of this trend for the cohesion of the Union's legal order, the functioning of its single market, the effectiveness of its common policies and its international credibility;
  3. recognises that the Union remains structurally ill-equipped to tackle democratic and rule of law backsliding in the 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;
  4. welcomes the Commission's work on the Annual Rule of Law Report; notes, however, that it fails to encompass the areas of democracy and fundamental rights; reiterates the need for a comprehensive monitoring mechanism enshrined in a legal act binding Parliament, the Council and the Commission to a transparent and regularised process, with clearly defined responsibilities, so that the protection and promotion of Union values becomes a permanent and visible part of the Union agenda;
  5. proposes the establishment of an EU mechanism on democracy, the rule of law and fundamental rights (the 'Mechanism'), building on Parliament's 2016 proposal and the

Commission's 2020 Rule of Law Report, to be governed by an interinstitutional agreement between Parliament, the Council and the Commission, consisting of an Annual Monitoring Cycle on Union values, covering all aspects of Article 2 TEU, and applying equally, objectively and fairly to all Member States;

6. underlines that the Annual Monitoring Cycle must contain country-specific recommendations, with timelines and targets for implementation, to be followed up in subsequent annual or urgent reports; stresses that failures to implement the recommendations must be linked to concrete Union enforcement measures;
7. points out that the Mechanism should consolidate and supersede existing instruments, in particular the Annual Rule of Law Report, the Commission's Rule of Law Framework, the Council's Rule of Law Dialogue and the Cooperation and Verification Mechanism (CVM), while increasing complementarity and coherence with other available tools, including infringement procedures under Article 7 TEU, budgetary conditionality once in force, and the European Semester; is of the opinion that the Annual Monitoring Cycle can fulfil the objectives of the CVM for Bulgaria and Romania, thus contributing to equal treatment of all Member States; considers that the three institutions should use the findings from the Annual Monitoring Cycle in their assessment for the purposes of triggering Article 7 TEU and Regulation (EU) 2020/xxxx 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<sup>11</sup>;
8. recalls the indispensable role played by civil society, national human rights institutions and other relevant actors in all stages of the Annual Monitoring Cycle, from providing input to facilitating implementation; points out that the accreditation status of national human rights institutions and the space for civil society may themselves serve as indicators for assessment purposes; considers that national parliaments must hold public debates and adopt positions on the outcome of the monitoring cycle;
9. reaffirms the role of Parliament, in accordance with Article 7 TEU, in monitoring compliance with Union values; reiterates the call for Parliament to be present in Article 7 hearings when it is Parliament that initiated the procedure; believes that the Mechanism, underpinned by an interinstitutional agreement, will provide the necessary framework for better coordination;
10. is of the view that, in the long-term, strengthening the Union's ability to promote and defend its constitutional core will require Treaty change; looks forward to the reflection and conclusions of the Conference on the Future of Europe in that regard;
11. strongly believes that addressing the crisis of Union values, including through the proposed Mechanism, is a precondition for re-establishing mutual trust among Member States, thus enabling the Union as a whole to sustain and further all common policies;
12. invites the Commission and the Council to enter without delay into negotiations with Parliament on an interinstitutional agreement in accordance with Article 295 TFEU; considers the proposal set out in the Annex hereto to constitute an appropriate basis for

---

<sup>11</sup> *[instead of xxxx insert final number of 2018/136(COD) in the text and correct OJ reference in footnote]*  
OJ C ..., .., p. ....

such negotiations;

13. instructs its President to forward this resolution and the accompanying proposal to the Commission and the Council.



## **ANNEX TO THE MOTION FOR A RESOLUTION:**

Proposal for an Interinstitutional Agreement on Reinforcing Union Values

THE EUROPEAN PARLIAMENT, THE COUNCIL OF THE EUROPEAN UNION AND  
THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union and in particular Article 295 thereof,

Whereas:

- (1) According to Article 2 of the Treaty on European Union (TEU), 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 ('Union values').
- (2) Pursuant to Article 49 TEU, respect for and commitment to promoting Union values is a fundamental condition of Union membership. In accordance with Article 7 TEU, the existence of a serious and persistent breach by a Member State of Union values can lead to the suspension of voting rights of the representative of the government of that Member State in the Council. Respect for Union values forms the basis of a high level of confidence and mutual trust between Member States.
- (3) The European Parliament, the Council and the Commission ('the three institutions') recognise the paramount importance of respect for Union values. Respect for Union values is necessary for the good functioning of the Union and the achievement of its objectives as set out in Article 3 TEU. The three institutions are committed to mutual sincere cooperation with the aim of promoting and ensuring respect for Union values.
- (4) The three institutions recognise the need for streamlining and strengthening the effectiveness of existing tools designed to foster compliance with Union values. A comprehensive interinstitutional mechanism should therefore be established in order to improve coordination between the three institutions and consolidate initiatives taken previously. In accordance with the Conclusions of the Justice and Home Affairs Council of 6 and 7 June 2013, such a mechanism should operate in 'a transparent manner, on the basis of evidence objectively compiled, compared and analysed and on the basis of equality of treatment as between all Member States'.
- (5) The three institutions agree that an Annual Monitoring Cycle on Union Values is necessary to reinforce the promotion and respect for Union values. The Annual Monitoring Cycle should be comprehensive, objective, impartial, evidence-based and applied equally and fairly to all Member States. The primary objective of the Annual Monitoring Cycle should be to prevent violations of and non-compliance with Union values, while providing a shared basis for other actions by the three institutions. The three institutions also agree to use this Interinstitutional Agreement to integrate existing instruments and initiatives relating to the promotion of and respect for Union values, in particular the Annual Rule of Law Report, the Council's Annual Rule of Law Dialogue and the Commission's Rule of Law Framework, in order to avoid duplication and strengthen overall effectiveness.

- (6) The Annual Monitoring Cycle should consist of a preparatory stage, the publication of an annual monitoring report on Union values including recommendations, and a follow-up stage. The Annual Monitoring Cycle should be conducted in a spirit of transparency and openness.
- (7) The three institutions share the view that the Cooperation and Verification Mechanism for Bulgaria and Romania should be terminated in its existing form in the interest of avoiding duplication of tasks and to strengthen equal treatment of all Member States. The Annual Monitoring Cycle should therefore replace Commission Decisions 2006/928/EC<sup>1</sup> and 2006/929/EC<sup>2</sup> and fulfil, inter alia, the objectives of those Decisions with respect to Bulgaria and Romania. This Interinstitutional Agreement is without prejudice to the 2005 Act of Accession, in particular Articles 37 and 38 thereof.
- (8) The Annual Monitoring Cycle should also be complementary to and coherent with other instruments relating to the promotion and strengthening of Union values. In particular, the three institutions commit to using the findings of the annual monitoring reports in their assessment of whether there is a clear risk of a serious breach or existence of a serious and persistent breach by a Member State of Union values in the context of Article 7 TEU. Similarly, the three institutions commit to using the findings of the annual monitoring report in their assessment of whether there are generalised deficiencies as regards the rule of law in the Member States, in accordance with Article 5 of Regulation (EU) 2020/xxxx of the European Parliament and of the Council<sup>3</sup>. The three institutions agree that the annual monitoring reports should more generally guide their actions with respect to Union values.
- (9) In accordance with Article 295 of the Treaty on the Functioning of the European Union (TFEU), this Interinstitutional Agreement lays down arrangements only for the facilitation of cooperation between the European Parliament, the Council and the Commission and, in accordance with Article 13(2) TEU, those institutions are to act within the limits of the powers conferred on them by the Treaties, and in conformity with the procedures, conditions and objectives set out therein. This Interinstitutional Agreement is without prejudice to the prerogatives of the Court of Justice of the European Union in the authentic interpretation of Union law,

HAVE AGREED AS FOLLOWS

## I. OBJECTIVES

1. The three institutions hereby agree to coordinate and cooperate with the aim of promoting and strengthening respect for Union values, in accordance with Article 2 TEU.

---

<sup>1</sup> Commission Decision of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption (OJ L 354, 14.12.2006, p. 56).

<sup>2</sup> Commission Decision of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime (OJ L 354, 14.12.2006, p. 58).

<sup>3</sup> *[instead of xxxx insert number of 2018/136(COD) in the text and the footnote and correct OJ reference in footnote]* Regulation (EU) .../... 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 OJ C ..., ..., p. ....

## II. ANNUAL MONITORING CYCLE

2. The three institutions agree to organise in sincere and mutual cooperation an Annual Monitoring Cycle on Union Values, covering issues and best practices in areas of Union values. The Monitoring Cycle shall consist of a preparatory stage, the publication of an annual monitoring report on Union values ('Annual Report') including recommendations, and a follow-up stage.

3. The three institutions agree to establish a permanent Interinstitutional Working Group on Union Values ('Working Group'). The Working Group shall facilitate coordination and cooperation among the three institutions in the Annual Monitoring Cycle. The Working Group shall invite the European Union Agency for Fundamental Rights to participate in its meetings. The Working Group shall also consult independent experts on a regular basis.

### *Preparatory stage*

4. On an annual basis, the Commission shall organise a targeted stakeholder consultation to collect information for the Annual Report. The stakeholder consultation shall take place in the first quarter of each year. The consultation shall be transparent and based on a clear and rigorous methodology agreed by the Working Group. The methodology shall, in any event, encompass in an appropriate form the benchmarks listed in the Annexes to Commission Decisions 2006/928/EC and 2006/929/EC.

5. The stakeholder consultation shall give an opportunity to civil society organisations, professional associations and networks, Council of Europe bodies, Union institutions, bodies, offices and agencies and the Member States, including national parliaments and local authorities, to contribute to the Annual Report. The Commission shall incorporate the information provided by stakeholders in the Annual Report. The Commission shall publish relevant contributions to the consultation on its website prior to the publication of the Annual Report.

6. The Commission shall draw on all information at its disposal when preparing the Annual Report. Of particular relevance in that regard are reports and data from the European Union Agency for Fundamental Rights, the Council of Europe, including the Venice Commission and the Group of States against Corruption, and other international organisations that produce relevant studies.

7. Designated representatives of any of the three institutions shall have the possibility to conduct a limited number of fact-finding visits to the Member States for the purpose of obtaining additional information and clarification about the state of Union values in the Member States concerned. The Commission shall incorporate the findings in the Annual Report.

8. The Commission shall inform the Working Group of the progress made throughout the preparatory stage.

### *Annual Report and recommendations*

9. The Commission shall draft the Annual Report based on information gathered during the preparatory stage. The Annual Report should cover both positive and negative developments relating to Union values in the Member States. The Annual Report shall be impartial, based on objectively compiled evidence and respect equality of treatment between

all Member States. The depth of reporting should reflect the gravity of the situation in question.

10. The Annual Report shall contain recommendations specific to the Member States with the aim of strengthening Union values. The recommendations shall specify concrete targets and timeframes for implementation. The recommendations shall take account of the diversity of Member States' political and legal systems. Implementation of the recommendations shall be assessed in subsequent Annual Reports or urgent reports, as appropriate.

11. The Annual Report including its recommendations shall be published in September each year. The publication date shall be coordinated among the three institutions in the Working Group.

#### ***Follow-up***

12. No later than two months from its publication date, the European Parliament and the Council shall discuss the content of the Annual Report. The discussions shall be made public. The Parliament and the Council shall adopt positions on the Annual Report by means of resolutions and conclusions. As part of the follow-up, the European Parliament and the Council shall assess and reflect on the extent to which previous recommendations have been implemented by the Member States. The three institutions shall endeavour to promote debate on the Annual Report in the Member States, in particular in national parliaments.

13. On the basis of the findings of the Annual Report, the Commission may, either on its own initiative or upon request by the European Parliament or the Council, enter into a dialogue with one or several Member States, including national parliaments and local authorities, with the aim of facilitating implementation of the recommendations. The Commission shall regularly report on the progress of the dialogue. The Commission may, at any time, provide technical assistance to the Member States through different activities. The European Parliament shall organise, in cooperation with national parliaments, an interparliamentary debate on the findings of the Annual Report.

14. Without prejudice to the powers of the Commission under Article 258 TFEU and the right of the European Parliament and the Commission to submit to the Council a reasoned proposal in accordance with Article 7(1) TEU, the three institutions agree that the Annual Reports should guide their actions concerning Union values.

#### ***Urgent report***

15. Where the situation in one or several Member States portends imminent and serious damage to Union values, the European Parliament or the Council may exceptionally request the Commission to draft an urgent report on the situation. The Commission shall prepare the report in consultation with the Working Group. The Commission shall make the urgent report public no later than two months following a request by the European Parliament or the Council. The findings of the urgent report should be incorporated in the next Annual Report. The urgent report may specify recommendations aimed at addressing the imminent threat to Union values.

### **III. COMPLEMENTARITY WITH OTHER INSTRUMENTS**

16. The three institutions acknowledge the complementary nature of the Annual Monitoring Cycle and other mechanisms for the protection and promotion of Union values, in particular the procedure laid down in Article 7 TEU and Regulation (EU) 2020/xxxx. The three institutions

commit to take account of the objectives of this Interinstitutional Agreement in Union policies.

17. Where the Annual Report identifies systemic deficiencies with respect to one or several Union values, the three institutions commit to take appropriate action, without delay, within their respective powers as conferred on them by the Treaties. The three institutions may consider, inter alia, whether Union policies requiring a high level of mutual trust can be sustained in light of systemic deficiencies identified in the Annual Report.

18. The Annual Monitoring Cycle established by this Agreement shall replace the mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption established by Commission Decision 2006/928/EC and the mechanism for cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime established by Commission Decision 2006/929/EC and shall fulfil, inter alia, the objectives pursued by those Decisions. The Commission therefore undertakes to repeal those Decisions at an appropriate time.

#### ***Common arrangements for Article 7 TEU***

19. The three institutions agree to use the findings of the Annual Report in their assessment of whether there is a clear risk of a serious breach or existence of a serious and persistent breach by a Member State of Union values under Article 7 TEU.

20. In order to strengthen the transparency and efficiency of the procedure laid down in Article 7 TEU, the three institutions agree to ensure that the institution initiating a proposal under Article 7(1) TEU is able to participate in the hearing where that proposal is presented and is consulted at all stages during the procedure. The three institutions agree to consult each other regularly in the Working Group regarding existing and potential procedures launched under Article 7 TEU.

#### ***Common arrangements for budgetary conditionality***

21. The three institutions agree to use the findings of the Annual Report in their assessment of whether there are generalised deficiencies as regards the rule of law in the Member States, in accordance with Article 5 of Regulation (EU) 2020/xxxx.

### **IV. FINAL PROVISIONS**

22. The three institutions shall take the necessary steps to ensure that they have the means and resources required for the proper implementation of this Interinstitutional Agreement.

23. The three institutions shall monitor the implementation of this Interinstitutional Agreement jointly and continuously, at both the political level through regular discussions and the technical level in the Working Group.

24. This Agreement shall enter into force on the day of its signature.