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## TEXTS ADOPTED

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### **P9\_TA(2020)0307**

### **The impact of COVID-19 measures on democracy, the rule of law and fundamental rights**

#### **European Parliament resolution of 13 November 2020 on the impact of COVID-19 measures on democracy, the rule of law and fundamental rights (2020/2790(RSP))**

*The European Parliament,*

- having regard to the Universal Declaration of Human Rights (UDHR) and other UN human rights treaties and instruments, particularly the International Covenant on Civil and Political Rights,
- having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the protocols thereto,
- having regard to the Treaty on European Union (TEU), the Treaty on the Functioning of the European Union (TFEU) and the Charter of Fundamental Rights of the European Union,
- having regard to the European Charter of Patients' Rights,
- having regard to the declarations of the UN Secretary General, the UN High Commissioner for Human Rights, the UN special rapporteurs, the UN Refugee Agency (UNHCR) and other UN bodies on the impact of COVID-19 measures on democracy, rule of law and fundamental rights,
- having regard to the UN Sustainable Development Goals (SDGs),
- having regard to the declarations of and documents produced by the representatives and bodies of the Council of Europe, notably its Secretary General, the president and rapporteurs of its Parliamentary Assembly (PACE), the Commissioner for Human Rights, the Commission for the Efficiency of Justice (CEPEJ), the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the Congress of Local and Regional Authorities and the Group of States against Corruption (GRECO) on the impact of COVID-19 measures on democracy, rule of law and fundamental rights,
- having regard to the Council of Europe publication of 7 April 2020 entitled 'Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis – A toolkit for member states',

- having regard to the relevant documents of the Venice Commission of the Council of Europe, including the compilation of Venice Commission opinions and reports on states of emergency<sup>1</sup>, published on 16 April 2020, the report of 26 May 2020 entitled ‘Respect for democracy, human rights and the rule of law during states of emergency – Reflections’<sup>2</sup>, the Observatory of situations of emergency in Venice Commission member states<sup>3</sup>, its 2011 report on the rule of law<sup>4</sup> and its 2016 rule of law checklist<sup>5</sup>,
- having regard to the request by its President to the Venice Commission of 1 July 2020, following the proposal of the Committee on Civil Liberties, Justice and Home Affairs (LIBE), and the subsequent interim report of 8 October 2020 on the measures taken in the EU Member States as a result of the COVID-19 crisis and their impact on democracy, the rule of law and fundamental rights<sup>6</sup>,
- having regard to the PACE resolutions of 13 October 2020 on democracies facing the COVID-19 pandemic<sup>7</sup> and on the impact of the COVID-19 pandemic on human rights and the rule of law<sup>8</sup>,
- having regard to the opinion of the Organization for Security and Co-operation in Europe (OSCE) of 27 April 2020 on the Draft Act on Special Rules for Conducting the General Election of the President of the Republic of Poland Ordered in 2020 (Senate Paper No.99) and to the declarations by the OSCE Representative on Freedom of the Media,
- having regard to the statement on Hungary by the Spokesperson for the UN High Commissioner for Human Rights, Rupert Colville, of 27 March 2020,
- having regard to the joint statement on Bulgaria of the UN Special Rapporteurs on contemporary forms of racism and on minority issues of 13 May 2020,
- having regard to the publications of the International Institute for Democracy and Electoral Assistance (International IDEA) of 11 May 2020 entitled ‘Parliaments in Crisis: Challenges and Innovations’<sup>9</sup> and of 26 March 2020 entitled ‘Elections and COVID-19’<sup>10</sup>,

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<sup>1</sup> Compilation of Venice Commission opinions and reports on states of emergency, 16 April 2020, CDL-PI(2020)003.

<sup>2</sup> Respect for democracy, human rights and the rule of law during states of emergency – Reflections (CDL-PI(2020)005rev).

<sup>3</sup> Observatory of situations of emergency in Venice Commission member states.

<sup>4</sup> Report on the rule of law (CDL-AD(2011)003rev).

<sup>5</sup> Rule of law checklist (CDL-AD(2016)007).

<sup>6</sup> Venice Commission, Interim report on the measures taken in the EU Member States as a result of the COVID-19 crisis and their impact on democracy, the rule of law and fundamental rights, 8 October 2020 (CDL-AD(2020)018).

<sup>7</sup> PACE, Resolution 2337 (2020).

<sup>8</sup> PACE, Resolution 2338 (2020).

<sup>9</sup> International IDEA, Parliamentary Primer No. 1, 11 May 2020.

<https://www.idea.int/publications/catalogue/parliaments-and-crisis-challenges-and-innovations>

<sup>10</sup> International IDEA, Technical Paper 1/2020, 26 March 2020.

<https://www.idea.int/publications/catalogue/elections-and-covid-19>

- having regard to the wide debate that has taken place on the impact of COVID-19 measures on democracy, rule of law and fundamental rights, involving citizens, the academic community, civil society and society at large<sup>1</sup> ,
- having regard to the Commission’s actions in relation to COVID-19, across all fields of its competence, and its efforts to coordinate a European response to the pandemic in domains ranging from the Schengen area to disinformation on the virus, and from data protection and apps to asylum, return and resettlement procedures,
- having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)<sup>2</sup> ,
- having regard to Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector<sup>3</sup> ,
- having regard to Guidelines 04/2020 of the European Data Protection Board (EDPB) on the use of location data and contact tracing tools in the context of the COVID-19 outbreak and to Guidelines 03/2020 on the processing of data concerning health for the purpose of scientific research in the context of the COVID-19 outbreak,
- having regard to the Commission communication of 16 April 2020 entitled ‘Guidance on Apps supporting the fight against COVID-19 pandemic in relation to data protection’ (C(2020)2523),
- having regard to the Commission communication of 30 September 2020 entitled ‘2020 Rule of Law Report – The rule of law situation in the European Union’ (COM(2020)0580) and its 27 accompanying country chapters on the rule of law in the Member States (SWD(2020)0300-0326), which address the impact of the COVID-19 measures taken by the Member States on democracy, the rule of law and fundamental rights,
- having regard to the statement of 1 April 2020 by 19 Member States in which they expressed deep concern ‘about the risk of violations of the principles of rule of law, democracy and fundamental rights arising from the adoption of certain emergency

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<sup>1</sup> See for example Verfassungsblog academic articles on COVID-19 and states of emergency, Michael Meyer-Resende, The Rule of Law Stress Test: EU Member States’ Responses to COVID-19, with Table and Map, Joelle Grogan, States of emergency; Fondation Robert Schuman, Le contrôle parlementaire dans la crise sanitaire Impacts of COVID-19 – The Global Access to Justice Survey: <https://verfassungsblog.de/impacts-of-covid-19-the-global-access-to-justice-survey/>; Oxford COVID-19 Government Response Tracker (OxCGRT) measuring the stringency of restrictive measures; ICNL COVID-19 Civic Freedom Tracker; Grogan, Joelle & Weinberg, Nyasha (August 2020) Principles to Uphold the Rule of Law and Good Governance in Public Health Emergencies. RECONNECT Policy Brief; International Appeal ‘A Call to Defend Democracy’, an Open Letter.

<sup>2</sup> OJ L 119, 4.5.2016, p. 1.

<sup>3</sup> OJ L 201, 31.7.2002, p. 37.

measures<sup>1</sup>,

- having regard to its resolution of 17 April 2020 on EU coordinated action to combat the COVID-19 pandemic and its consequences<sup>2</sup>,
- having regard to its resolution of 19 June 2020 on the situation in the Schengen area following the COVID-19 outbreak<sup>3</sup>,
- having regard to its resolution of 19 June 2020 on European protection of cross-border and seasonal workers in the context of the COVID-19 crisis<sup>4</sup>,
- having regard to its resolution of 10 July 2020 on the EU's public health strategy post-COVID-19<sup>5</sup>,
- having regard to its resolution of 17 September 2020 entitled 'COVID-19: EU coordination of health assessments and risk classification, and the consequences for Schengen and the single market'<sup>6</sup>,
- having regard to its resolution of 17 September 2020 on the proposal for a Council decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law<sup>7</sup>,
- having regard to its resolution of 7 October 2020 on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights<sup>8</sup>,
- having regard to its resolution of 8 October 2020 on the rule of law and fundamental rights in Bulgaria<sup>9</sup>,
- having regard to the briefing published by its Policy Department for Citizens' Rights and Constitutional Affairs on 23 April 2020 entitled 'The Impact of COVID-19 Measures on Democracy, the Rule of Law and Fundamental Rights in the EU'<sup>10</sup>, summarising the main findings of the monitoring exercise launched through the weekly overviews of the COVID-19 measures taken by the Member States,
- having regard to the briefings of the European Centre for Parliamentary Research and

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<sup>1</sup> Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, Bulgaria, Cyprus, Estonia, Latvia, Lithuania and Romania:

<https://www.government.nl/documents/diplomatic-statements/2020/04/01/statement-by-belgium-denmark-finland-france-germany-greece-ireland-italy-luxembourg-the-netherlands-portugal-spain-sweden>

<sup>2</sup> Texts adopted, P9\_TA(2020)0054.

<sup>3</sup> Texts adopted, P9\_TA(2020)0175.

<sup>4</sup> Texts adopted, P9\_TA(2020)0176.

<sup>5</sup> Texts adopted, P9\_TA(2020)0205.

<sup>6</sup> Texts adopted, P9\_TA(2020)0240.

<sup>7</sup> Texts adopted, P9\_TA(2020)0225.

<sup>8</sup> Texts adopted, P9\_TA(2020)0251.

<sup>9</sup> Texts adopted, P9\_TA(2020)0264.

<sup>10</sup> [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/651343/IPOL\\_BRI\(2020\)651343\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/651343/IPOL_BRI(2020)651343_EN.pdf)

Documentation on parliamentary activity during the COVID-19 outbreak<sup>1</sup> ,

- having regard to the European Parliamentary Research Service (EPRS) briefings linked to the state of emergency in response to the coronavirus crisis in several Member States and other relevant briefings on this topic<sup>2</sup> ,
- having regard to the five bulletins of the EU Agency for Fundamental Rights (FRA) on the fundamental rights implications of the coronavirus pandemic in the EU<sup>3</sup> ,
- having regard to the statement of the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy (VP/HR), Josep Borrell, of 18 June 2020 on tackling COVID-19 disinformation and the impact on freedom of expression,
- having regard to the Europol Internet Organised Crime Threat Assessment (IOCTA) 2020, published on 5 October 2020,
- having regard to the Europol report of 19 June 2020 entitled ‘Exploiting Isolation: Offenders and victims of online child sexual abuse during the COVID-19 pandemic’ ,
- having regard to the Europol report of 30 April 2020 entitled ‘Beyond the pandemic – How COVID-19 will shape the serious and organised crime landscape in the EU’ ,
- having regard to the preparatory work undertaken for this resolution by the Democracy, Rule of Law and Fundamental Rights Monitoring Group (DRFMG) of the Committee on Civil Liberties, Justice and Home Affairs (LIBE), including its report to the LIBE

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<sup>1</sup> Briefing N° 27 – March 2020, Adjustment of Parliamentary Activity to COVID-19 Outbreak and the prospect of remote sessions and voting; Briefing N° 28 – March 2020, Preventive and sanitary measures in Parliaments; Briefing N°29 – July 2020, Emergency Laws and Legal measures against Covid-19.

<sup>2</sup> EPRS, States of emergency in response to the coronavirus crisis: Situation in certain Member States (Belgium, France, Germany, Hungary, Italy, Poland, Spain), 4 May 2020; EPRS, States of emergency in response to the coronavirus crisis: Situation in certain Member States II (Bulgaria, Estonia, Latvia, Malta, Austria, Romania, and Slovenia), 13 May 2020; EPRS, Tracking mobile devices to fight coronavirus, 2 April 2020; EPRS, Tackling the coronavirus outbreak: Impact on asylum-seekers in the EU, 22 April 2020; EPRS, The impact of coronavirus on Schengen borders, 27 April 2020; EPRS, The impact of coronavirus on media freedom, 8 May 2020; EPRS, Coronavirus and elections in selected Member States, 17 June 2020; EPRS, States of emergency in response to the coronavirus crisis: Situation in certain Member States IV, 7 July 2020. EPRS, Coronavirus and prisons in the EU: Member-State measures to reduce spread of the virus, 22 June 2020; EPRS, States of emergency in response to the coronavirus crisis: Situation in certain Member States IV, 7 July 2020.

<sup>3</sup> FRA, Coronavirus pandemic in the EU – Fundamental Rights Implications – Bulletin 1 and Country research, 7 April 2020; FRA, Coronavirus pandemic in the EU – Fundamental Rights Implications – Bulletin 2: With a focus on contact-tracing apps, and Country research, 28 May 2020; FRA, Coronavirus pandemic in the EU – Fundamental rights Implications – Bulletin 3: With a focus on older people and Country research, 30 June 2020; FRA, Coronavirus pandemic in the EU – Fundamental Rights Implications – Bulletin 4, 30 July 2020, focusing on racism, asylum and migration, disinformation, privacy and data protection; FRA, Coronavirus pandemic in the EU – Impact on Roma and Travellers – Bulletin 5, 29 September 2020.

Committee of 10 July 2020<sup>1</sup>,

- having regard to the question to the Commission on the impact of COVID-19 measures on democracy, rule of law and fundamental rights (O-000065/2020 – B9-0023/2020),
  - having regard to Rules 136(5) and 132(2) of its Rules of Procedure,
  - having regard to the motion for a resolution of the Committee on Civil Liberties, Justice and Home Affairs,
- A. whereas the COVID-19 pandemic has created distress across the entire EU and has deeply affected the population; whereas many areas of the world, including the EU, are experiencing a second wave of COVID-19 cases and governments are adopting new restrictive measures to address the spike in cases, including the reintroduction of lockdowns and sanitary measures, the use of masks and harsher fines for non-compliance;
- B. whereas government-led emergency measures that respect the rule of law, fundamental rights and democratic accountability are needed to combat the pandemic and should be the cornerstone of all efforts to control the spread of COVID-19; whereas emergency powers require additional scrutiny to ensure that they are not used as a pretext for changing the balance of powers more permanently; whereas measures taken by governments should be necessary, proportional and temporary; whereas emergency powers carry a risk of abuse of power by the executive and of remaining in the national legal framework once the emergency is over, and consequently appropriate parliamentary and judicial oversight, both internal and external, and counterbalances have to be ensured to limit this risk;
- C. whereas the COVID-19 crisis is unprecedented; whereas in the future we need to rethink our crisis management methods at both Member State and EU levels;
- D. whereas a number of EU countries have declared a state of emergency<sup>2</sup> on the basis of their constitutions<sup>3</sup> which have in some cases caused legal concerns, while others have resorted to emergency powers provided for under ordinary law<sup>4</sup> or to normal legislation<sup>5</sup> to urgently adopt restrictive measures in order to counter the COVID-19 epidemic; whereas these measures have an impact on democracy, the rule of law and fundamental rights as they affect the exercise of individual rights and freedoms, such as freedom of movement, freedom of assembly and of association, freedom of expression and information, freedom of religion, the right to family life, the right of asylum, the principle of equality and non-discrimination, the right to privacy and data protection, the right to education and the right to work; whereas these measures also have an impact

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<sup>1</sup> LIBE/9/02808 report of 10 July 2020.

<sup>2</sup> Compilation of Venice Commission opinions and reports on states of emergency, CDL-PI(2020)003.

<sup>3</sup> De jure constitutional state of emergency, spring 2020: Bulgaria, the Czech Republic, Finland, Estonia, Hungary, Latvia, Luxembourg, Romania, Portugal and Spain.

<sup>4</sup> Germany, Latvia, France, Italy and Slovakia.

<sup>5</sup> De facto state of emergency based on ordinary legislation: 13 Member States have not declared a de jure state of emergency during the COVID-19 crisis, notably: Austria, Belgium, Croatia, Cyprus, Denmark, Greece, Ireland, Lithuania, Malta, Netherlands, Poland, Slovenia and Sweden, plus the UK.

on the economies of Member States;

- E. whereas the functioning of democracies and the checks and balances to which they are subject are impacted when a health emergency situation causes shifts in the distribution of powers such as allowing the executive to acquire new powers to limit individual rights and to exercise competences usually reserved for the legislature and local authorities, while imposing constraints on the role of parliaments, the judiciary, civil society and the media, as well as the activities and involvement of citizens; whereas in most Member States there are no specific restrictions on the judiciary, but lockdown measures have made it near impossible for courts to operate in a normal manner;
- F. whereas internal judicial oversight, complemented by external oversight, continues to be fundamental, as the rights to a fair trial and to effective legal remedies continue to apply during a state of emergency so that individuals affected by emergency measures have effective recourse in the event that state authorities interfere with their fundamental rights and to guarantee that the executive does not exceed its powers;
- G. whereas the Venice Commission supports the constitutional de jure state of emergency, rather than the de facto state of emergency based on ordinary legislation, as ‘a system of de jure constitutional emergency powers can provide better guarantees for fundamental rights, democracy and the rule of law, and better serve the principle of legal certainty, deriving therefrom’<sup>1</sup>;
- H. whereas the COVID-19 crisis has been and continues to be a stress test for democracies and the resilience of national safeguards for the rule of law and fundamental rights;
- I. whereas trust in the actions of governments and states is paramount to ensure support for and implementation of the emergency measures adopted; whereas in order to achieve this in a democracy, transparent, science-based and democratic decisions, as well as dialogue with and the involvement of the opposition, civil society and stakeholders, are fundamental;
- J. whereas the Commission has monitored the emergency measures taken by the governments of the Member States throughout the crisis; whereas Commission President Ursula von der Leyen stated on 31 March 2020 that ‘any emergency measures must be limited to what is necessary and strictly proportionate. They must not last indefinitely. Moreover, governments must make sure that such measures are subject to regular scrutiny. The European Commission will closely monitor, in a spirit of cooperation, the application of emergency measures in all Member States’<sup>2</sup>, and whereas Commissioner Didier Reynders made a similar statement on 26 March 2020;
- K. whereas ‘nearly all EU Member States have introduced temporary (i.e. with a time limit) emergency measures to deal with the COVID-19 crisis<sup>3</sup> [...] mainly through

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<sup>1</sup> Venice Commission, Interim report on the measures taken in the EU member States as a result of the Covid-19 crisis and their impact on democracy, the Rule of Law and Fundamental Rights, 8 October 2020 (CDL-AD(2020)018), paragraph 57.

<sup>2</sup> [https://ec.europa.eu/commission/presscorner/detail/en/statement\\_20\\_567](https://ec.europa.eu/commission/presscorner/detail/en/statement_20_567)

<sup>3</sup> Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Italy, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden; Venice Commission opinion, Interim Report on the measures taken in the EU member States as

ordinary legislation’; whereas ‘the first emergency measures were generally introduced for a period of 15 days to approximately one month across all EU Member States’ and were then renewed at least once; whereas according to the Venice Commission ‘only a few EU Member States did not prescribe a time limit for the application of emergency measures’<sup>1</sup>;

- L. whereas the Venice Commission recommends that ‘declarations or measures that have no specific time limit, including those whose suspension is made conditional upon overcoming the exceptional situation, should not be considered as lawful if there is no regular review of the situation’<sup>2</sup>;
- M. whereas emergency measures must be non-discriminatory and governments must not take advantage of emergency legislation to push through restrictions on fundamental rights; whereas governments must also undertake a range of additional actions to reduce the potential negative impact that such measures might have on people’s lives;
- N. whereas the state of emergency has been prolonged at least once in almost all the Member States in which it has been declared; whereas the Venice Commission underlined that the review of the declaration and prolongation of the state of emergency, as well as of the activation and application of emergency powers, is vital and that parliamentary and judicial control should be possible<sup>3</sup>;
- O. whereas parliamentary scrutiny has been limited in most Member States owing to the use of exceptional executive powers, while parliaments in some Member States have been relegated to a secondary role, allowing governments to rapidly introduce emergency measures without sufficient scrutiny;
- P. whereas the European Parliament, in particular the LIBE Committee and its Democracy, Rule of Law and Fundamental Rights Monitoring Group, has continuously monitored the situation within the EU since March 2020 and has held regular exchanges with stakeholders, as reflected in the DRFMG working document on the impact of COVID-19 on democracy, the rule of law and fundamental rights<sup>4</sup>;
- Q. whereas ombudsman institutions and National Human Rights Institutions play an important role in detecting fundamental rights problems and in providing scrutiny, oversight and redress, and therefore in protecting citizens in relation to emergency measures;
- R. whereas freedom of movement has been restricted across the Member States through obligatory or recommended self-isolation and bans on non-essential movement; whereas as a response to the COVID-19 pandemic, most Schengen area states have reintroduced internal border controls or have closed such borders, whether partially, totally, or to certain types of travellers, including EU citizens and their family members or third-country nationals residing on their territory or that of another Member State; whereas there was a clear lack of coordination among Member States and with the Union

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a result of the Covid-19 crisis and their impact on democracy, the rule of law and fundamental rights, Opinion No. 995/2020 (CDL-AD(2020)018), paragraph 46.

<sup>1</sup> Croatia, Hungary; Venice Commission, Interim Report, paragraph 47.

<sup>2</sup> Venice Commission, Interim Report, paragraph 48.

<sup>3</sup> Venice Commission, Interim Report, paragraph 49.

<sup>4</sup> LIBE/9/02808 report of 10 July 2020.



institutions when these measures were introduced<sup>1</sup>; whereas some Member States have introduced unlawful and discriminatory restrictions by not allowing residents of another EU nationality to enter their territory;

- S. whereas freedom of assembly and of association are important cornerstones of democracy; whereas the ability to exercise these rights has been restricted due to the necessary social distancing rules and public health precautions in the majority of Member States; whereas some Member States have decided to allow assemblies in compliance with social distancing rules while others have banned them altogether; whereas in some Member States, controversial laws and measures unrelated to the state of emergency have been examined without the possibility for citizens to demonstrate freely;
- T. whereas freedom of expression has been restricted in some Member States on the pretext of fighting disinformation; whereas arrests have been made for ‘fearmongering’ or ‘endangering the public’ following the publishing of critical thoughts on social media; whereas the coronavirus pandemic has been accompanied by a wave of false and misleading information, hoaxes, consumer fraud, cybercrime and conspiracy theories, as well as targeted disinformation campaigns by foreign actors, or even Member State public authorities, which pose numerous potential threats to EU citizens, their health and their trust in public institutions;
- U. whereas law enforcement authorities have in recent months seen a global increase in the amount of child sexual exploitation material shared online;
- V. whereas serious and organised crime is benefiting from the changing circumstances brought about by the pandemic; whereas the important role of Europol in monitoring the impact of the COVID-19 pandemic on serious and organised crime and terrorism in the EU from the outset of the pandemic must be acknowledged;
- W. whereas the media play a fundamental role in scrutiny and oversight, as well as being citizens’ main sources of information; whereas media freedom has come under pressure as live press conferences have been cancelled without alternatives, and as some Member States have restricted access to public health information and limited the freedom to publish about public health policy; whereas there have been numerous accounts of questions from media outlets to governments being rejected or ignored; whereas journalists and media workers need to be protected when covering demonstrations and protests; whereas some Member States have restricted access to information by either extending or suspending deadlines for authorities to respond to freedom of information (FOI) requests;
- X. whereas Member States should ensure the protection of whistleblowers during the COVID-19 crisis, and beyond, as it has proven to be a powerful tool to fight and prevent actions that undermine the public interest<sup>2</sup>;
- Y. whereas some Member States have resorted to disproportionately repressive measures to enforce restrictions, such as the criminalisation of the violation of lockdown and

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<sup>1</sup> Texts adopted, P9\_TA(2020)0175.

<sup>2</sup> <https://www.ecpmf.eu/coalition-to-make-whistleblowing-safe-during-covid-19/>

quarantine rules resulting in high fines and lasting criminal records<sup>1</sup>;

- Z. whereas justice systems have been impacted by the general restrictions, with the temporary closing of many courts or reductions to their activity, sometimes resulting in backlogs and longer waiting times for hearings; whereas the procedural rights of suspects and the right to a fair trial are under pressure as access to lawyers has become more difficult due to the general restrictions and as courts are making increased use of online hearings;
- AA. whereas measures to combat the pandemic that restrict the right to privacy and data protection should always be necessary, proportionate and temporary in nature, with a solid legal basis; whereas new technologies have played an important part in the fight against the pandemic, but at the same time bring significant new challenges and have raised concerns; whereas the governments of some Member States have resorted to extraordinary surveillance of their citizens through the use of drones, police surveillance cars with cameras, tracking by means of location data from telecommunications providers, police and military patrols, monitoring of mandatory quarantines via house calls by the police or mandatory reporting via an app; whereas some Member States have introduced contact tracing apps, even though there is no consensus about their effectiveness and the most privacy-friendly, decentralised system is not always used; whereas in some Member States the reopening of public spaces has been accompanied by the collection of data through mandatory temperature checks and questionnaires and the obligation to share contact details, sometimes without due regard for the obligations that stem from the General Data Protection Regulation;
- AB. whereas lockdown measures and the closing of borders have had a profound impact on access to asylum procedures; whereas many Member States temporarily limited or even put on hold the processing of asylum requests, and most suspended Dublin transfers, returns and resettlement; whereas some Member States have declared their ports unsafe or not allowed the disembarkation of migrants rescued in search and rescue operations, leaving them in limbo for an unlimited period of time at sea and putting their lives at risk; whereas most Member States have now recommenced these activities; whereas outbreaks of COVID-19 have been reported in several asylum reception centres, resulting in vulnerable groups being put directly at risk, and whereas overcrowded camps at the EU's external borders continue to pose a particular risk of a massive outbreak as social distancing rules cannot be applied, while shelter and access to food, water, sanitation facilities, and mental and physical healthcare, including for those who have contracted COVID-19, are very limited;
- AC. whereas prisons are at particularly high risk of COVID-19 outbreaks as social distancing and sanitation rules are often impossible to enforce, and sanitary measures have led to the limiting of time in the open air as well as bans on visitors which affect prisoners' right to communicate with their families; whereas the health of prison officers has been particularly at risk during this pandemic; whereas in some Member States, some specific categories of prisoners have been released with a view to decreasing health risks during the pandemic;
- AD. whereas the enforcement of COVID-19 restrictions should be proportionate and non-discriminatory in order to avoid targeting people belonging to ethnic minorities and

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<sup>1</sup> LIBE/9/02808 report of 10 July 2020.

marginalised groups; whereas the pandemic affects Romani people disproportionately, with women and children often being the most vulnerable groups, and particularly those living in socially excluded and marginalised settings with no access to drinking water or sanitary services where it is nearly impossible to follow social distancing rules or to comply with strict hygiene measures; whereas there have been reports of incidents of racism and xenophobia in several Member States where discrimination has taken place against people of a certain background or nationality; whereas persons of Asian descent and Romani people have been the targets of hate speech and attacks; whereas certain politicians in some Member States have used media reports of mass returns of Romani migrant workers from countries with a high prevalence of COVID-19 to fan fears about the spread of the virus, reinforcing negative attitudes and stereotypes;

- AE. whereas children are at a disproportionate risk of social and economic exclusion due to the lockdown measures and are facing increased risk of violation of their fundamental rights owing to abuse, violence, exploitation, and poverty; whereas many Member States have seen an increase in domestic violence due to the lockdown measures; whereas women and girls,<sup>1</sup> children and LGBTI+ persons are disproportionately at risk during lockdowns, as they can be exposed to abusers for long periods of time and can be cut off from social and institutional support; whereas community support for these vulnerable groups has been dramatically restricted given the measures taken in response to the pandemic;
- AF. whereas equal access to healthcare, a right enshrined in Article 35 of the Charter of Fundamental Rights, is potentially at risk due to measures taken to stop the spread of COVID-19, in particular for groups of people in vulnerable situations such as elderly or chronically ill persons, persons with disabilities, LGBTI+ persons, children, parents, pregnant women, homeless persons, all migrants including undocumented migrants, asylum seekers, refugees, and ethnic and other minorities; whereas sexual and reproductive health and rights services, have been negatively affected during the health crisis; whereas in some Member States access to reproductive health and rights, including the right to abortion, has been heavily restricted, resulting in a de facto ban that has forced demonstrators to take to the streets in the middle of a pandemic; whereas medicine shortages, the diversion of resources from other health issues and the abrupt cancellation of certain treatments, including IVF and transitioning treatments, may present risks to patients suffering from other illnesses<sup>2</sup>; whereas bereavement, isolation, the additional strain on work-life balance for parents and frontline workers, loss of income and fear are triggering mental health conditions or exacerbating existing ones, leading to an increased demand for mental health services and resulting in an urgent need to increase funding for these services;
- AG. whereas many Member States postponed elections<sup>3</sup>, and one a referendum<sup>4</sup>, owing to lockdowns imposed in the first phase of the health crisis; whereas elections have been taking place again since the pandemic entered its second phase; whereas the issue of

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<sup>1</sup> <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26083&LangID=E>

<sup>2</sup> [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2020-coronavirus-pandemic-eu-bulletin\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-coronavirus-pandemic-eu-bulletin_en.pdf), Bulletin No 1, p. 26.

<sup>3</sup> Germany, France, Italy, Spain, Austria, the Czech Republic, Poland and Latvia (extraordinary elections of Riga city council).

<sup>4</sup> Italy.

holding or postponing elections is a delicate balancing exercise, on which the Venice Commission has developed reflections and guidelines<sup>1</sup>; whereas universal, free, secret and direct suffrage is only possible when open and fair electoral campaigning, freedom of expression, media freedom and freedom of assembly and association for political purposes, are guaranteed;

- AH. whereas the provisions of the Treaties in the area of freedom, security and justice must not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security, within the boundaries of the Union's values of democracy, the rule of law and fundamental rights, as stipulated in Article 2 of the TEU;
- AI. whereas, according to the Treaties, limits on the Union's competences are governed by the principle of conferral and the use of Union competences is governed by the principles of subsidiarity and proportionality;
1. Recalls that, even in a state of public emergency, the fundamental principles of the rule of law, democracy and respect for fundamental rights must prevail, and that all emergency measures, derogations and limitations are subject to three general conditions, those of necessity, proportionality in the narrow sense and temporariness, conditions which have been regularly applied and interpreted in the case law of the European Court of Human Rights (ECtHR), the Court of Justice of the EU (CJEU) and various constitutional (and other) courts of the Member States<sup>2</sup>;
  2. Believes that reactions to the crisis have, on the whole, shown the strength and resilience of national democratic systems; stresses that extraordinary measures should be matched by more intense communication between governments and parliaments; calls for a more intense dialogue with stakeholders including citizens, civil society and political opposition in order to build broad support for extraordinary measures and ensure that they are implemented as efficiently as possible, while avoiding repressive measures and ensuring unimpeded access to information for journalists;
  3. Calls on the Member States to ensure that, when measures that could restrict the functioning of democratic institutions, the rule of law or fundamental rights are adopted, assessed or reviewed, those measures observe the recommendations of international bodies such as the UN and the Council of Europe, including the Venice Commission, and of the Commission's report on the rule of law situation in the EU; reiterates its call on the Member States not to abuse emergency powers to pass legislation unrelated to the COVID-19 health emergency objectives in order to surpass parliamentary oversight;
  4. Calls on the Member States:
    - to consider exiting the state of emergency or otherwise limiting their impact on democracy, the rule of law and fundamental rights,
    - to evaluate the constitutional and institutional rules in force in their domestic orders in the light of the Venice Commission recommendations, for instance by

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<sup>1</sup> Compilation of Venice Commission opinions and reports on states of emergency, CDL-PI(2020)003.

<sup>2</sup> Venice Commission, Interim report of 8 October 2020 (CDL-AD(2020)018), paragraphs 19 and 21.

moving from a de facto state of emergency based on ordinary legislation to a de jure constitutional state of emergency, hence providing for better guarantees of democracy, the rule of law and fundamental rights in the event of an emergency<sup>1</sup>; to explicitly define in a legislative act, where a de facto state of emergency is maintained, the objectives, content, and scope of the delegation of power from the legislature to the executive,

- to ensure that both the declaration and possible prolongation of the state of emergency, on the one hand, and the activation and application of emergency powers, on the other hand, are subject to effective parliamentary and judicial control, both internal and external, and to ensure that parliaments are entitled to discontinue the state of emergency<sup>2</sup>,
  - to ensure that, if legislative powers are transferred to the executive, any legal acts issued by the executive be subject to subsequent parliamentary approval and cease to produce effects if they do not secure such approval within a certain period of time<sup>3</sup>; to address the excessive use of accelerated and emergency legislation, an issue also pointed out by the Commission in its 2020 Rule of Law Report (COM(2020)0580),
  - to examine how better to guarantee the central role of parliaments in situations of crisis and emergency, in particular their role in monitoring and controlling the situation at national level,
  - to consider the Venice Commission’s view that parliaments need to hold their plenary sessions and that they should not allow the temporary replacement of members or reduce their attendance (even if proportionally)<sup>4</sup>;
  - to examine the Venice Commission’s reflections on elections and look into the possibility of using remote voting methods such as postal voting, internet voting, mobile ballot boxes and proxy voting, as well as early voting, in particular in the event of a pandemic;
5. Calls on the Member States to enforce the COVID-19 related measures with due regard to the proportionality of the enforcement measures; affirms that the enforcement of COVID-19 related measures needs to respect EU fundamental rights and the rule of law and considers that equal treatment of persons is crucial in that regard;
6. Calls on the Member States to evaluate the measures they have implemented which have restricted freedom of movement and to exercise the utmost restraint and ensure full respect for EU law, in particular the Schengen Borders Code and the Free Movement Directive, when considering imposing new restrictions on freedom of movement; recalls that, according to the Schengen Borders Code, the assessment of the necessity for

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<sup>1</sup> Venice Commission, Interim report of 8 October 2020 (CDL-AD(2020)018), paragraphs 29-31.

<sup>2</sup> Venice Commission, Interim report of 8 October 2020 (CDL-AD(2020)018), paragraphs 59-62.

<sup>3</sup> Venice Commission, Interim report of 8 October 2020 (CDL-AD(2020)018), paragraph 63.

<sup>4</sup> Venice Commission, Interim report of 8 October 2020 (CDL-AD(2020)018), paragraph 75.

internal border control and its prolongation when introduced as an immediate action should be monitored at Union level; calls on the Commission in that respect to exercise appropriate scrutiny over the application of the Schengen acquis, and in particular to assess the measures already taken by Member States, as well as the timeliness and quality of notifications made by the Member States, to closely monitor developments and, where necessary, to remind Member States of their legal obligations and adopt opinions; encourages the Commission to make use of its prerogatives to request additional information from Member States; calls on the Commission to enhance its reporting to Parliament on how it exercises its prerogatives under the Treaties; recalls the importance of further integration of the Schengen area, based on the Commission's evaluations and recommendations;

7. Calls on the Member States to respect the right to family life, in particular of families living and working across different Member States and beyond, and only to allow for restrictions where strictly necessary and proportionate; calls on the Member States to allow for the reunification of couples and families separated by COVID-19 related measures, regardless of their marital status, and to refrain from imposing unnecessarily high standards of proof of the relationship;
8. Calls on the Member States to restrict the freedom of assembly only where strictly necessary and justifiable in the light of the local epidemiological situation and where proportionate, and not to use the banning of demonstrations to adopt controversial measures, even if unrelated to COVID-19, that would merit a proper public and democratic debate;
9. Insists that Member States refrain from adopting measures that would have a profound impact on fundamental rights, such as women's sexual and reproductive rights, especially in a situation where public health concerns do not allow for due democratic debate and safe protest, forcing protestors to endanger their health and lives in order to defend their rights;
10. Encourages the Member States to take measures aimed at ensuring the right to education during this pandemic; calls on the Member States, in the light of the resurgent waves of the pandemic, to provide the means for and a safe framework within which to guarantee the continuation of classes, and to ensure that every student has effective access;
11. Calls on the Member States to respect the right to privacy and data protection and to make sure that all new surveillance or tracking measures, adopted in full consultation with data protection authorities, are strictly necessary and proportionate, have a solid legal basis, are limited as to their purposes and are of a temporary nature; calls on the Commission to monitor these measures, especially in the light of its own Recommendation (EU) 2020/518 of 8 April 2020 on a common Union toolbox for the use of technology and data to combat and exit from the COVID-19 crisis, in particular concerning mobile applications and the use of anonymised mobility data<sup>1</sup>;
12. Recalls that the best way to fight disinformation is to protect and ensure the right to information and freedom of expression, providing support to ensure media pluralism and independent journalism; calls on the Member States, in this context, to ensure

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<sup>1</sup> OJ L 114, 14.4.2020, p. 7.

transparency when adopting measures and to provide their citizens with comprehensive, up-to-date, precise and objective information and data concerning the public health situation and measures taken to control it, to fight disinformation that aims to discredit or distort scientific knowledge about health risks and that concerns government measures that are justified in the fight against the spread of COVID-19, in a balanced way and taking great care not to create a chilling effect on freedom of expression and on journalists, healthcare workers or others by resorting to criminalisation or disproportionate sanctioning; stresses that the pandemic has increased the stigmatisation of migrants and led to a rise in instances of discrimination which has been exacerbated by misinformation and fake news<sup>1</sup>, including racist and xenophobic incidents against people belonging to ethnic minorities, and hate speech against persons with disabilities and refugees<sup>2</sup>; stresses that disinformation is an evolving challenge with the potential to negatively influence democratic processes and societal debates affecting all policy areas, to undermine citizens' trust in democracy and to discourage European cooperation and solidarity; recalls that Parliament is already working on a set of possible measures through its Special Committee on Foreign Interference in all Democratic Processes in the European Union, including Disinformation (INGE);

13. Calls for further significant investments in the EU's strategic communication capabilities, in line with the Action Plan against Disinformation, for the stepping up of cooperation and coordination with Member States and for the full use of existing mechanisms in order to facilitate concrete cooperation with Member States and international partners on strategic communication;
14. Considers that the work of journalists has become more difficult as a result of measures related to the COVID-19 pandemic, owing, for example, to the limiting of physical access to press conferences, lacking or inadequate replies to questions from public authorities, and cancelled or delayed deadlines for freedom of information requests or access to documents; regrets that while quality journalism is needed more than ever, particularly given its role in the fight against increasingly prevalent disinformation, the economic fallout of this crisis also affects the financial viability of media outlets, and in particular of independent media and journalists, thereby further undermining media pluralism in the EU; is concerned about the lack of transparency in some Member States regarding the placing of advertisements and the distribution of subsidies to the media, and about the increasing concentration of media ownership in some Member States; underlines that substantive changes in the media sector should not be brought in during a de facto or de jure state of emergency;
15. Calls on the Member States to guarantee the rights of defendants, including their unfettered access to a lawyer, and to evaluate the possibility of online hearings as a solution and an alternative to hearings in court or to the transfer of suspects to other EU Member States under the European Arrest Warrant; calls on the Member States to ensure adherence to all governing principles of judicial proceedings, including the right to a fair trial; calls on the Member States to safeguard the rights and health of all persons in prisons, in particular their rights to medical assistance, visitors, time in the

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<sup>1</sup> International Organization for Migration, COVID-19 Analytical Snapshot #19: Misinformation on migration & migrants, 20 April 2020.

<sup>2</sup> FRA, Coronavirus pandemic in the EU – Fundamental Rights implications – Bulletin No 1, 8 April 2020.

open air and educational, professional or leisure activities;

16. Acknowledges that most Member States have recommenced their asylum procedures and that some have made use of the recent period of lower numbers of new applications to reduce the backlog of pending applications; calls on the Member States to fully guarantee access to an asylum procedure and to preserve the individual right to asylum, as enshrined in the Charter of Fundamental Rights, and to carry out resettlement and dignified return procedures with full respect for international law; calls, furthermore, for access to translators to be provided, or reinstated, as soon as possible for those applying for asylum; urges the Member States to provide adequate physical and mental health facilities in reception centres, given the poor sanitary conditions, the high-risk environment and the vulnerability of refugee populations during the COVID-19 pandemic; calls on the Commission and the Member States to draw up an effective plan, with a public health focus, to comprehensively address their situation, including at external borders, by guaranteeing the right to asylum and providing adequate reception conditions for refugees and asylum seekers; recalls that COVID-19 measures should never lead to detention; calls for urgent family reunification, the immediate evacuation of the camps on the Greek islands and the relocation of asylum seekers to other Member States, giving priority to the most vulnerable, unaccompanied minors and families with children; calls on the Member States to allow disembarkation and to ensure that disembarkation takes place only in a place of safety, in accordance with the relevant international and Union law, and as quickly as possible;
17. Considers that discrimination has increased during the pandemic and that certain groups have been the target of hate speech and discriminatory measures; calls on the Member States to counter such hate speech and to end and remedy such discriminatory measures; calls on national and in particular local authorities to redouble their efforts to combat antigypsyism, deconstruct negative stereotypes and involve people with a Romani background themselves in identifying and implementing measures to tackle the pandemic; calls on the Member States, furthermore, to continue their efforts to combat homophobia and transphobia, as the pandemic has exacerbated the discrimination and inequalities of which LGBTI+ people are victims;
18. Calls on the Member States to effectively guarantee safe and timely access to sexual and reproductive health and rights (SRHR) and the necessary healthcare services for all women and girls during the COVID-19 pandemic, especially access to contraception, including emergency contraception, and to abortion care; highlights the importance of continuing best practices and finding innovative ways to provide SRHR services, including telemedicine, online consultations and access to early medical abortion from home; calls on the Commission to organise forums for the exchange of best practices among Member States and stakeholders in this regard, and to support actions that ensure access to SRHR in Member States;
19. Calls on the Member States to include independent experts on democracy, the rule of law and fundamental rights in decision making wherever necessary; calls on the Member States to draw on the expertise of and proactively consult a broad range of experts and stakeholders, including National Human Rights Institutions, ombudsman institutions and civil society, when taking new measures;
20. Calls on the Member States to uphold the right to free and fair elections; recalls the Venice Commission's recommendation that the adoption of reforms to electoral codes



during this period should only take place following a wide debate and with a large consensus as a guarantee against abuses and of trust in the electoral process and its legitimacy; underlines that parties competing for voter support must have equal rights to campaign, and that the fairness of elections held during states of emergency might be in doubt<sup>1</sup>; calls on the Member States to consider the institutional consequences of any decision to postpone elections; stresses that, according to the Venice Commission, the specific rules on the postponement of elections should not be adopted by the executive branch of power nor by a simple majority in parliament, but should be laid down in the constitution or an organic law, and that the decision to postpone elections should preferably be taken by parliament in reasonable time before the election, if possible before the opening of the official campaign<sup>2</sup>;

21. Calls on the Commission to urgently commission an independent and comprehensive evaluation of the measures taken during the ‘first wave’ of the COVID-19 pandemic in order to generate lessons learned, share best practices and enhance cooperation, and to ensure that measures taken during subsequent waves of the pandemic are effective, targeted, well justified on the basis of the specific epidemiological situation, strictly necessary and proportionate, and to limit their impact on democracy, the rule of law and fundamental rights; welcomes the fact that a first such assessment of Member States’ COVID-19 measures is included in the Commission’s first annual Rule of Law Report; calls on the Commission and the Council to engage in the negotiation of an interinstitutional agreement on an effective monitoring mechanism on rule of law, democracy and fundamental rights, as called for in its resolution of 7 October 2020 on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights, which would assess the situation in all Member States diligently and fairly, as well as contribute to the better protection of the rule of law and the Union’s values during extraordinary situations such as the ongoing pandemic;
22. Reiterates its call on the EU institutions and the Member States to draw the right lessons from the COVID-19 crisis and to engage in far stronger cooperation in the area of health, given the huge burdens citizens have faced in trying to manage their physical and mental health during this pandemic, including through the creation of a European Health Union, as put forward in its resolution of 10 July 2020 on the EU’s public health strategy post-COVID-19<sup>3</sup>;
23. Calls on the Commission to continue its monitoring of the measures taken, step up its activities to coordinate the Member States, proactively guide authorities in their handling of the pandemic in line with democratic rule of law and fundamental rights, take legal action and use other tools available whenever necessary and consider options available to safeguard respect for the Union’s fundamental values, as well as taking the lead to ensure that restrictive measures are lifted as soon as possible; calls on the FRA to continue reporting on the impact of COVID-19 measures on fundamental rights;
24. Instructs its President to forward this resolution to the Commission, the Council, the

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<sup>1</sup> Venice Commission, Report on respect for democracy, human rights and the rule of law during states of emergency: Reflections, 19 June 2020 (CDL-AD(2020)014), paragraph 96.

<sup>2</sup> Venice Commission, Interim report of 8 October 2020 (CDL-AD(2020)018), paragraphs 101, 114, 119, 122, 123.

<sup>3</sup> Texts adopted, P9\_TA(2020)0205.

governments and parliaments of the Member States, the Council of Europe, the Organization for Security and Co-operation in Europe and the United Nations.