



TEXTS ADOPTED

P9_TA(2021)0287

Rule of Law situation in the European Union and the application of the Conditionality Regulation (EU, Euratom) 2020/2092

European Parliament resolution of 10 June 2021 on the rule of law situation in the European Union and the application of the Conditionality Regulation (EU, Euratom) 2020/2092 (2021/2711(RSP))

The European Parliament,

- having regard to Articles 2, 3(1), 4(3), 6, 7, 13, 14(1), 16(1), 17(1), 17(3), 17(8), 19(1) second subparagraph and 49 of the Treaty on European Union (TEU), as well as Articles 265, 310, 317 and 319 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to the Charter of Fundamental Rights of the European Union,
- having regard to Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget¹ ('the Rule of Law Conditionality Regulation'),
- having regard to its resolution of 25 March 2021 on the application of Regulation (EU, Euratom) 2020/2092, the rule-of-law conditionality mechanism² and to its resolution of 17 December 2020 on the Multiannual Financial Framework 2021-2027, the Interinstitutional Agreement, the EU Recovery Instrument and the Rule of Law Regulation³,
- having regard to the Commission's 2020 Rule of Law Report of 30 September 2020 (COM(2020)0580),
- having regard to the conclusions of the European Council adopted on 21 July 2020 and on 11 December 2020,
- having regard to the case law of the Court of Justice of the European Union (CJEU),

¹ OJ L 433 I, 22.12.2020, p. 1.

² Texts adopted, P9_TA(2021)0103.

³ Texts adopted, P9_TA(2020)0360.

- having regard to its resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded¹,
 - having regard to the CJEU’s decision of 3 June 2021 in Case C-650/18 dismissing Hungary’s action against Parliament’s resolution of 12 September 2018 triggering the procedure for determining the existence of a clear risk of a serious breach by a Member State of the values on which the European Union is founded²,
 - having regard to the Commission’s reasoned proposal of 20 December 2017 in accordance with Article 7(1) TEU regarding the rule of law in Poland: 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 (COM(2017)0835),
 - having regard to its resolution of 1 March 2018 on the Commission’s decision to activate Article 7(1) TEU as regards the situation in Poland³,
 - having regard to Rule 132(2) of its Rules of Procedure,
- A. whereas the European 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 enshrined in Article 2 TEU;
 - B. whereas any clear risk of a serious breach by a Member State of the values enshrined in Article 2 TEU does not concern solely the individual Member State where the risk materialises, but also has an impact on the other Member States, on the mutual trust between them and on the very nature of the Union and its citizens’ fundamental rights under Union law;
 - C. whereas Article 7(1) TEU was triggered by the Commission and Parliament in relation to Poland and Hungary, respectively, following the determination of a clear risk of a serious breach of the values on which the Union is founded; whereas the Council has so far organised three hearings of Poland and two hearings of Hungary within the framework of the General Affairs Council;
 - D. whereas the Rule of Law Conditionality Regulation entered into force on 1 January 2021 and has been applicable since then;
 - E. whereas the applicability, purpose and scope of the Rule of Law Conditionality Regulation are clearly defined therein and, in accordance with Article 17(1) TEU, the Commission ‘shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them’;
 - F. whereas the application of the Rule of Law Conditionality Regulation cannot be subject to the adoption of guidelines, and recalls that any guidelines shall not undermine the intention of the co-legislators;

¹ OJ C 433, 23.12.2019, p. 66.

² Judgment of 3 June 2021, *Hungary v Parliament*, C-650/18, ECLI:EU:C:2021:426.

³ OJ C 129, 5.4.2019, p. 13.

- G. whereas, in accordance with Article 234 TFEU, the European Parliament has the right to vote on a motion of censure of the Commission;
- H. whereas the Commission ‘shall be completely independent’ and its members ‘shall neither seek nor take instructions from any Government or other institution, body, office or entity’ (Article 17(3) TEU, Article 245 TFEU) and furthermore ‘shall be responsible to the European Parliament’ (Article 17(8) TEU) and ‘shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them’ (Article 17(3) TEU);
- I. whereas only the CJEU has the power to annul the Rule of Law Conditionality Regulation or any part thereof, and whereas actions brought before the CJEU do not have suspensory effect according to Article 278 TFEU;
- J. whereas the Union’s financial interests are to be protected in accordance with the general principles embedded in the Union Treaties, in particular the values laid down in Article 2 TEU, and with the principle of sound financial management enshrined in Article 317 TFEU and in Regulation (EU, Euratom) 2018/1046 of 18 July 2018 on the financial rules applicable to the general budget of the Union¹ (the Financial Regulation);
1. Reiterates its position on the Rule of Law Conditionality Regulation, which entered into force on 1 January 2021 and is directly applicable in its entirety in the European Union and all its Member States for all funds of the EU budget, including resources allocated through the EU Recovery Instrument since then;
 2. Calls on the Commission and the Council to finally recognise the urgent need for action to defend the values enshrined in Article 2 TEU and to admit that a Member State cannot amend its legislation, including constitutional provisions, in such a way as to bring about a reduction in the protection of these values; believes that mutual sincere cooperation between institutions is undermined if Parliament’s concerns are not fully shared and taken into account; recalls that Parliament has the right to vote on a motion of censure of the Commission and has the possibility to react to the lack of cooperation by the Council; invites other institutions to work together rather than obstruct the efforts to resolve the current crisis;
 3. Recalls that according to Article 5 of the Rule of Law Conditionality Regulation, ‘the Commission shall verify whether applicable law has been complied with and, where necessary, take all appropriate measures to protect the Union budget’; believes that the situation as regards respect for the principles of the rule of law in some Member States warrants immediate use of the Rule of Law Conditionality Regulation;
 4. Urges the Commission to react swiftly to the ongoing severe violations of the principles of the rule of law in some Member States, which are causing a serious danger in relation to the fair, legal and impartial distribution of EU funds, especially under shared management, and to conduct a thorough analysis of the need to trigger, without any undue delay, the procedure envisaged in the Rule of Law Conditionality Regulation; reiterates its call on the Commission to immediately fulfil its obligations under this regulation to duly inform Parliament of any written notifications to the Member States concerned, setting out the factual elements and specific grounds of the breaches of the rule of law, or of any

¹ OJ L 193, 30.7.2018, p. 1.

ongoing investigations; notes that to date, Parliament has not received any such information about a notification;

5. Stresses its concern at the increasingly clear indications and the growing risk of misuse of the Union's budget as a means to deteriorate the rule of law in some Member States; regrets the inability of the Council to make meaningful progress in enforcing the Union's values in ongoing Article 7 procedures in response to the threats to common European values in Poland and Hungary; points out that this failure by the Council to make effective use of Article 7 TEU continues to undermine the integrity of common European values, mutual trust, and the credibility of the Union as a whole; urges the forthcoming presidencies to organise hearings regularly; recommends that the Council address concrete recommendations to the Member States in question, as enshrined in Article 7(1) TEU, as a follow-up to the hearings, and that it indicate deadlines for the implementation of those recommendations;
6. Underlines that despite numerous European Parliament resolutions and reports, and several infringement proceedings and decisions of the CJEU, the rule of law situation in the European Union is continuing to deteriorate;
7. Calls on the Commission to use all tools at its disposal, including the regulation, also to address the persistent violations of democracy and fundamental rights everywhere in the Union, including attacks against media freedom and journalists, migrants, women's rights, LGBTIQ people's rights, and freedom of association and assembly; welcomes the decision taken by the Grand Chamber of the CJEU to dismiss Hungary's action against Parliament's resolution of 12 September 2018 triggering the Article 7 procedure; regrets the Commission's inability to respond properly to the many concerns expressed by Parliament about democracy, the rule of law and fundamental rights in several Member States; calls on the Commission to use all tools at its disposal, including Article 7 TEU, the Rule of Law Framework and infringement procedures under Article 19(1) TEU, as well as further instruments, such as expedited procedures, applications for interim measures before the CJEU and actions regarding non-implementation of the Court's judgments; asks the Commission to explicitly state reasons when it decides not to use the tools recommended by Parliament;
8. Highlights the importance of supporting and strengthening cooperation between the EU institutions, the Member States, the European Anti-Fraud Office (OLAF) and the European Public Prosecutor's Office (EPPO); welcomes the fact that the EPPO became operational on 1 June 2021;
9. Underlines that the annual rule of law report is a separate tool complementary to the Rule of Law Conditionality Regulation; calls on the Commission to use the findings of the annual report in its assessment for the purposes of the regulation; asks the Commission to include in its annual Rule of Law Report a dedicated section with an analysis of cases where breaches of the principles of the rule of law in a particular Member State could affect or seriously risk affecting the sound financial management of the Union budget in a sufficiently direct way;
10. Regrets the fact that the Commission has not sent written notifications to Member States since the entry into force of the regulation, despite many concerns about the breaches of the rule of law identified in the Commission's 2020 Rule of Law Report, as well as the existence of two ongoing Article 7 procedures, which have an impact on the sound

financial management of the Union budget and remain unresolved by Member States; notes that the absence of actions under Article 5(1) and Article 6 of the regulation constitutes a refusal by the Commission to fulfil its obligations under it;

11. Recalls that in its resolution of 25 March 2021 on the application of Regulation (EU, Euratom) 2020/2092, the rule-of-law conditionality mechanism, a concrete deadline was given to the Commission by Parliament, and notes with disappointment that the Commission did not meet its obligations within this deadline; stresses that this constitutes a sufficient basis for taking legal action against the Commission under Article 265 TFEU;
12. Regrets the Commission's failure to respond to Parliament's requests by 1 June 2021 and to activate the procedure laid down in the Rule of Law Conditionality Regulation in the most obvious cases of breaches of the rule of law in the EU; instructs its President to call on the Commission, within two weeks from the date of adoption of this resolution at the latest, on the basis of Article 265 TFEU, to fulfil its obligations under this regulation; states that, in order to be prepared, Parliament shall, in the meantime, immediately start the necessary preparations for potential court proceedings under Article 265 TFEU against the Commission;
13. Instructs its President to forward this resolution to the Commission, the Council and the Member States.