Rule of Law and the consequences of the ECJ ruling

European Parliament resolution of 10 March 2022 on the rule of law and the consequences of the ECJ ruling (2022/2535(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 its resolution of 25 March 2021 on the application of Regulation (EU, Euratom) 2020/2092, the rule-of-law conditionality mechanism,

– having regard to its 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,

– having regard to its resolution of 8 July 2021 on the creation of guidelines for the application of the general regime of conditionality for the protection of the Union budget,

– having regard to its action brought on 29 October 2021 for failure to act in case C-657/21, European Parliament v Commission, which is currently pending before the Court of Justice of the European Union (ECJ),

– having regard to the Commission’s Rule of Law Reports of 30 September 2020 (COM(2020)0580) and of 20 July 2021 (COM(2021)0700),

– having regard to the conclusions of the European Council adopted on 11 December 2020,

3 OJ C 67, 8.2.2022, p. 86.
4 OJ C 99, 1.3.2022, p. 146.
having regard to the case-law of the ECJ and of the European Court of Human Rights,
having regard to the ECJ’s judgments of 16 February 2022 in cases C-156/21 and C-157/21,
having regard to the ECJ’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 founded,
having regard to the ECJ’s order of 14 July 2021 and its ruling of 15 July 2021 stipulating that the disciplinary system for judges in Poland is not compatible with EU law,
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 founded,
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 Poland,
having regard to the letters of 17 November 2021 sent by the Commission to Poland and Hungary pursuant to Article 6(4) of the Rule of Law Conditionality Regulation,
having regard to Rule 132(2) and Annex VI 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 in accordance with the Rule of Law Conditionality Regulation, the rule of law must be understood in the light of the values and principles enshrined in Article 2 TEU, including fundamental rights and non-discrimination; is of the opinion that the Commission should use all of the tools at its disposal, including the Rule of Law Conditionality Regulation, to address the persistent violations of democracy and fundamental rights everywhere in the Union, including attacks against media freedom and

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3 Order of the Vice-President of the Court of 14 July 2021, European Commission v Republic of Poland, C-204/21 R, ECLI:EU:C:2021:593 and judgment of 15 July 2021, European Commission v Republic of Poland, C-791/19, ECLI:EU:C:2021:596.
journalists, migrants, women’s rights, LGBTIQ people’s rights, and freedom of association and assembly; calls on the Commission to act and to take this into account in the application of the Rule of Law Conditionality Regulation;

C. whereas any clear risk of a serious breach by a Member State of the values enshrined in Article 2 TEU does not solely concern 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;

D. whereas the values contained in Article 2 TEU define the very identity of the European Union as a common legal order and therefore the European Union must be able to defend these values, within the limits of its powers as conferred by the Treaties;

E. whereas the Rule of Law Conditionality Regulation entered into force on 1 January 2021 and has been binding in its entirety and directly applicable in all Member States since that date;

F. whereas the applicability, purpose and scope of the Rule of Law Conditionality Regulation are clearly defined therein; whereas 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’;

G. whereas the absence of the Commission President from the plenary debate on 16 February 2022 demonstrates a lack of respect for the Commission’s obligation to give priority to its presence, if requested, at the plenary sittings of Parliament, over other competing events or invitations, as enshrined in the Framework Agreement on relations between the European Parliament and the European Commission;

H. whereas in her press statement of 16 February 2022, President von der Leyen announced that taking into account the ECJ judgments, the Commission ‘will adopt in the following weeks guidelines providing further clarity about how we apply the mechanism in practice’;

I. whereas the application of the Rule of Law Conditionality Regulation is not subject to the adoption of guidelines, which are not part of the regulation, and whereas any guidelines must not undermine the intention of the co-legislators, or alter, expand or narrow the scope of the text of the regulation;

J. whereas the Rule of Law Conditionality Regulation is intended to protect the Union budget and the financial interests of the Union from effects resulting from breaches of the principles of the rule of law;

K. whereas it is unacceptable that since December 2021, the Commission and the Council have refused to enter into negotiations on an interinstitutional agreement on a single, evidence-based and EU-wide mechanism on democracy, the rule of law and fundamental rights, as called for by Parliament in its legislative initiative of 7 October 2020;

L. whereas the three conditions for disbursing the Recovery and Resilience Facility funds to Poland mentioned by the Commission President on 19 October 2021 have not yet been fulfilled;

M. whereas in accordance with Article 319 TFEU, ‘the European Parliament, acting on a recommendation from the Council, shall give a discharge to the Commission in respect of the implementation of the budget’;

N. whereas the war unfolding in Ukraine has reminded us of our shared duty to effectively protect democracy, the rule of law and our values as enshrined in Article 2 TEU with all the means at our disposal;

O. whereas in accordance with Article 234 TFEU, the European Parliament has the right to vote on a motion of censure of the Commission;

P. whereas the Commission has regrettably decided to abide by the non-binding European Council conclusions of 11 December 2020, even though it ‘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(1) TEU);

1. Welcomes the judgements of the ECJ of 16 February 2022\(^1\) and its conclusions that the Rule of Law Conditionality Mechanism is in line with EU law, confirming the appropriateness of the legal basis, the regime’s compatibility with Article 7 TEU and the principle of legal certainty, as well as the EU’s competences regarding the rule of law in the Member States, and the conclusion that the actions brought by Hungary and Poland against the Rule of Law Conditionality Regulation should be dismissed;

2. Calls on the Commission to take urgent action and immediately apply the Rule of Law Conditionality Mechanism by sending a written notification under Article 6(1) of the Rule of Law Conditionality Regulation, directly informing Parliament thereafter, and expects that all occurrences falling within the scope of the regulation in the 14 months since its entry into force in January 2021 must form part of the notification; underlines that it is high time for the Commission to fulfil its duties as the guardian of the Treaties and to instantly react to the ongoing severe violations of the principles of the rule of law in some Member States, which represent a serious danger to the Union’s financial interests in relation to the fair, legal and impartial distribution of EU funds, particularly those under shared management; warns that any further delay may have serious consequences;

3. Stresses that inaction and a lax approach towards oligarchic structures and the systemic violation of the rule of law weaken the entire European Union and undermine the trust of its citizens; underlines the need to ensure that taxpayers’ money never ends up in the pockets of those who undermine the EU’s shared values;

4. Regrets the Commission’s inadequate response to the ECJ rulings of 16 February 2022, notwithstanding its commitment to finalise the guidelines on the application of the Rule of Law Mechanism; reiterates, however, that the text of the Rule of Law Conditionality

\(^1\) In cases C-156/21 and C-157/21, as referenced above.
Regulation is clear and does not require any additional interpretation in order to be applied, and that the co-legislators have not delegated to the Commission any powers to this effect; underlines that the ECJ has recognised, in particular, that the Member States cannot maintain that they are not in a position to determine with sufficient precision the essential content of and requirements stemming from the regulation; highlights, in this context, that the process of developing guidelines, which are not legally binding and are not part of the regulation, must not in any event cause further delay to the application of the regulation, and points out in particular that the Commission has a duty to implement EU legislation regardless of electoral timetables in the Member States;

5. Notes that in October 2021, pursuant to Article 265 TFEU, Parliament launched an action against the Commission before the ECJ over its failure to act and apply the regulation, which had been requested in two resolutions in 2021 and which followed on from the unsatisfactory replies from the Commission and its attempt to play for time; recalls that this case\(^1\) is currently at the written procedure stage, where the parties involved – the Commission and Parliament – submit their arguments in writing; regrets the fact that the Commission has not yet responded to Parliament’s call to trigger Article 6(1) of the regulation and has not sent written notifications to the Member States concerned, but only sent requests for information to Hungary and Poland in November 2021;

6. 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 French Presidency and its successors to organise hearings on a regular basis; welcomes, in this regard, the first hearing convened by the French Presidency on 22 February 2022 and the second, which has been planned for 30 May 2022; recommends that the Council address concrete recommendations to the Member States in question, as provided for by Article 7(1) TEU, as a follow-up to the hearings, and that it indicate deadlines for the implementation of those recommendations;

7. Calls, therefore, on the French Presidency to fulfil its commitment to ‘a humane Europe’ and to resolutely contribute to the strengthening of the rule of law and to the protection of fundamental rights, as enshrined in its EU presidency programme, in which the rule of law is described as ‘an essential prerequisite to the proper functioning of the Union’; urges the French Presidency to support the swift and proper application and implementation of the Rule of Law Conditionality Regulation;

8. Underlines that the deteriorating situation as regards the rule of law in some Member States necessitates a constructive dialogue about the further evolution of the EU’s rule of law toolbox;

9. Stresses that in taking any action under the regulation, the Commission should ensure full transparency and inform Parliament in full and in a timely manner, unlike the approach taken by the Commission when sending letters requesting information under the regulation in November 2021;

\(^1\) C-657/21.
10. Calls on the Commission to ensure that the final recipients or beneficiaries of EU funds are not deprived of the benefits of EU funds in the event of sanctions being applied under the Rule of Law Conditionality Mechanism, as set out in Article 5, subparagraphs (4) and (5), of the regulation;

11. Stresses that the Rule of Law Conditionality Mechanism should be applied to both the Union budget and to NextGenerationEU; stresses further that approval of the national plans under the Recovery and Resilience Facility should be made conditional on the fulfilment of all 11 criteria set out in Article 19 of and Annex V to the regulation on the Recovery and Resilience Facility; expects the Commission to exclude all risks of programmes under cohesion policy contributing to the misuse of EU funds or to breaches of the rule of law before approving the partnership agreements and cohesion policy programmes; calls on the Commission to apply the Common Provisions Regulation and the Financial Regulation more stringently in order to tackle the discriminatory use of EU funds, in particular any use of a politically motivated nature;

12. Instructs its President to forward this resolution to the Commission, the Council and the Member States.