



Paris, 18 March 2021

POLITICAL OPINION

On the Rule of Law in the European Union

The European Affairs Committee of the French Senate,

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms,

Having regard to the Charter of Fundamental Rights of the European Union,

Having regard to Articles 2 to 4, 6, 7, 13, 19, 21 and 49 of the Treaty on European Union,

Having regard to Articles 67, 258 to 260, 267 and 317 of the Treaty on the Functioning of the European Union,

Having regard to the European Parliament resolution of 10 March 2011 on media law in Hungary,

Having regard to the report from the European Commission for Democracy through Law of the Council of Europe of 25 and 26 March 2011 on the rule of law,

Having regard to the European Parliament resolution of 5 July 2011 on the revised Hungarian Constitution,

Having regard to the European Parliament resolution of 16 February 2012 on the recent political developments in Hungary,

Having regard to the European Parliament resolution of 3 July 2013 on the situation of fundamental rights: standards and practices in Hungary,

Having regard to the Commission Communication to the European Parliament and the Council of 11 March 2014 entitled 'A new EU Framework to strengthen the Rule of Law', COM (2014) 158 final,

Having regard to the Council conclusions of 16 December 2014 on ensuring respect for the rule of law,

Having regard to the European Parliament resolution of 10 June 2015 on the situation in Hungary,

Having regard to the European Parliament resolution of 16 December 2015 on the situation in Hungary,

Having regard to the report from the European Commission for Democracy through Law of the Council of Europe of 11 and 12 March 2016 establishing a rule of law checklist,

Having regard to the European Parliament resolution of 13 April 2016 on the situation in Poland,

Having regard to Commission recommendation (EU) 2016/1374 of 27 July 2016 regarding the rule of law in Poland,

Having regard to the European Parliament resolution of 14 September 2016 on recent developments in Poland and their impact on fundamental rights as laid down in the Charter of Fundamental Rights of the European Union,

Having regard to the European Parliament 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,

Having regard to Commission recommendation (EU) 2017/146 of 21 December 2016 regarding the rule of law in Poland complementary to Recommendation (EU) 2016/1374,

Having regard to the European Parliament resolution of 17 May 2017 on the situation in Hungary,

Having regard to Commission recommendation (EU) 2017/1520 of 26 July 2017 regarding the rule of law in Poland complementary to Recommendations (EU) 2016/1374 and (EU) 2017/146,

Having regard to the European Parliament resolution of 15 November 2017 on the situation of the rule of law and democracy in Poland,

Having regard to the European Parliament resolution of 15 November 2017 on the rule of law in Malta,

Having regard to Commission recommendation (EU) 2018/103 of 20 December 2017 regarding the rule of law in Poland complementary to Recommendations (EU) 2016/1374, (EU) 2017/146 and (EU) 2017/1520,

Having regard to the Proposal for a Council Decision of 20 December 2017 on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law, COM(2017) 835 final,

Having regard to the report of 8 January 2018 by Mr Cezar Florin Preda on behalf of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe on the progress of the Assembly's monitoring procedure and the periodic review of the honouring of obligations and commitments of Council of Europe Member States (doc. 14450 Part 4),

Having regard to the European Parliament resolution of 1 March 2018 on the Commission's decision to activate Article 7(1) of the Treaty on European Union as regards the situation in Poland,

Having regard to the report of 4 July 2018 by Ms Judith Sargentini on behalf of the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament 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 European Parliament 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 European Parliament proposal for a Council decision of 12 September 2018 determining, 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 European Parliament resolution of 13 November 2018 on the rule of law in Romania,

Having regard to the European Parliament 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,

Having regard to the Council conclusions of 12 December 2018 on the Cooperation and Verification Mechanism,

Having regard to the European Parliament resolution of 12 February 2019 on the implementation of the Charter of Fundamental Rights of the European Union in the EU institutional framework,

Having regard to the European Parliament resolution of 28 March 2019 on the situation of the rule of law and the fight against corruption in the EU, specifically in Malta and Slovakia,

Having regard to the communication from the Commission to the European Parliament, the European Council and the Council of 3 April 2019 entitled 'Further strengthening the Rule of Law within the Union – State of play and possible next steps', COM (2019) 163 final,

Having regard to the communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions of 17 July 2019 entitled 'Strengthening the rule of law within the Union – A blueprint for action', COM (2019) 343 final,

Having regard to the Council conclusions of 7 October 2019 on the Charter of Fundamental Rights after 10 years: state of play and future work,

Having regard to the Council conclusions of 14 October 2019 on democracy,

Having regard to the report from the Commission to the European Parliament and the Council of 22 October 2019 on progress in Bulgaria under the Cooperation and Verification Mechanism, COM (2019) 498 final,

Having regard to the report from the Commission to the European Parliament and the Council of 22 October 2019 on progress in Romania under the Cooperation and Verification Mechanism, COM (2019) 499 final,

Having regard to the European Parliament resolution of 14 November 2019 on the criminalisation of sexual education in Poland,

Having regard to the Council Presidency conclusions of 19 November 2019 on the evaluation of the annual rule of law dialogue,

Having regard to the European Parliament resolution of 18 December 2019 on the rule of law in Malta after recent revelations on the assassination of Daphne Caruana Galizia,

Having regard to the European Parliament resolution of 18 December 2019 on public discrimination and hate speech against LGBTI people, including LGBTI free zones,

Having regard to the report of 6 January 2020 by Ms Azadeh Rojhan Gustafsson and Mr Pieter Omtzigt on behalf of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe of the Parliamentary Assembly of the Council of Europe on the functioning of democratic institutions in Poland (doc. 15025),

Having regard to the European Parliament 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,

Having regard to resolution 2316 (2020) of 28 January 2020 of the Parliamentary Assembly of the Council of Europe on the functioning of democratic institutions in Poland,

Having regard to the joint communication from the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy to the European Parliament and the Council of 25 March 2020 entitled 'EU Action Plan on Human Rights and Democracy 2020-2024', JOIN(2020) 5 final,

Having regard to the joint proposal for a recommendation from the Council to the European Council of 25 March 2020 on the adoption of a decision identifying the strategic objectives of the Union to be pursued through the EU Action Plan on Human Rights and Democracy 2020-2024, JOIN (2020) 6 final,

Having regard to the statement by Ms Ursula von der Leyen, President of the European Commission, of 31 March 2020 on emergency measures in Member States,

Having regard to the European Parliament resolution of 17 April 2020 on EU coordinated action to combat the COVID-19 pandemic and its consequences,

Having regard to the declaration by High Representative Josep Borrell on behalf of the European Union of 5 May 2020 on human rights in the times of the coronavirus pandemic,

Having regard to its political opinion of 6 May 2020 on monitoring respect for the rule of law in Europe in the context of the COVID-19 pandemic and the Commission's response of 13 August 2020 to this political opinion, C(2020) 5637 final,

Having regard to the EU Annual Report of 15 June 2020 on Human Rights and Democracy in the World,

Having regard to the Senate information report no. 562 (2019-2020) of 25 June 2020 on behalf of the European Affairs Committee on the accession of the European Union to the European Convention on Human Rights by Messrs Philippe Bonnacarrère et Jean-Yves Leconte,

Having regard to European Parliament 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,

Having regard to the Commission Communication to the European Parliament, the Council, the European Economic and

Social Committee and the Committee of the Regions of 18 September 2020 entitled 'A Union of equality: EU anti-racism action plan 2020-2025', COM (2020) 565 final,

Having regard to the Commission communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 30 September 2020 entitled '2020 Rule of Law Report – The rule of law situation in the European Union', COM (2020) 580 final, and the Commission staff working documents comprising the chapters dedicated to the rule of law situation in each Member State and accompanying this communication, SWD (2020) 302 final to SWD (2020) 326 final,

Having regard to the European Parliament resolution of 7 October 2020 on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights,

Having regard to the European Parliament resolution of 8 October 2020 on the rule of law and fundamental rights in Bulgaria,

Having regard to the European Parliament resolution of 13 November 2020 on the impact of COVID-19 measures on democracy, the rule of law and fundamental rights,

Having regard to the Council conclusions of 18 November 2020 on the EU action plan on human rights and democracy 2020-2024 as well as the EU action plan on human rights and democracy 2020-2024,

Having regard to the Senate information report no. 146 (2020-2021) of 19 November 2020 on behalf of the European Affairs Committee on Hungary's relations with the European Union by Messrs Jean Bizet, André Gattolin and Jean-Yves Leconte,

Having regard to the European Parliament resolution of 26 November 2020 on the situation of fundamental rights in the European Union - annual report for the years 2018 - 2019,

Having regard to the European Parliament resolution of 26 November 2020 on the de facto ban on the right to abortion in Poland,

Having regard to the Commission communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 2 December 2020 entitled 'Strategy to strengthen the application of the Charter of Fundamental Rights in the EU', COM (2020) 711 final,

Having regard to the Commission communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 3 December 2020 on the European democracy action plan, COM(2020) 790 final,

Having regard to Council Decision (CFSP) 2020/1999 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses,

Having regard to the European Council conclusions of 10-11 December 2020, in particular Paragraphs 1 to 4,

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 budget,

Having regard to the 5 January 2021 report by Mr Andrea Orlando on behalf of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe entitled 'Judges in Poland and in the Republic of Moldova must remain independent' (doc. 15204),

Having regard to resolution 2359 (2021) of 26 January 2021 of the Parliamentary Assembly of the Council of Europe entitled 'Judges in Poland and in the Republic of Moldova must remain independent',

Recalls its unwavering commitment to the values of the European Union as set out in Article 2 of the Treaty on European Union (TEU) and to the rule of law in particular, which, in the absence of a precise legal definition, is now widely recognised within the European Union; notes that this recognition is based on the Treaties, the Charter of Fundamental Rights of the European Union, the case-law of the Court of Justice of the European Union

(CJEU) and the European Court of Human Rights (ECHR), as well as the Council of Europe's treaty system and the work of its bodies;

Considers that the European Union must be exemplary in promoting and respecting the rule of law; regrets all the more deeply the increase in breaches of the rule of law in several Member States observed over the past several years;

Highlights the importance of raising awareness in public opinion of a rule-of-law culture, not just in Member States but in candidate countries and partners, to ensure the credibility of Europe's message on values and the benefits of a functional rule of law; notes the important role of the judiciary, the media and civil society in spreading this rule-of-law culture; insists on the role of national human rights institutions, which must have sufficient resources and be empowered to take action on their own;

Considers that the EU reacted too late to the initial breaches of the rule of law; welcomes, however, that it has now adopted a true public policy in the matter; considers, however, that this policy ought to be more effective and easier to understand, particularly on the institutional aspects;

Highlights the benefits for EU institutions of adopting a preventive approach to tackling rule-of-law violations as soon as possible;

Recognises the value of dialogue with Member States to advance the rule of law and to better apply EU legislation; asks that the interinstitutional aspect of this dialogue be improved, including with national parliaments; is, however, of the opinion that dialogue is not enough if breaches of the rule of law persist;

Acknowledges the Commission's first annual report on the rule of law situation in the EU; considers that this report must be the starting point for further steps based on eventual recommendations and that it must be regularly and thoroughly monitored;

Regrets the lack of concrete results from the Article 7(1) procedure of the TEU that has now been triggered for two Member States; invites the Council to decide whether there is a clear risk of a serious breach of the rule of law in these States; calls for a review of the sanction mechanism provided by the Article to make it both more dissuasive and gradual; asks that breaches of the rule of law

be truly addressed according to their severity so that occasional, and not just systemic, violations of the rule of law can be sanctioned;

Welcomes the Commission's determination to act in favour of respecting the rule of law by using the infringement procedure and, where appropriate, by referring to the CJEU under the infringement procedure; notes that Member States are also able to refer to the CJEU to this end, just as they can take the initiative to trigger Article 7(1) of the TEU;

Recognises the role of the CJEU and the ECHR in ensuring the rule of law is respected; notes that the case-law of these two European courts proves that there are breaches of EU law; demands that all decisions of the CJEU be enforced; invites the Commission to make systematic use of Article 260 of the Treaty on the Functioning of the European Union if the non-execution of a CJEU decision concerns a decision on the rule of law;

Approves the introduction of the 'rule of law conditionality' within the 2021-2027 Multiannual Financial Framework; immediately requests that the Commission publish guidelines to allow this 'rule of law conditionality' to be operational; considers that these guidelines must ensure that the new provisions are dissuasive, effective and demonstrate the EU's determination to defend its values; considers that good financial management of the EU budget and the protection of its financial interests require the involvement of the European Court of Auditors, Europol, Eurojust, the European Anti-Fraud Office (OLAF) and the European Public Prosecutor's Office, as well as the competent national administrations; reiterates its invitation to all Member States to join the European Public Prosecutor's Office;

Considers it essential to place greater importance, in verifying respect for the rule of law, on tackling corruption that helps to weaken institutions, especially the police and the judiciary, in charge of tackling fraud in European structural and investment funds; invites the Commission and Member States to trigger the infringement procedure to enforce EU regulations on public procurement contracts;

Calls for a revision of the mandate of the European Union Agency for Fundamental Rights so that, in particular, its activity better interacts with those of national human rights institutions and

that it can fully participate in investigating and monitoring the Article 7 TEU procedure;

Welcomes the cooperation between the European Union and the Council of Europe, especially the Venice Commission, in promoting respect for the rule of law; affirms its attachment to the EU's accession to the European Convention on Human Rights in respect of the conditions stipulated by the CJEU in its Opinion 2/13 of 18 December 2014;

Notes that the Charter of Fundamental Rights of the European Union constitutes a basis that is increasingly used to sanction breaches of fundamental rights; welcomes this development; supports the Commission's strategy to reinforce application of the Charter;

Asks that the internal and external aspects of the EU's action in favour of the rule of law be coherent and complementary;

Considers it essential to step up monitoring of rule-of-law issues in candidate countries, taking into account not just their commitments but the actual results obtained so as to guarantee the essence of the rule of law *acquis* before these countries accede and to ensure they are monitored after accession;

Supports the EU action plan on human rights and democracy; asks that the action plan integrate new challenges, particularly digital and environmental, and gives a central place to tackling disinformation, hate speech and illegal online content; considers that the EU action plan on racism must lead to concrete results in order to become more operational;

Insists that promoting and respecting the rule of law be included in the priorities of the French Presidency of the Council of the European Union in the first half of 2022.