



Plenary sitting

A9-0170/2020

29.9.2020

REPORT

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

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Michal Šimečka

(Initiative – Rule 46 of the Rules of Procedure)

CONTENTS

	Page
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION.....	3
ANNEX TO THE MOTION FOR A RESOLUTION:.....	12
EXPLANATORY STATEMENT	18
OPINION OF THE COMMITTEE ON LEGAL AFFAIRS	20
OPINION OF THE COMMITTEE ON CONSTITUTIONAL AFFAIRS.....	27
INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE.....	34
FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE	35

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

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

The European Parliament,

- having regard to Article 295 of the Treaty on the Functioning of the European Union,
- having regard, in particular, to Article 2, Article 3(1), the second subparagraph of Article 3(3), Article 4(3) and Articles 5, 6, 7 and 11 of the Treaty on European Union,
- having regard to the articles of the Treaty on the Functioning of the European Union relating to the respect for, and the promotion and protection of, democracy, the rule of law and fundamental rights in the Union, including Articles 70, 258, 259, 260, 263 and 265 thereof,
- having regard to Protocol No 1 on the role of national parliaments in the European Union and Protocol No 2 on the application of the principles of subsidiarity and proportionality, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union,
- having regard to the Charter of Fundamental Rights of the European Union,
- having regard to the case law of the Court of Justice of the European Union,
- having regard to the Copenhagen criteria and the body of Union rules that a candidate country must fulfil if it wishes to join the Union (the *acquis*),
- having regard to the Universal Declaration of Human Rights,
- having regard to the United Nations instruments on the protection of human rights and fundamental freedoms and the recommendations and reports of the United Nations Universal Periodic Review, as well as the case law of the United Nations treaty bodies and the special procedures of the Human Rights Council,
- having regard to the United Nations Declaration on Human Rights Defenders of 8 March 1999,
- having regard to the recommendations and reports of the Office for Democratic Institutions and Human Rights, the High Commissioner on National Minorities, the Representative on Freedom of the Media and other bodies of the Organization for Security and Co-operation in Europe,
- having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter, the case law of the European Court of Human Rights and the European Committee of Social Rights, and the conventions, recommendations, resolutions and reports of the Parliamentary Assembly, the Committee

of Ministers, the Human Rights Commissioner, the European Commission Against Racism and Intolerance, the Steering Committee on Anti-Discrimination, Diversity and Inclusion, the Venice Commission and other bodies of the Council of Europe,

- having regard to the Memorandum of Understanding between the Council of Europe and the European Union of 23 May 2007,
- having regard to the United Nations Convention against Corruption,
- having regard to the agreement establishing the Group of States against Corruption,
- having regard to the Rule of Law Checklist adopted by the Venice Commission at its 106th Plenary Session on 18 March 2016,
- having regard to the Council of Europe’s toolkit for Member States ‘Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis’ of 7 April 2020,
- having regard to the 2020 Annual Report by the partner organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists,
- having regard to the Commission communication of 17 July 2019 entitled ‘Strengthening the rule of law within the Union - A blueprint for action’ (COM(2019)0343),
- having regard to the Commission communication of 29 January 2020 containing the Commission Work Programme 2020 (COM(2020)0027) and the adjusted Commission Work Programme of 27 May 2020 (COM(2020)0440),
- having regard to the EU Justice Scoreboard 2020,
- having regard to the European Economic and Social Committee Opinion of 19 June 2019 entitled ‘Further strengthening the Rule of Law within the Union. State of play and possible next steps’, which proposed the establishment of an annual Forum on Fundamental Rights and the Rule of Law,
- having regard to the report of the European Economic and Social Committee’s Group on Fundamental Rights and the Rule of Law of June 2020 entitled ‘National developments from a civil society perspective, 2018-2019’,
- having regard to the report of the European Union Agency for Fundamental Rights entitled ‘Challenges facing civil society organisations working on human rights in the EU’, published on 17 January 2018, and to its other reports and data,
- having regard to the report of the European Institute for Gender Equality entitled ‘Beijing +25: the fifth review of the implementation of the Beijing Platform for Action in the EU Member States’, published on 5 March 2020,
- having regard to the conclusions of the Council of the European Union and the Member States meeting within the Council on ensuring respect for the rule of law of 16 December 2014,

- having regard to its resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights¹,
- having regards to its resolution of 19 April 2018 on the need to establish a European Values Instrument to support civil society organisations which promote fundamental values within the European Union at local and national level²,
- having regard to its legislative resolution of 17 April 2019 on the proposal for a regulation of the European Parliament and of the Council establishing the Rights and Values programme³,
- having regard to its resolution of 14 November 2018 on the need for a comprehensive EU mechanism for the protection of democracy, the rule of law and fundamental rights⁴,
- having regard to its resolution of 16 January 2019 on the situation of fundamental rights in the European Union in 2017⁵,
- having regard to its resolution of 13 February 2019 on experiencing backlash in women’s rights and gender equality in the EU⁶,
- having regard to its resolution of 28 March 2019 on the situation of rule of law and fight against corruption in the EU, specifically in Malta and Slovakia⁷,
- having regard to its resolution of 18 December 2019 on public discrimination and hate speech against LGBTI people, including LGBTI free zones⁸,
- having regard to its resolution of 15 January 2020 on human rights and democracy in the world and the European Union’s policy on the matter – annual report 2018⁹,
- having regard to its resolution of 16 January 2020 on ongoing hearings under Article 7(1) of the TEU regarding Poland and Hungary¹⁰,
- having regard to its resolution of 17 April 2020 on EU coordinated action to combat the Covid-19 pandemic and its consequences¹¹,
- having regard to the joint civil society organisation recommendations entitled 'From blueprint to footprint: Safeguarding media freedom and pluralism through the European Rule of Law Mechanism' of April 2020,

¹ OJ C 215, 19.6.2018, p. 162.

² OJ C 390, 18.11.2019, p. 117.

³ Texts adopted, P8_TA(2019)0407.

⁴ Texts adopted, P8_TA(2018)0456.

⁵ Texts adopted, P8_TA(2019)0032.

⁶ Texts adopted, P8_TA(2019)0111.

⁷ Texts adopted, P8_TA(2019)0328.

⁸ Texts adopted, P9_TA(2019)0101.

⁹ Texts adopted, P9_TA(2020)0007.

¹⁰ Texts adopted, P9_TA(2020)0014.

¹¹ Texts adopted, P9_TA(2020)0054.

- having regard to the report of the European Network of National Human Rights Institutions entitled 'The Rule of Law in the European Union' of 11 May 2020,
 - having regard to the Human Rights and Democracy Network Working Group on EU Internal Human Rights Policy's submission of 4 May 2020 to the European Commission in the framework of the stakeholder consultation for the 2020 Rule of Law Report,
 - having regard to its European added value assessment accompanying the legislative initiative report on an EU mechanism on democracy, the rule of law and fundamental rights of October 2016,
 - having regard to the Parliament's Preliminary Assessment on the European added value of an EU mechanism on democracy, rule of law and fundamental rights of April 2020,
 - having regard to Rules 46, 54 and 148 of its Rules of Procedure,
 - having regard to the opinions of the Committee on Legal Affairs and the Committee on Constitutional Affairs,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0170/2020),
- A. whereas the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities, as set out in Article 2 of the Treaty on European Union (TEU); whereas those values are values which are common to the Member States and to which all Member States have freely subscribed; whereas democracy, the rule of law and fundamental rights are mutually reinforcing values;
- B. whereas the Union has codified in its accession criteria that Union membership requires that a candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; points out, however, that the Union lacks effective tools to enforce those criteria once a country has become part of the Union;
- C. whereas the preceding decade has seen brazen attacks against Union values in several Member States; whereas Parliament has addressed those worrying developments repeatedly in its resolutions since 2011, including the activation of Article 7 TEU in 2018; whereas Parliament has been calling since 2016 for a comprehensive, preventive and evidence-based monitoring in this field via an EU mechanism on democracy, the rule of law and fundamental rights;
- D. whereas vulnerable groups such as women, persons with disabilities, Roma, LGBTI persons and elderly persons continue not having their rights fully respected in some Member States and are not fully protected from hate and discrimination, in breach of Union values as provided for in Article 2 TEU and of the right to non-discrimination provided for in Article 21 of the Charter of Fundamental Rights of the European Union (the Charter); whereas emergency measures taken in response to the COVID-19 pandemic have further strained fundamental rights and democratic checks and balances;

- E. whereas approximately 10 % of Union citizens belong to a national minority; whereas respecting the rights of minorities is an integral part of the values of the Union as set out in Article 2 TEU; whereas minorities contribute to the cultural and linguistic diversity of the Union; whereas there is currently no Union legal framework to guarantee and monitor minority rights;
- F. whereas breaches of the values referred to in Article 2 TEU, without proper response and consequences at Union level, weaken the cohesion of the European project, the rights of all Union citizens and mutual trust among the Member States;
- G. whereas corruption poses a serious threat to democracy, the rule of law and the fair treatment of all citizens;
- H. whereas independent journalism and access to pluralistic information are key pillars of democracy; whereas the worrying state of media freedom and pluralism in the Union has not been addressed in a sufficiently vigorous manner; whereas civil society is essential for any democracy to thrive; whereas the shrinking space for civil society contributes to violations of democracy, the rule of law and fundamental rights; whereas Union institutions are to maintain an open, transparent and regular dialogue with representative associations and civil society at all levels;
- I. whereas the independence, quality and efficiency of national justice systems are crucial for the achievement of effective justice; whereas the availability of legal aid and the level of court fees can have a major impact on access to justice; whereas the Charter has the same legal value as the Treaties; whereas, in accordance with the guidance of the Court of Justice of the European Union, the Charter is applied by Member States' judicial authorities only when implementing legal acts of the Union, it is, however, important for the fostering of a common legal, judicial and rule of law culture that the rights as enshrined in the Charter be always taken into account;
- J. whereas the Commission is preparing to publish its 2020 Rule of Law Report, to be followed by a Strategy for the Implementation of the Charter of Fundamental Rights and a European Democracy Action Plan;
- K. whereas a regulation on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States, once adopted, would become an indispensable tool in safeguarding the rule of law within the Union;
- L. whereas any monitoring mechanism must closely involve stakeholders active in the protection and promotion of democracy, the rule of law and fundamental rights, including civil society, the Council of Europe and United Nations bodies, the Organization for Security and Co-operation, the European Union Agency for Fundamental Rights, national human rights institutions, relevant authorities and professional associations supporting judiciaries in the independent delivery of justice; whereas, therefore, adequate Union funding is necessary for civil society, particularly through the Justice Programme and the Citizens, Equality, Rights and Values Programme;
- M. whereas it is necessary to strengthen and streamline existing mechanisms and develop an effective mechanism to ensure that the principles and values enshrined in the Treaties are upheld throughout the Union;

- N. whereas Parliament, the Commission and the Council (the ‘three institutions’) share political responsibility for upholding Union values, within the limits of the powers conferred on them by the Treaties; whereas an interinstitutional agreement based on Article 295 of the Treaty on the Functioning of the European Union (TFEU) would ensure the necessary arrangements to facilitate the cooperation of the three institutions in that regard; whereas, pursuant to Article 295 TFEU, any of the three institutions may propose such an agreement;
1. Emphasises the urgent need for the Union to develop a robust, comprehensive and positive agenda for effectively protecting and reinforcing democracy, the rule of law and fundamental rights for all its citizens; insists that the Union must remain a champion of freedom and justice in Europe and the world;
 2. Warns that the Union is facing an unprecedented and escalating crisis of its founding values, which threatens its long-term survival as a democratic peace project; is gravely concerned by the rise and entrenchment of autocratic and illiberal tendencies, further compounded by the COVID-19 pandemic and economic recession, as well as corruption, disinformation and state capture, in several Member States; underlines the dangers of this trend for the cohesion of the Union’s legal order, the protection of the fundamental rights of all its citizens, the functioning of its single market, the effectiveness of its common policies and its international credibility;
 3. Recalls that the Union remains structurally ill-equipped to tackle democratic, fundamental rights and rule of law violations and backsliding in the Member States; regrets the inability of the Council to make meaningful progress in enforcing Union values in ongoing Article 7 TEU procedures; notes that the Council’s failure to apply Article 7 TEU effectively is in fact enabling continued divergence from the values provided for in Article 2 TEU; notes with concern the disjointed nature of the Union’s toolkit in that field and calls for it to be streamlined and properly enforced;
 4. Welcomes the Commission’s work on the annual Rule of Law Report; welcomes the fact that corruption and media freedom is part of the annual assessment; notes, however, that it fails to encompass the areas of democracy and fundamental rights; particularly regrets that freedom of association and the shrinking space for civil society are not part of the annual assessment; underlines with concern that vulnerable groups, including women, persons with disabilities, Roma, LGBTI persons and elderly persons, continue not seeing their rights fully respected in some Member States and are not fully protected from hate and discrimination, in breach of Union values as provided for in Article 2 TEU; recalls that Parliament has repeatedly called for a monitoring mechanism to cover the full scope of Article 2 TEU; reiterates the need for a an objective and evidence-based monitoring mechanism enshrined in a legal act binding the three institutions to a transparent and regularised process, with clearly defined responsibilities, so that the protection and promotion of all Union values becomes a permanent and visible part of the Union agenda;
 5. Proposes the establishment of an EU mechanism on democracy, the rule of law and fundamental rights (the ‘Mechanism’), building on Parliament’s 2016 proposal and the Commission’s annual Rule of Law Report, to be governed by an interinstitutional agreement between the three institutions, consisting of an Annual Monitoring Cycle on Union values, covering all aspects of Article 2 TEU and applying equally, objectively and

fairly to all Member States, while respecting the principles of subsidiarity and proportionality;

6. Underlines that the Annual Monitoring Cycle must contain country-specific clear recommendations, with timelines and targets for implementation, to be followed up in subsequent annual or urgent reports; stresses that failure to implement the recommendations must be linked to concrete Union measures, including procedures under Article 7 TEU, infringement proceedings and budgetary conditionality once in force; points out that recommendations should not only be aimed at redressing violations but should also promote policies enabling citizens to benefit from Union rights and values;
7. Points out that the Mechanism should consolidate and supersede existing instruments to avoid duplication, in particular the annual Rule of Law Report, the Commission's Rule of Law Framework, the Commission's annual reporting on the application of the Charter, the Council's Rule of Law Dialogue and the Cooperation and Verification Mechanism (CVM), while increasing complementarity and coherence with other available tools, including procedures under Article 7 TEU, infringement proceedings and budgetary conditionality once in force; considers that the three institutions should use the findings from the Annual Monitoring Cycle in their assessment for the purposes of triggering Article 7 TEU and Regulation (EU) 2020/xxxx of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States¹²; stresses that the roles and prerogatives of each of the three institutions must be respected;
8. Underlines that judicial independence is integral to judicial decision making and is a requirement resulting from the principle of effective legal protection set out in Article 19 TEU; is worried that recent attacks on the rule of law have mainly consisted of attempts to jeopardise judicial independence and stresses that every national court is also a European court; urges the Commission to use all the instruments at its disposal against any attempt by governments of Member States to endanger the independence of national courts and to inform Parliament of any such situation in a timely manner;
9. Recalls that the accession of the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms is a legal obligation provided for under Article 6(2) TEU; reiterates the need for a swift conclusion of the accession process in order to ensure a consistent framework for human rights protection throughout Europe and to further strengthen the protection of fundamental rights and freedoms within the Union; calls therefore on the Commission to step up efforts to fully implement the Treaties and conclude the accession process without undue delay;
10. Recalls the indispensable role played by civil society, national human rights institutions, equality bodies and other relevant actors in all stages of the Annual Monitoring Cycle, from providing input to facilitating implementation and monitoring; underlines the need to provide human rights defenders and reporting actors with protection at both national and Union level, including against abuses of court actions where necessary, along with adequate funding at all levels; calls in that regard for the creation of a statute for European

¹² *[instead of xxxx insert final number of 2018/136(COD) in the text and correct OJ reference in footnote]*
OJ C ..., .., p.

cross-border associations and non-profit organisations after a thorough impact assessment; stresses the contribution of whistleblowers to safeguarding the rule of law and fighting corruption; calls on the Commission to closely monitor the transposition and application of Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law¹³; points out that the accreditation status of national human rights institutions and the space for civil society may themselves serve as indicators for assessment purposes; encourages national parliaments to hold public debates and adopt positions on the outcome of the monitoring cycle; highlights that training of justice professionals is essential for the proper implementation and application of Union law and thus for the strengthening of a common legal culture throughout the Union; considers that the upcoming European judicial training strategy must put additional focus on promoting the rule of law and judicial independence and include training on skills and non-legal issues to make judges better prepared to resist undue pressure; encourages the Commission and the Member States to further promote and facilitate the dialogue between courts and legal practitioners by fostering the regular exchange of information and best practices in order to strengthen and advance a Union area of justice based on democracy, the rule of law and fundamental rights; stresses the need to ensure adequate funding for the sectoral Justice Programme and Citizens, Equality, Rights and Values Programme in the upcoming MFF, as those programmes aim to protect and promote Union values and develop a Union area of justice based on the rule of law and to support civil society;

11. Points to the complementarity that should exist between the EU Justice Scoreboard, which allows for a comparison between Member States' judicial systems, and the Mechanism; notes that according to the 2020 EU Justice Scoreboard there are still significant differences among Member States regarding the number of pending cases and that the building up of backlogs has increased in some Member States, that not all Member States offer training on ICT skills aimed at adapting to digitalisation and facilitating access to justice, that legal aid has become less accessible in some Member States over the years and that gender equality has not yet been ensured in the judicial systems in most Member States
12. Reaffirms the role of Parliament, in accordance with Article 7 TEU, in monitoring compliance with Union values; reiterates the call for Parliament to be able to present its reasoned proposal to the Council and to attend Article 7 hearings when it is Parliament that initiated the procedure, respecting the prerogatives of each of the three institutions and the principle of sincere cooperation; calls on the Council to keep Parliament regularly informed and closely involved and to work in a transparent manner; believes that the Mechanism, underpinned by an interinstitutional agreement, will provide the necessary framework for better coordination;
13. Is of the view that, in the long-term, strengthening the Union's ability to promote and defend its constitutional core might require Treaty change; looks forward to the reflection and conclusions of the Conference on the Future of Europe in that regard; stresses that the effectiveness of the Article 7 TEU procedure should be enhanced by revising the majority necessary for action and reinforcing the sanctioning mechanism; invites the Conference on the Future of Europe to consider strengthening the role of the Court of

¹³ OJ L 305, 26.11.2019, p. 17.

Justice of the European Union in protecting the Union's founding values; calls for a revision of Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights¹⁴, following a thorough impact assessment, with a view to strengthening and enlarging its mandate to cover all the values referred to in Article 2 TEU;

14. Strongly believes that addressing the crisis of Union values, including through the proposed Mechanism, is a precondition for re-establishing mutual trust among Member States, thus enabling the Union as a whole to sustain and further all common policies;
15. Regrets that the European Council, in its conclusions of 21 July 2020, weakened the budgetary conditionality mechanism proposed by the Commission; reiterates its call to ensure that systemic breaches of the values referred to in Article 2 TEU are made incompatible with Union funding; stresses the need to employ reverse qualified majority for the protection of the Union budget, without which the effectiveness of the new budgetary conditionality mechanism would be under threat; demands that the application of budgetary conditionality be accompanied by measures aimed at mitigating any potential impact on individual beneficiaries of Union funding, including civil society organisations; underlines that the budgetary conditionality mechanism cannot be substituted by the proposed Annual Monitoring Cycle alone; urges the European Council to act on its promise made in the Sibiu Declaration of 9 May 2019 to protect democracy and the rule of law;
16. Invites the Commission and the Council to enter without delay into negotiations with Parliament on an interinstitutional agreement in accordance with Article 295 TFEU; considers the proposal set out in the Annex hereto to constitute an appropriate basis for such negotiations;
17. Instructs its President to forward this resolution and the accompanying proposal to the Commission and the Council.

¹⁴ OJ L 53, 22.2.2007, p. 1.

ANNEX TO THE MOTION FOR A RESOLUTION:

Proposal for an Interinstitutional Agreement on Reinforcing Union Values

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

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

Whereas:

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

Commission's Rule of Law Framework, in order to avoid duplication and strengthen overall effectiveness.

- (6) The Annual Monitoring Cycle should consist of a preparatory stage, the publication of an annual monitoring report on compliance with Union values including country-specific recommendations, and a follow-up stage including the implementation of recommendations. The Annual Monitoring Cycle should be conducted in a spirit of transparency and openness with the involvement of citizens and civil society and should be protected from disinformation.
- (7) The three institutions share the view that the Annual Monitoring Cycle should replace Commission Decisions 2006/928/EC¹ and 2006/929/EC² and fulfil, inter alia, the objectives of those Decisions. This Interinstitutional Agreement is without prejudice to the 2005 Act of Accession, in particular Articles 37 and 38 thereof.
- (8) The Annual Monitoring Cycle should also be complementary to and coherent with other instruments relating to the promotion and strengthening of Union values. In particular, the three institutions commit to using the findings of the annual monitoring reports in their assessment of whether there is a clear risk of a serious breach or existence of a serious and persistent breach by a Member State of Union values in the context of Article 7 TEU. Similarly, the Commission has committed to using the findings of the annual monitoring report as part of its assessment of whether an infringement procedure should be launched and whether there are generalised deficiencies as regards the rule of law in the Member States, in accordance with Article 5 of Regulation (EU) 2020/xxxx of the European Parliament and of the Council³. The three institutions agree that the annual monitoring reports should more generally guide their actions with respect to Union values.
- (9) In accordance with Article 295 of the Treaty on the Functioning of the European Union (TFEU), this Interinstitutional Agreement lays down arrangements only for the facilitation of cooperation between the European Parliament, the Council and the Commission and, in accordance with Article 13(2) TEU, those institutions are to act within the limits of the powers conferred on them by the Treaties and in conformity with the procedures, conditions and objectives set out therein. This Interinstitutional Agreement is without prejudice to the prerogatives of the Court of Justice of the European Union in the authentic interpretation of Union law,

HAVE AGREED AS FOLLOWS

I. OBJECTIVES

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

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

³ *[instead of xxx insert number of 2018/136(COD) in the text and the footnote and correct OJ reference in footnote]* Regulation (EU) .../... of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States OJ C ..., p.

1. The three institutions hereby agree to promote and strengthen respect for Union values, in accordance with Article 2 TEU, through coordination and cooperation.

II. ANNUAL MONITORING CYCLE

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

3. The three institutions agree to establish a permanent Interinstitutional Working Group on Union Values ('Working Group'). The Working Group shall facilitate coordination and cooperation among the three institutions in the Annual Monitoring Cycle. The Working Group shall periodically inform the public about its work.

4. A panel of independent experts shall advise the Working Group and the three institutions. In cooperation with the European Union Agency for Fundamental Rights, the panel of independent experts shall identify the main positive and negative developments in each Member State in an impartial manner and contribute to the development of a methodology for the Annual Report. The three institutions may consult the panel at any stage of the Annual Monitoring Cycle.

Preparatory stage

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

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

7. The Commission shall draw on all information at its disposal when preparing the Annual Report on the basis of the methodology agreed by the Working Group. Of particular relevance in that regard are reports and data from the European Union Agency for Fundamental Rights and other Union bodies, offices and agencies, the Council of Europe, including the Venice Commission and the Group of States against Corruption, and other international organisations that produce relevant studies and assessments. Where the Annual Report as drafted by the Commission diverges from the findings of the panel of independent experts, the European Parliament and the Council may request the Commission to explain its reasons to the Working Group.

8. Designated representatives of any of the three institutions, after coordinating within the

Working Group, shall have the possibility to conduct fact-finding visits to the Member States for the purpose of obtaining additional information and clarification about the state of Union values in the Member States concerned. The Commission shall incorporate the findings in the Annual Report.

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

Annual Report and recommendations

10. The Commission shall draft the Annual Report based on information gathered during the preparatory stage. The Annual Report should cover both positive and negative developments relating to Union values in the Member States. The Annual Report shall be impartial, based on objectively compiled evidence and respect equality of treatment between all Member States. The depth of reporting should reflect the gravity of the situation in question. The Annual Report shall include a section on infringement procedures concerning Union values.

11. The Annual Report shall contain recommendations specific to each Member State with the aim of strengthening the protection and promotion of Union values. The recommendations shall specify concrete targets and timeframes for implementation and take due account of any concerns expressed in reasoned proposals adopted under Article 7(1) TEU. The recommendations shall take account of the diversity of Member States' political and legal systems. Implementation of the recommendations shall be assessed in subsequent Annual Reports or urgent reports, as appropriate.

12. The Annual Report including its recommendations shall be published in September each year. The publication date shall be coordinated among the three institutions in the Working Group. Prior to its publication, the Commission shall present the draft Annual Report to the Working Group.

Follow-up

13. No later than two months from its publication date, the European Parliament and the Council shall discuss the content of the Annual Report. The discussions shall be made public. The Parliament and the Council shall adopt positions on the Annual Report by means of resolutions and conclusions. As part of the follow-up, the European Parliament and the Council shall assess and reflect on the extent to which previous recommendations have been implemented by the Member States, including implementation of relevant rulings of the Court of Justice of the European Union. The three institutions shall make use of their respective powers under the Treaties with a view to contributing to an effective follow-up. The three institutions shall endeavour to promote debate on the Annual Report in the Member States, in particular in national parliaments, in a timely manner.

14. On the basis of the findings of the Annual Report, the Commission shall, either on its own initiative or upon request by the European Parliament or the Council, enter into a dialogue with one or several Member States, including relevant authorities, with the aim of facilitating implementation of the recommendations. The Commission shall regularly report on the progress of the dialogue to the European Parliament and to the Council. The Commission may, at any time, including at the request of the Member State concerned, provide technical assistance to the Member States through different activities. The European Parliament shall

organise, in cooperation with national parliaments, an interparliamentary debate on the findings of the Annual Report.

15. The three institutions should consider the findings of the Annual Report in the determination of funding priorities. In particular, the Commission should include targeted support for national actors contributing to the protection and promotion of Union values, such as civil society and media organisations, when establishing relevant annual work programmes for the disbursement of Union funds under both shared and direct management.

16. Without prejudice to the powers of the Commission under Article 258 TFEU and Article 5 of Regulation (EU) 2020/xxxx and the right of one third of Member States, the European Parliament and the Commission to submit to the Council a reasoned proposal in accordance with Article 7(1) TEU, the three institutions agree that the Annual Reports should guide their actions concerning Union values.

17. The European Parliament and the Council may request the Commission to develop additional guidelines and indicators to address relevant horizontal issues that emerge from the Annual Monitoring Cycle.

Urgent report

18. Where the situation in one or several Member States portends imminent and serious damage to Union values, the Commission may, either on its own initiative or upon request by the European Parliament or the Council draft an urgent report on the situation. The Commission shall prepare the report in consultation with the Working Group. The Commission shall draft the urgent report without delay and make it public no later than two months following a request by the European Parliament or the Council. The findings of the urgent report shall be incorporated in the next Annual Report. The urgent report may specify recommendations aimed at addressing the imminent threat to Union values.

III. COMPLEMENTARITY WITH OTHER INSTRUMENTS

19. The three institutions acknowledge the complementary nature of the Annual Monitoring Cycle and other mechanisms for the protection and promotion of Union values, in particular the procedure laid down in Article 7 TEU, infringement procedures and Regulation (EU) 2020/xxxx. The three institutions commit to take account of the objectives of this Interinstitutional Agreement in Union policies.

20. Where the Annual Report identifies systemic deficiencies with respect to one or several Union values, the three institutions commit to take appropriate action, without delay, within their respective powers as conferred on them by the Treaties. The three institutions agree that the findings of the Annual Report shall serve as a basis for deciding whether to activate the procedure provided for in Article 7 TEU and launching infringement procedures concerning the protection of Union values. The three institutions shall consider, inter alia, whether Union policies requiring a high level of mutual trust can be sustained in light of systemic deficiencies identified in the Annual Report.

21. The Annual Monitoring Cycle established by this Agreement shall replace the mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption established by Commission Decision 2006/928/EC and the mechanism for cooperation and verification of

progress in Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime established by Commission Decision 2006/929/EC and shall fulfil, inter alia, the objectives pursued by those Decisions. The Commission therefore undertakes to repeal those Decisions at an appropriate time.

Common arrangements for Article 7 TEU

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

23. In order to strengthen the transparency and efficiency of the procedure laid down in Article 7 TEU, the three institutions agree to ensure that the institution initiating a proposal under Article 7(1) TEU shall be able to present the proposal in the Council and be fully informed and involved at all stages during the procedure. The three institutions agree to consult each other regularly in the Working Group regarding existing and potential procedures launched under Article 7 TEU.

24. The three institutions agree to work out modalities aimed at enhancing the effectiveness of the procedure laid down in Article 7 TEU. Such new modalities may include a regularised schedule of hearings and state-of-play sessions, recommendations aimed at redressing concerns expressed in the reasoned proposal and timelines for implementation.

Common arrangements for budgetary conditionality

25. The three institutions agree to use the findings of the Annual Report in their assessment of whether there are generalised deficiencies as regards the rule of law in the Member States, in accordance with Article 5 of Regulation (EU) 2020/xxxx, as well as in any other relevant assessment for the purposes of existing and future budgetary tools. Where the Annual Report identifies that a generalised deficiency as regards the rule of law in a Member State affects or risks affecting the principles of sound financial management or the protection of the financial interests of the Union, the Commission shall send a written notification to that Member State in accordance with Article 5(1) of Regulation (EU) 2020/xxxx.

IV. FINAL PROVISIONS

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

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

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

EXPLANATORY STATEMENT

Having been created in response to two world wars and periods of gross violation of the values of democracy, the rule of law and fundamental rights, the Union was founded exactly on these values as set out in Article 2 of the Treaty on European Union (TEU). These values are common to all Member States and underpin the entire functioning of the Union.

As set out in Article 49 TEU, respect for Union values is a fundamental condition for membership of the Union; as part of the accession process the Union assesses a candidate's adherence to Union values, including its commitment to democracy, the rule of law and fundamental rights, and membership will be withheld if such a commitment is not sufficiently clear in law and practice.

The last decade has seen shameless attacks against the rule of law, fundamental rights and other Union values in several Member States. Experience has sadly shown that the instruments available to the Union, including the procedure set out in Article 7 TEU, are ineffective and fragmented. It is commendable that the Commission has taken steps to produce an annual Rule of Law Report, the first time in 2020, but that Report does not cover several crucial subjects, notably democracy and fundamental rights. In addition, annual monitoring of the values referred to in Article 2 TEU should be anchored in a legally binding act of the Union, such as an interinstitutional agreement on the basis of Article 295 of the Treaty on the Functioning of the European Union. The draft report acknowledges that the Union remains structurally ill-equipped so far to tackle democratic, fundamental rights and rule of law violations and backsliding in the Member States. It is also regrettable that Council did not succeed to make meaningful progress in enforcing Union values in ongoing Article 7 TEU procedures which is in fact enabling continued divergence from the values provided for in Article 2 TEU.

In order to address the lack of a comprehensive mechanism that can holistically look at the state of democracy, the rule of law, fundamental rights and all other Union values, while at the same time being mindful of the need to treat all Member States in the same way and based on transparent and clear criteria, the rapporteur proposes that the Commission, the Council and Parliament jointly set up a mechanism to monitor all Member States annually with respect to their adherence to Union values by entering into an interinstitutional agreement to that effect.

The proposed interinstitutional agreement aims at laying down arrangements that will promote and strengthen respect for Union values through coordination and cooperation between Parliament, Council and Commission. This will entail an Annual Monitoring Cycle that will cover all Union values in all Member States on the basis of objective and transparent criteria and lead to an Annual Report. The cooperation and coordination will be done via an Interinstitutional Working Group that will be supported by a panel of independent experts. The Annual Report will not only look at negative developments but will also identify best practices and positive steps.

Mindful of the work being carried out by, among others, civil society, national human rights institutions and bodies of the Council of Europe and other international and Union bodies, the rapporteur proposes to clearly set out how their work shall inform the Annual Report and how such stakeholders shall be included. The draft interinstitutional agreement also takes into

account the existing mechanisms and procedures for the protection and promotion of Union values, in particular the procedure laid down in Article 7 TEU, infringement procedures and the draft Regulation on protection of the Union's budget in case of general deficiencies. In order to avoid duplication and ensure that all steps against Member States are taken on the same basis, the rapporteur proposes that the Annual Report be used as the basis for decision on whether to activate the Article 7 TEU procedure and in assessing whether any other instruments, including on budgetary conditionality, are appropriate.

The report is based on valuable input from the shadow rapporteurs and opinions from JURI and AFCD. The expectation is that the adoption of the draft resolution with the annexed draft interinstitutional agreement will lead to constructive negotiations with Council and Commission and ultimately to a strong EU Mechanism on Democracy, the Rule of Law and Fundamental Rights.

14.9.2020

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

with recommendations to the Commission on the Establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights
(2020/2072(INL))

Rapporteur for opinion (*): Tiemo Wölken

(Initiative – Rule 47 of the Rules of Procedure)

(*) Associated committee – Rule 57 of the Rules of Procedure

SUGGESTIONS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible:

- to incorporate the following suggestions into its motion for a resolution:
 - A. whereas the independence, quality and efficiency of national justice systems are crucial for the achievement of effective justice in civil, commercial and administrative cases for citizens and businesses; whereas the EU Justice Scoreboard provides substantive data on these parameters and represents a tool of comparison;
 - B. whereas according to Article 6 of the Treaty of the European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union (The Charter), which shall have the same legal value as the Treaties; whereas under the guidance of the European Court of Justice, the Charter is applied by Member States' judicial authorities only when implementing European legislation, however, it is important for the fostering of a common legal, judicial and rule of law culture that the rights as enshrined in the Charter are always taken into account including in civil and administrative proceedings;
- 1. Considers that the Union mechanism on Democracy, the Rule of Law and Fundamental Rights (DRF) should primarily aim at preventing and addressing any threat to any of the Union values enshrined in Article 2 TEU before any clear risk of infringement of these values arises in a Member State and Article 7 TEU should be triggered, while respecting the principles of subsidiarity and proportionality enshrined in Articles 4 and 5 TEU; recalls that failure to adhere to EU values may have a negative impact on the European project itself, particularly when it comes to the fundamental rights of European Union citizens, as this can diminish mutual trust between Member States; points out that the Union has no legally binding mechanism in place to regularly monitor the compliance

of Member States and Union institutions with Union values; considers that the main purpose of any such mechanism should be to prevent and address any clear risk of a serious breach of those values; considers, in this regard, that in any future proposal for an interinstitutional agreement for an Union Pact for DRF, emphasis should be put on preventive and corrective elements; highlights the need to ensure full objectivity when drawing up evaluation metrics and criteria as part of the Mechanism on DRF;

2. Considers it of paramount importance that the periodic review under the mechanism be based on the inextricable relationship between democracy, the rule of law and fundamental rights, encompassing all the aspects enlisted in Article 7 of the Parliament's proposal for a draft interinstitutional agreement on a European Union Pact on DRF; invites the Commission as Guardian of the Treaties to further substantiate its annual reporting on the application of the Charter by establishing a monitoring exercise and dialogue with the Member States within the framework of the future Mechanism on DRF with the aim of ensuring that national legislative and judicial measures and practices with regards to civil, administrative, commercial and procedural law are aligned with the provisions of the Charter;
3. Emphasises that all public authorities in the Member States must always act within the limits of the law under the control of an independent and impartial judiciary and reminds that the principle of legal certainty is essential to the confidence in the judicial systems and the rule of law; underlines that effective judicial protection by an independent and impartial judiciary, legal certainty, access to justice, prohibition of the arbitrary exercise of executive power and equality before the law are indispensable cornerstones of the rule of law; highlights that the requirement that courts be independent is of the essence to the fundamental right to effective judicial protection and a fair trial and to ensure that all rights, both material and procedural, deriving from Union law are protected; underlines that judicial independence is integral to judicial decision-making and a requirement resulting from the principle of effective legal protection set out in Article 19 TEU; reiterates its call to replace the existing partially applicable instruments for monitoring of those matters, such as the Cooperation and Verification Mechanism for Romania and Bulgaria, with a thorough and harmonised analysis applicable to all Member States;
4. Is worried that recent attacks on the rule of law have mainly consisted of attempts to jeopardise judicial independence calling into question the very legal, political and economic bases of how the European Union works; stresses that every national court is also a European court; urges the Commission to use all the instruments at its disposal against any attempt by national governments to endanger the independence of their judiciary and to timely inform Parliament of any such situation; points to the conclusion of the 2020 EU Justice Scoreboard that citizens accurately perceive the interference from government and politicians as the main reason for the lack of independence in their respective judicial systems; defends, in this context, that the principle of separation of powers entails that those investigating and deciding on disciplinary sanctions for judges should be appointed in a manner that is free from political influence and that judges who are members of existing national Councils for the Judiciary should be proposed, selected or elected by their peers;
5. Highlights the importance of the Sibiu Declaration of May 2019, in which the European leaders unanimously committed to continue to protect our way of life, democracy and

the rule of law in the European Union; to this end, invites the Commission, the European Council and the Council to prioritise action in this area, particularly in the aftermath of the COVID-19 crisis, which gave rise to autocratic and illiberal tendencies in several Member States;

6. Underlines that the system of requirements laid down in the context of the rule of law and based on the principle of democracy was originally created and incorporated into the Treaties in order to improve the democratic and efficient functioning of the EU institutions and thus enable them to perform their tasks within a single institutional framework;
7. Emphasises that the European Union should fulfil its role of examining its institutions to see whether their functioning is in compliance with the principle of democracy and the rule of law;
8. Highlights that training of justice professionals is essential to the proper implementation and application of Union law and thus to the strengthening of a European common legal culture based on the principles of mutual trust and the rule of law; considers that such training must be adequately funded and that the upcoming European judicial training strategy must put additional focus and resources on access to justice, promoting the rule of law and judicial independence and include training on skills and non-legal issues so that judges are better prepared to resist undue pressure; stresses in particular the need to ensure adequate funding for the sectoral ‘Justice’ and ‘Rights and Values’ Programmes in the upcoming multiannual financial framework, as these programmes aim to promote and ensure the development of a common European culture of judicial systems, the rule of law and EU values; calls on the Commission to develop common judicial training standards and promote institutional cooperation on judicial training in the EU; calls also on the Commission to further strengthen its awareness-raising activities concerning the Charter of Fundamental Rights of the European Union by promoting and funding Charter-focused training modules for national judges and legal practitioners;
9. Welcomes the fact that, until now, the European networks have played an essential role in promoting exchanges of ideas and good practices within the EU’s judicial system; urges the Commission to identify further measures to support these networks, such as the European Judicial Training Network, so that they can focus on projects that promote the rule of law, particularly in Member States facing these types of problems;
10. Condemns all forms of coercion, harassment, pressure, intimidation and/or physical or verbal violence against judges and prosecutors, especially in their private lives, at their homes or in their family settings; considers that judges and lawyers should be able to carry out their duties without public authorities or officials questioning their legitimacy, capability or independence;
11. Observes that considerable differences remain in the level of participation in training across Member States and types of legal professions; calls on the Commission to identify the reasons for those differences and address them in the upcoming European judicial training strategy and to assess the impact of those differences on the independence, quality and efficiency of Member States’ judiciaries;
12. Highlights the potential of judicial training for improving the dialogue between national

courts and the Court of Justice of the European Union, particularly through the use of references for a preliminary ruling and the interaction between the principles of subsidiarity and primacy of Union law anchored in Article 5 TEU; recalls that preliminary rulings clarify the manner in which the law of the European Union is to be applied; considers that recourse to this procedure allows for uniform interpretation and implementation of European legislation; encourages the Commission and the Member States to further promote and facilitate the dialogue between courts and legal practitioners, by fostering the regular exchange of information and best practices in order to strengthen and advance an EU area of justice based on democracy, the rule of law and fundamental rights; emphasises the need for closer cooperation among the bodies responsible for constitutional supervision; calls on the Commission to identify measures to promote and support the projects of the Conference of European Constitutional Courts;

13. Points to the conclusion of the 2020 EU Justice Scoreboard that there are still significant differences among Member States regarding the number of pending cases and that the building up of backlogs has increased in some Member States; notes that the protection of the rule of law is dependent on the efficiency of justice systems and that there should not be a two-speed Union when it comes to the delivery of justice;
14. Points to the complementarity that should exist between the EU Justice Scoreboard, which allows for an overview comparison between Member States' judicial systems, and the Annual Monitoring Report on Union Values as an in-depth qualitative mapping of the concrete situation in each Member State;
15. Notes the conclusion of the 2020 EU Justice Scoreboard that not all Member States offer training on ICT skills aimed at adapting to digitalisation and facilitating access to justice through new technologies as well as enabling judges to develop skills, such as court management and judicial ethics, and that the number of judges receiving such training is low in most countries; in this context, calls on the Commission to put emphasis on ICT trainings in the upcoming European judicial training strategy; further calls on the Commission to promote faster digitalisation at all levels of the Member States' judicial systems, the use of artificial intelligence as a means of improving access to justice, and to support standardisation and simplification of ICT tools; calls on the Commission to assess ICT tools and other means put in place by Member States at the disposal of judges and citizens for faster procedures and facilitating access to justice, including the possibility to follow court proceedings online, in particular of citizens with disabilities or belonging to vulnerable groups, such as national minorities and migrants; furthermore points to the conclusion of the 2020 EU Justice Scoreboard that nationwide data collection across all justice areas is still not possible in all Member States and recalls that having access to data is a valuable and necessary assessment tool;
16. Calls on the Commission to pay special attention to the implementation in Member States of adequately funded legal aid schemes and to the quality and affordability of the legal assistance provided, as well as to the length and transparency of legal proceedings, and to assess any obstacles currently preventing citizens without resources from effectively accessing justice; similarly, calls on the Commission to look at the recoverability of legal fees as it too can be a deterrent when it comes to accessing justice; points to the conclusion of the 2020 EU Justice Scoreboard that legal aid has become less accessible in some Member States over the years; stresses that the

availability of legal aid and the level of court fees can have a major impact on access to justice, as well as an dissuasive effect for people in poverty;

17. Notes that Article 41 European Union Charter on Fundamental Rights recognises the right to a good European Union administration; observes that with the development of the competences of the Union, citizens are increasingly confronted with the Union's institutions, bodies, offices and agencies, without always having their procedural Rights adequately protected; notes that the existing rules and principles on good administration are scattered across a wide variety of sources; stresses that in a Union under the rule of law it is necessary to ensure that procedural Rights and obligations are always adequately defined, developed and complied with; recalls its resolutions of 15 January 2013 and 9 June 2016 for an open, efficient and independent European Union administration; considers that the Union should lead by example and adopt an administrative procedural code and, in this regard, calls once more on the Commission to put forward a proposal for a regulation on administrative procedure for the European Union;
18. Invites the Commission to consider how collective action procedures are used in Member States and help improve the effectiveness and accessibility of their legal systems, namely in terms of efficiency of the procedures and costs;
19. Condemns any instances where court actions can be abused against the values and rights any legal system is called to protect; urges the Commission to take note of any cases where the introduction of court actions and the financial costs they entail for the defendant are being used in Member States for purposes that go against a rule of law culture, like, for instance, the existence of a free and plural media and independent academics, researchers, trade unionists, human rights defenders and civil society organisations; further calls on the Commission to take any action and measures necessary in line with the powers conferred to it by the Treaties in order to end such practices and ensure the accountability of those allowing such practices to occur;
20. Stresses that whistleblowers play a critical role in the protection of the rule of law in the EU and the Member States; calls on the Commission to closely monitor the transposition and application of Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law;
21. Believes that addressing the persisting gender gap and promoting diversity, including ethnical and cultural diversity, in the composition and structure of Member States' judicial systems is necessary to enhance their quality, impartiality, effectiveness and independence; points to the conclusion of the 2020 EU Justice Scoreboard that women still represent less than fifty percent of judges at the level of Supreme Courts in most Member States.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	10.9.2020
Result of final vote	+: 20 -: 3 0: 2
Members present for the final vote	Manon Aubry, Gunnar Beck, Geoffroy Didier, Angel Dzhambazki, Ibán García Del Blanco, Jean-Paul Garraud, Esteban González Pons, Mislav Kolakušić, Gilles Lebreton, Jiří Pospíšil, Franco Roberti, Marcos Ros Sempere, Liesje Schreinemacher, Stéphane Séjourné, Raffaele Stancanelli, Marie Toussaint, Adrián Vázquez Lázara, Axel Voss, Marion Walsmann, Tiemo Wölken, Lara Wolters, Javier Zarzalejos
Substitutes present for the final vote	Heidi Hautala, Ilhan Kyuchyuk, Emil Radev

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

20	+
EPP	Geoffroy Didier, Esteban González Pons, Jiří Pospíšil, Emil Radev, Axel Voss, Marion Walsmann, Javier Zarzalejos
S&D	Ibán García Del Blanco, Franco Roberti, Marcos Ros Sempere, Tiemo Wölken, Lara Wolters
RENEW	Ilhan Kyuchyuk, Liesje Schreinemacher, Stéphane Séjourné, Adrián Vázquez Lázara
VERTS/ALE	Heidi Hautala, Marie Toussaint
GUE/NGL	Manon Aubry
NI	Mislav Kolakušić

3	-
ID	Gunnar Beck, Jean-Paul Garraud, Gilles Lebreton

2	0
ECR	Angel Dzhambazki, Raffaele Stancanelli

Key to symbols:

+ : in favour

- : against

0 : abstention

11.9.2020

OPINION OF THE COMMITTEE ON CONSTITUTIONAL AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

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

Rapporteur for opinion: Włodzimierz Cimoszewicz(Initiative – Rule 47 of the Rules of Procedure)

SUGGESTIONS

The Committee on Constitutional Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible:

- to incorporate the following suggestions into its motion for a resolution:

1. Recalls that the EU architecture on the rule of law, democracy and fundamental rights has been in continuous development ever since the creation of the European Community (EC) and has been strengthened both by the jurisprudence of the Court of Justice and by amendments to that architecture brought about by successive treaties, and that, at present, the rule of law, democracy and fundamental rights have been elevated by the Lisbon Treaty from common principles to founding values of the Union; firmly believes that this process of development must be further advanced;
2. Recalls that the EU has codified in its accession criteria that EU membership requires that the candidate country has stability of institutions guaranteeing democracy, the rule of law, human rights, respect for and protection of minorities;
3. Notes the contradiction that whereas future Member States are vetted before they accede to the Union for their compliance with those EU values, codified in accession criteria, the EU lacks effective tools to enforce adherence to those foundational principles once they have become Member States;
4. Highlights that the lack of monitoring, evaluating and supervisory mechanisms for the EU's legal founding principles would not constitute a problem if Member States adhered to those principles after their accession to the European Union;
5. Considers that the situation with regard of the rule of law, democracy and fundamental rights has substantially deteriorated in a number of Member States, which is deeply regrettable; deplores that the COVID-19 pandemic has also been used in some Member States to further limit citizens' rights and fundamental freedoms as embedded in the Charter of fundamental rights; emphasises the need for continuous monitoring of any such measures with the view to reversing or discontinuing them once they are no longer strictly necessary in

order to preserve public health;

6. Stresses that the rule of law is intrinsically linked to respect for democracy and for fundamental rights and that therefore the three principles must be jointly monitored;

7. Underlines that the Union is founded on a set of common principles of democracy, the rule of law, and fundamental rights, as enshrined in Article 2 TEU; strongly believes there is a need for a monitoring mechanism that fully covers Article 2 of TEU and does not create a hierarchy of values, but encompasses all Union values, and ensures that they are properly assessed; points out in particular the importance of promoting and defending the rule of law which is a core value of the Union, which is a community based on law, and the obligation of Member States to ensure effective judicial protection;

8. Recalls that the EU still has no effective mechanisms to monitor, prevent and put an end to systemic threats to EU values in the Member States; notes in this regard, the Commission communication on further strengthening the Rule of Law within the Union and the actions set out therein; calls on the Commission to implement the proposed rule of law framework without undue delay; considers reflection on how to put in place in the future sanctions that could be effective, dissuasive and proportionate to be necessary;

9. Underlines the importance of designing an objective, evidence-based Mechanism that will assess democracy, the rule of law and respect for fundamental freedoms in a fair and impartial manner, acknowledges that the establishment of such mechanism must be linked to strengthening democratic functioning in the Union; regrets that previous requests for dialogue with particular governments have led to only limited solutions;

10. Recalls that the accession of the European Union to the European Convention for the protection of Human Rights and Fundamental Freedoms is a legal obligation under Article 6(2) TEU, reiterates the need for a swift conclusion of that accession process in order to ensure a consistent framework for human rights protection throughout Europe and to further strengthen the protection of fundamental rights and freedoms within the EU; calls therefore on the Commission to step up efforts to fully implement the Treaties and conclude the negotiations without undue delay;

11. Insists that the Union institutions are to practise mutual sincere cooperation in line with Article 13(2) TEU and therefore should all contribute, without political bias, to the defence of the Union values in accordance with the provisions set out in the Treaties; calls for such activities to be governed by an interinstitutional agreement and for existing mechanisms to be consolidated, while setting out annual reports of the situations in all Member States based on the assessment of a panel of independent experts and determining preventive and corrective actions;

12. Believes that for effective implementation, in accordance with Article 295 TFEU, the future Interinstitutional Agreement on Reinforcing Union Values, should also establish clear procedures for coordinating cooperation between institutions in this field; notes that unnecessary creation of new structures or duplication should be avoided and integration and incorporation of existing instruments should be the preferred option;

13. Stresses the need for a monitoring system that will follow the situations closely in all Member States; calls for the inclusion of a debate on the conclusions of the annual report in the Council and in an inter-parliamentary conference organised by the Parliament in an

Annual Monitoring Cycle;

14. Insists that the Annual Monitoring Cycle should be governed at all its stages, by the principles of transparency, impartiality, and equality between Member States, be based on objective evidence, measurable indicators and criteria, protected from any malicious disinformation strategy, and lead to effective and realistic measures, such as infringement procedures or sanctions where relevant;

15. Stresses that the Council of Europe plays a crucial role in monitoring the respect of democracy, fundamental rights and the rule of law in Europe. Insists therefore that consultations with the Council and foremost the Venice Commission should take place on a regular basis and that their assessment should inform the evaluations and recommendations of the new joint monitoring mechanism.

16. Recalls that while in the EU legal framework the rule of law is explicitly mentioned as a value which is common to the EU and its Member States (Article 2 TEU), the EU Treaties do not provide a definition of the notion; points out that the rule of law is a complex and in many aspects vague concept and therefore the setup of the Annual Monitoring Cycle would require a consensus on the principles of the rule of law common to all Member States; considers that the strict minimum of the meaning of the rule of law is a system where laws are applied and enforced and that in the definition of the concept the Commission should use a broad definition, drawing on principles set out in the case-law of the European Court of Justice and of the European Court of Human Rights, as well as the concepts and principles set out in the Rule of Law checklist of the Venice Commission;

17. Believes that, both in the process of establishment of the Interinstitutional Agreement and in the operation of the Annual Monitoring Cycle, the institutions should, in accordance with Article 11 TEU, maintain an open dialogue with representatives of civil society and stakeholders and their views and contributions should be made public in that process and included in the annual reports; the Annual Monitoring Cycle should therefore provide for regular and open consultations with organised civil society at all stages of the Annual Monitoring Cycle; suggests that other EU institutions, bodies and agencies, international organisations, judicial networks and associations, academia and think tanks, as well as national parliaments of the Member States, should contribute with their input, where relevant;

18. Points out that in the case of Romania and Bulgaria a Cooperation and Verification Mechanism (CVM) was set up when they joined the EU on 1 January 2007 as a transitional measure to assist the two countries to remedy shortcomings in the fields of judicial reform, corruption and organised crime and that 13 years after their accession the mechanism is still applied in case of both countries; considers that the Annual Monitoring Cycle, which would apply equally to all member States of the European Union should replace the CVM; considers that the benchmarks set up by the European Commission for assessing progress within the CVM could be used within the framework of the Annual Monitoring Cycle;

19. Recognises that in the Annual Monitoring Cycle, the Member States should be given the opportunity to present their positions in full, with respect to the equality of all Member States while not hampering the efficiency of the procedure, underlines the importance of Member States' active and responsible approach to the Annual Monitoring Cycle;

20. Stresses that any mechanism is incomplete without positive incentives such as concrete funding to support civil society organisations working on advancing fundamental rights, the rule of law and democratic principles; highlights therefore that in order to ensure success in defence of EU values, appropriate financial support should be established for civil society

organisations which defend democracy, rule of law and fundamental rights both at national and regional level, as provided for in the proposal for the Regulation on the Rights and Values programme, and that overall support should be given to individuals reporting breaches of the EU values; emphasises the importance of upholding the Union Values Strand in the Rights and Values programme in the MFF 2021-2027;

21. Insists that the Annual Monitoring Cycle be fully integrated with the Regulation on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States¹, linking budget transfers to the results of the monitoring process, while protecting the legitimate interests of the final recipients and beneficiaries of Union funds; considers that it is necessary for, that Regulation to include criteria and indicators that are sufficiently detailed and measurable to enable breaches of the rule of law to be assessed and sanctions to be triggered;

22. Considers that the assessments which are carried out in the context of the Annual Monitoring Cycle should inform Commission decisions including providing recommendations about whether to launch systemic infringement procedures; calls on the Commission to make full use of its power in this regard;

23. Underlines furthermore that while considerable delay in rendering judgments, in particular in the rule of law-related cases, may result in irreversible and severe harm caused by rule of law backsliding, more consideration should be given to strengthening the Court of Justice of the European Union's potential and role in defending the rule of law; considers that such an option could be to provide for an accelerated procedure in all such cases, systematically applying interim relief; calls on the Commission to systematically request the Court to grant interim measures under Article 279 TFEU in the urgent cases related to the Union values, in particular where the absence of such measures is susceptible to cause irreparable harm to EU citizens or to the EU legal order, and to submit requests seeking that a fine be imposed in cases of non-compliance with the interim measures pursuant to Article 260 TFEU;

24. Insists that, alongside the annual cycle, in specific exceptional cases justified by the gravity of the possible consequences of democracy, rule of law and fundamental rights violations and the scale of its effects, it should be possible for the European Parliament or the Council to request the Commission to draft an urgent report on the situation;

25. Highlights that the Conference on the Future of Europe provides a momentum for better understanding the need to protect and address the crisis Union founding values and could therefore provide the opportunity to discuss embedding in the Treaties a process for their more operational enforcement; underlines that the Conference will bring new impetus to European discussion on strengthening European democracy;

26. Proposes that the effectiveness of the Article 7 by enhanced by ensuring the presence of the Parliament in Article 7 hearings, and in the event of Treaty changes being made in the future, by removing the requirement for unanimity and reinforcing the sanction mechanism;

27. Demands that the Court of Justice of the European Union be strengthened by introducing an instrument of individual complaint for citizens; underlines the need to establish a

¹ Proposal for a Regulation on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States COM/2018/324 final

mechanism for the arbitration of constitutional matters; proposes that these topics be debated during the course of the upcoming Conference on the Future of Europe;

28. Calls for the revision of Council Regulation (EC) No 168/2007 of 15 February 2007 on the Fundamental Rights Agency, with a view to strengthening that Agency's mandate and its capacity to act in defence of the values enshrined in Article 2 TEU, and to deliver non-binding opinions on draft EU legislation on its own initiative, and to promote systematic consultations with the Agency.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	1.9.2020
Result of final vote	+ : 22 - : 5 0 : 1
Members present for the final vote	Gerolf Annemans, Gabriele Bischoff, Damian Boeselager, Fabio Massimo Castaldo, Włodzimierz Cimoszewicz, Gwendoline Delbos-Corfield, Daniel Freund, Charles Goerens, Esteban González Pons, Brice Hortefeux, Laura Huhtasaari, Giuliano Pisapia, Paulo Rangel, Antonio Maria Rinaldi, Domènec Ruiz Devesa, Jacek Saryusz-Wolski, Helmut Scholz, Pedro Silva Pereira, Antonio Tajani, László Trócsányi, Mihai Tudose, Loránt Vincze, Rainer Wieland
Substitutes present for the final vote	Gilles Boyer, Jorge Buxadé Villalba, Cristian Ghinea, Maite Pagazaurtundúa, Nikolaj Villumsen

Final vote by roll call in committee for opinion

22	+
GUE/NGL	Helmut Scholz, Nikolaj Villumsen
NI	Fabio Massimo Castaldo
PPE	Esteban González Pons, Brice Hortefeux, Paulo Rangel, Antonio Tajani, Loránt Vincze, Rainer Wieland
RENEW	Gilles Boyer, Cristian Ghinea, Charles Goerens, Maite Pagazaurtundúa
S&D	Gabriele Bischoff, Włodzimierz Cimoszewicz, Giuliano Pisapia, Domènec Ruiz Devesa, Pedro Silva Pereira, Mihai Tudose
VERTS/ALE	Damian Boeselager, Gwendoline Delbos Corfield, Daniel Freund

5	-
ECR	Jorge Buxadé Villalba, Jacek Saryusz Wolski
ID	Gerolf Annemans, Laura Huhtasaari, Antonio Maria Rinaldi

1	0
PPE	László Trócsányi

INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

Date adopted	22.9.2020
Result of final vote	+: 51 -: 14 0: 1
Members present for the final vote	Magdalena Adamowicz, Malik Azmani, Katarina Barley, Fernando Barrena Arza, Pietro Bartolo, Nicolas Bay, Vladimír Bilčík, Vasile Blaga, Ioan-Rareş Bogdan, Patrick Breyer, Saskia Bricmont, Joachim Stanisław Brudziński, Jorge Buxadé Villalba, Damien Carême, Anna Júlia Donáth, Lena Düpont, Cornelia Ernst, Laura Ferrara, Nicolaus Fest, Jean-Paul Garraud, Maria Grapini, Sylvie Guillaume, Andrzej Halicki, Balázs Hidvéghi, Evin Incir, Sophia in 't Veld, Lívia Járóka, Marina Kaljurand, Fabienne Keller, Peter Kofod, Moritz Körner, Alice Kuhnke, Jeroen Lenaers, Juan Fernando López Aguilar, Nuno Melo, Roberta Metsola, Nadine Morano, Javier Moreno Sánchez, Maite Pagazaurtundúa, Nicola Procaccini, Paulo Rangel, Diana Riba i Giner, Ralf Seekatz, Michal Šimečka, Birgit Sippel, Sylwia Spurek, Tineke Strik, Ramona Strugariu, Annalisa Tardino, Tomas Tobé, Dragoş Tudorache, Milan Uhrík, Tom Vandendriessche, Bettina Vollath, Jadwiga Wiśniewska, Elena Yoncheva
Substitutes present for the final vote	Delara Burkhardt, Gwendoline Delbos-Corfield, Kostas Papadakis, Kris Peeters, Anne-Sophie Pelletier, Rob Rooker, Paul Tang, Tomáš Zdechovský
Substitutes under Rule 209(7) present for the final vote	Isabel Benjumea Benjumea

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

51	+
PPE	Magdalena ADAMOWICZ, Isabel BENJUMEA BENJUMEA, Vladimír BILČÍK, Vasile BLAGA, Ioan-Rareș BOGDAN, Lena DÚPONT, Andrzej HALICKI, Jeroen LENAERS, Nuno MELO, Roberta METSOLA, Nadine MORANO, Kris PEETERS, Paulo RANGEL, Ralf SEEKATZ, Tomas TOBÉ, Tomáš ZDECHOVSKÝ
S&D	Katarina BARLEY, Pietro BARTOLO, Delara BURKHARDT, Maria GRAPINI, Sylvie GUILLAUME, Evin INCIR, Marina KALJURAND, Juan Fernando LÓPEZ AGUILAR, Javier MORENO SÁNCHEZ, Birgit SIPPEL, Sylwia SPUREK, Paul TANG, Bettina VOLLATH, Elena YONCHEVA
Renew	Malik AZMANI, Anna Júlia DONÁTH, Sophia in 't VELD, Fabienne KELLER, Moritz KÖRNER, Maite PAGAZAURTUNDÚA, Michal ŠIMEČKA, Ramona STRUGARIU, Dragoș TUDORACHE
Greens/EFA	Patrick BREYER, Saskia BRICMONT, Damien CARÊME, Gwendoline DELBOS-CORFIELD, Alice KUHNKE, Diana RIBA I GINER, Tineke STRIK
GUE	Pernando BARRENA ARZA, Cornelia ERNST, Anne-Sophie PELLETIER, Sira REGO
NI	Laura FERRARA

14	-
PPE	Balázs HIDVÉGGHI, Livia JÁRÓKA
ID	Nicolas BAY, Nicolaus FEST, Jean-Paul GARRAUD, Annalisa TARDINO, Tom VANDENDRIESSCHE
ECR	Joachim Stanisław BRUDZIŃSKI, Jorge BUXADÉ VILLALBA, Nicola PROCACCINI, Rob ROOKEN, Jadwiga WIŚNIEWSKA
NI	Kostas PAPADAKIS, Milan UHRÍK

1	0
ID	Peter KOFOD

Key to symbols:

+ : in favour

- : against

0 : abstention