Thursday 30 March 2023

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(Resolutions, recommendations and opinions)

RESOLUTIONS

EUROPEAN PARLIAMENT

P9_TA(2023)0094

2022 Rule of Law Report — The Rule of Law situation in the European Union

European Parliament resolution of 30 March 2023 on the 2022 Rule of Law Report — the rule of law situation in the European Union (2022/2898(RSP))

(2023/C 341/01)

The European Parliament,

— having regard to the Treaty on European Union (TEU), in particular Articles 2, 3(1), 3(3), second subparagraph, 4(3) and Articles 5, 6, 7, 11, 19 and 49 thereof,

— having regard to the Treaty on the Functioning of the European Union, and in particular to the articles thereof relating to respect for, and the protection and promotion of, democracy, the rule of law and fundamental rights in the Union, including Articles 70, 258, 259, 260, 263, 265 and 267,

— 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 Commission communication of 13 July 2022 on the 2022 Rule of Law Report — the rule of law situation in the European Union (COM(2022)0500),

— 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 [1] (the Rule of Law Conditionality Regulation),

— having regard to Regulation (EU) 2021/692 of the European Parliament and of the Council of 28 April 2021 establishing the Citizens, Equality, Rights and Values programme and repealing Regulation (EU) No 1381/2013 of the European Parliament and of the Council and Council Regulation (EU) No 390/2014 [2],

— having regard to the Universal Declaration of Human Rights,

— having regard to the UN instruments on the protection of human rights and fundamental freedoms, and the recommendations and reports of the UN Universal Periodic Review, as well as the case-law of the UN treaty bodies and the special procedures of the Human Rights Council,

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[1] OJ L 433 I, 22.12.2020, p. 1.
[2] OJ L 156, 5.5.2021, p. 1.

— 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 (OSCE),

— 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, opinions 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 and the Council conclusions of 8 July 2020 on EU priorities for cooperation with the Council of Europe 2020-2022,

— having regard to the Commission's reasoned 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, issued in accordance with Article 7(1) TEU (COM(2017)0835),

— having regard to the reports of the European Union Agency for Fundamental Rights (FRA) of 19 July 2022 entitled 'Europe's civil society: still under pressure', of 8 June 2022 entitled 'Fundamental Rights Report 2022', of 19 August 2022 entitled 'Protecting civic space in the EU' and of 3 November 2022 entitled 'Antisemitism — Overview of antisemitic incidents recorded in the European Union 2011-2021', and its other reports, data and tools, in particular the European Union Fundamental Rights Information System (EFRIS),

— 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 rights ([3]),

— having regard to its resolution of 1 March 2018 on the Commission's decision to activate Article 7(1) TEU as regards the situation in Poland ([4]),

— having regard 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 level ([5]),

— having regard to its resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) TEU, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded ([6]),

— 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 rights ([7]),

— having regard to its resolution of 7 October 2020 on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights ([8]),

— having regard to its resolution of 13 November 2020 on the impact of COVID-19 measures on democracy, the rule of law and fundamental rights ([9]),

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([3]) OJ C 215, 19.6.2018, p. 162.
([4]) OJ C 129, 5.4.2019, p. 13.
([5]) OJ C 390, 18.11.2019, p. 117.
([6]) OJ C 433, 23.12.2019, p. 66.
([7]) OJ C 363, 28.10.2020, p. 45.
([8]) OJ C 395, 29.9.2021, p. 2.
([9]) OJ C 415, 13.10.2021, p. 36.

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— having regard to its resolution of 10 June 2021 on the rule of law situation in the European Union and the application of the Conditionality Regulation (EU, Euratom) 2020/2092 ([10]),

— having regard to its resolution of 24 June 2021 on the Commission's 2020 Rule of Law Report ([11]),

— having regard to its resolution of 8 July 2021 on the creation of guidelines for the application of the general regime of conditionality for the protection of the Union budget ([12]),

— having regard to its resolution of 11 November 2021 on strengthening democracy and media freedom and pluralism in the EU: the undue use of actions under civil and criminal law to silence journalists, NGOs and civil society ([13]),

— having regard to its resolution of 15 December 2021 on the evaluation of preventive measures for avoiding corruption, irregular spending and misuse of EU and national funds in case of emergency funds and crisis-related spending areas ([14]),

— having regard to its resolution of 8 March 2022 on the shrinking space for civil society in Europe ([15]),

— having regard to its resolution of 10 March 2022 on the rule of law and the consequences of the ECJ ruling ([16]),

— having regard to its resolution of 19 May 2022 on the Commission's 2021 Rule of Law Report ([17]),

— having regard to its resolution of 9 June 2022 on the rule of law and the potential approval of the Polish national recovery plan (RRF) ([18]),

— having regard to its resolution of 15 September 2022 on the proposal for a Council decision 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 ([19]),

— having regard to its resolution of 15 September 2022 on the situation of fundamental rights in the European Union in 2020 and 2021 ([20]),

— having regard to its resolution of 20 October 2022 on the rule of law in Malta, five years after the assassination of Daphne Caruana Galizia ([21]),

— having regard to its resolution of 20 October 2022 on growing hate crimes against LGBTIQ+ people across Europe in light of the recent homophobic murder in Slovakia ([22]),

— having regard to its resolution of 10 November 2022 on racial justice, non-discrimination and anti-racism in the EU ([23]),

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([10]) OJ C 67, 8.2.2022, p. 86.
([11]) OJ C 81, 18.2.2022, p. 27.
([12]) OJ C 99, 1.3.2022, p. 146.
([13]) OJ C 205, 20.5.2022, p. 2.
([14]) OJ C 251, 30.6.2022, p. 48.
([15]) OJ C 347, 9.9.2022, p. 2.
([16]) OJ C 347, 9.9.2022, p. 168.
([17]) OJ C 479, 16.12.2022, p. 18.
([18]) OJ C 493, 27.12.2022, p. 108.
([19]) Texts adopted, P9_TA(2022)0324.
([20]) Texts adopted, P9_TA(2022)0325.
([21]) Texts adopted, P9_TA(2022)0371.
([22]) Texts adopted, P9_TA(2022)0372.
([23]) Texts adopted, P9_TA(2022)0389.

— having regard to its resolution of 24 November 2022 on the assessment of Hungary's compliance with the rule of law conditions under the Conditionality Regulation and state of play of the Hungarian RRP ([24]),

— having regard to the Conference on the Future of Europe's report on the final outcome,

— having regard to Rule 132(2) of its Rules of Procedure,

— having regard to the motion for a resolution of the Committee on Civil Liberties, Justice and Home Affairs,

A. whereas the Union is founded on the common values enshrined in Article 2 TEU 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 — values that are common to the EU Member States and to which candidate countries must adhere in order to join the Union as part of the Copenhagen criteria, which cannot be disregarded or reinterpreted after accession; whereas democracy, the rule of law and fundamental rights are mutually reinforcing values which, when undermined, may pose a systemic threat to the Union and the rights and freedoms of its citizens; whereas respect for the rule of law is binding on the Union as a whole and its Member States at all levels of governance, including subnational entities;

B. whereas the Conference on the Future of Europe clearly expressed a desire for the EU to systematically uphold the rule of law across all Member States, to protect citizens' fundamental rights and to retain the EU's credibility when promoting its values within the EU and abroad;

C. whereas the principle of sincere cooperation in Article 4(3) TEU places an obligation on the Union and the Member States to assist each other in carrying out obligations which arise from the Treaties in full mutual respect, and on Member States to take any appropriate measure, general or in particular, to ensure the fulfilment of the obligations arising from the Treaties or resulting from the acts of the institutions of the Union;

D. whereas the addition of concrete and legally binding country-specific recommendations would help Member States to prevent, detect and address challenges and backsliding on the rule of law;

E. whereas the Member States introduced emergency measures to respond to the COVID-19 pandemic; whereas, in order to be lawful, these needed to respect the principles of necessity and proportionality when restricting fundamental rights or basic freedoms; whereas some governments have used the extraordinary measures as an excuse to weaken democratic checks and balances;

F. whereas it is necessary to strengthen and streamline existing mechanisms and to develop a single comprehensive EU mechanism to protect democracy, the rule of law and fundamental rights effectively and to ensure that Article 2 TEU values are upheld throughout the Union as well as promoted among candidate countries, albeit with different monitoring regimes, so that Member States are prevented from developing domestic law that runs counter to the protection of Article 2 TEU; whereas the Commission and the Council have continued to dismiss the need for an interinstitutional agreement on an EU mechanism on democracy, the rule of law and fundamental rights;

G. whereas since May 2022, Parliament has also been addressing the rule of law situation in Hungary, Malta and Poland in its resolutions; whereas Parliament's Committee on Civil Liberties, Justice and Home Affairs' Democracy, Rule of Law and Fundamental Rights Monitoring Group has also addressed certain issues in Bulgaria, Greece, Slovakia, Slovenia and Spain;

Overall assessment of the report

1. Welcomes the Commission's third annual rule of law report as part of the Commission's rule of law toolbox; considers that the report represents a step towards a coherent mechanism to uphold the Union values enshrined in Article 2 TEU, and that the key challenge now is to make effective and consistent use of the existing toolbox in order to protect and enforce these values;

([24]) Texts adopted, P9_TA(2022)0422.

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2. Notes improvements compared to previous annual reports, such as the addition of country-specific recommendations; welcomes also the special attention paid to the public service media and to measures to ensure the transparency of media ownership, including the Media Pluralism Monitor ranking, the assessment of the implementation of the rulings of the European Court of Human Rights by the Member States, the attention paid to political party financing, the focus on equality bodies, national human rights institutions and ombudspersons, the monitoring of high-level appointments in the justice system and the increased attention paid to the legal profession including judges, notaries and attorneys;

3. Encourages the Commission to deepen its participation in public debates at local, regional and national levels and to invest more in awareness-raising about the Union values and applicable tools, including the annual report, particularly in the countries where serious concerns exist; supports the Commission's efforts to upgrade the reporting methodology and considers that the expansion of scope of the report should go hand in hand with an increase in resources; believes that more time should be devoted to the Commission's country visits, including on site;

4. Regrets the worrying trends with respect to freedom of the press, media pluralism and the safety of journalists in several Member States and calls on the Commission to closely monitor the situation of the media in future editions of the report, including media ownership and the funding of public service media, as well as to provide recommendations and follow-up through adequate policy and legal measures; condemns disruptive political interference in editorial decisions, abusive lawsuits (SLAPPs) and the illegal surveillance of journalists, especially through the use of spyware, and affirms that journalists will continue to be at risk as long as institutions remain unable or unwilling to prosecute the corruption journalists expose;

5. Stresses the special role that the national councils for the judiciary play in protecting the independence of courts and judges against political interference; deplores the continued politicisation of these bodies in some countries, as well as the devastating effect this has on the independence and integrity of their justice systems;

6. Acknowledges the important role of the European Public Prosecutor's Office (EPPO) in safeguarding the rule of law and in combating corruption in the Union, and encourages the Commission to closely monitor Member States' level of cooperation with the EPPO in subsequent reports; calls on the Member States which have not yet done so to join the EPPO;

7. Deplores the fact that the Commission did not address in full the recommendations made by Parliament in its previous resolutions ([25]) and calls on the Commission to take steps to address them;

8. Is concerned about the lack of consistency between the horizontal report and the recommendations, in particular that the country-specific concerns expressed in the horizontal report do not fully correspond to the country-specific recommendations; asks for a clear link to be established between the concerns expressed and the recommendations put forward;

9. Highlights that the intentional targeting of minority groups' rights in some Member States has created and established momentum elsewhere, as can be evidenced by backtracking on the rights of women, including a deterioration in the situation in relation to sexual and reproductive health and rights, and of LGBTIQ+ persons, migrants and other minority groups; calls for a summary of the implementation of the EU anti-racism action plan in the report's country chapters and an analysis of how the backlash in the rule of law affects different minority groups;

10. Condemns the instructions given by the Italian Government to the City Council of Milan to stop registering the children of same-sex parents; believes that this decision will inevitably lead to discrimination against not only same-sex couples, but also primarily their children; considers this action to be a direct breach of children's rights, as listed in the 1989 UN Convention on the Rights of the Child; is concerned that this decision is part of a broader attack against the LGBTQI+ community in Italy; calls on the Italian Government to immediately rescind its decision;

([25]) Resolutions of 24 June 2021 on the Commission's 2020 Rule of Law Report and of 19 May 2022 on the Commission's 2021 Rule of Law Report.

11. Calls on the Commission to use the relevant elements of the methodology applied in the annual rule of law reports in its evaluation of all candidate and potential candidate countries for EU accession;

Country-specific recommendations

12. Welcomes the addition of country-specific recommendations, as a follow-up to the reiterated calls from Parliament and civil society to this end; recalls that the annual reports serve as a basis for informed discussions on the rule of law situation in Member States and in EU institutions; acknowledges that these country-specific recommendations help to target specific issues with a view to achieving real improvements in Member States; deplores, however, the fact that the recommendations are not binding; calls on the Commission to develop the annual rule of law cycle further by assessing the implementation of the country-specific recommendations in the next annual report, with specific benchmarks and a clear timeline for implementation, clearly indicating progress and regression;

13. Regrets the fact that many of the recommendations are too vague and lack the specificity required to ensure effective implementation; reiterates the need to set out a timeline for the implementation of the recommendations and to detail the possible consequences in the event of non-compliance;

14. Urges the Commission to initiate the relevant procedures without hesitation or delay, especially when governments show no willingness to comply with the country-specific recommendations;

15. Commends the efforts by the Commission to engage better with national stakeholders; recognises civil society as an essential actor for the rule of law, with an important role to play in the follow-up to the annual report and its implementation; calls on the Commission to pursue the consistent and meaningful involvement of civil society in both the preparation of and the follow-up to the report at national level, in cooperation with the FRA, including by allowing sufficient time to contribute to the process and reaching out extensively to civil society organisations (CSOs) in country visits; calls on the Commission to secure a more inclusive, transparent and user-friendly approach to the cycle, in order to ensure meaningful stakeholder participation and accountability throughout the process; calls for a more systematic presentation of the contributions made by civil society and professional organisations, including from the judiciary, in order to supplement the information provided by the governments of the Member States;

16. Acknowledges the crucial role civil society and a healthy civic space play in upholding and protecting the rule of law, and reiterates its call for a separate chapter to be dedicated to the condition of civil society in Member States; stresses the links between civic space and rule of law issues; calls on the Commission to further invest, through dedicated funding, in building capacity for CSOs to monitor and report on the rule of law situation in the Member States, and to ensure adequate protection to civil society engaging in this process; is concerned that the biased distribution of funding in some countries impacts CSOs working on promoting the rights of vulnerable groups or working, more generally, for causes that governments do not support; encourages a thorough assessment of these issues in all countries covered by the report and stresses the need for country recommendations to address these issues; urges the Commission to consider direct management of EU funds, also in order to ensure that end beneficiaries, including CSOs working with vulnerable groups, receive the EU funding intended for them; calls on the Commission to monitor the impact of the Citizens, Equality, Rights and Values Programme on civil society in the Member States; calls on the Council and the Commission to provide adequate funding for independent and European-wide quality journalism at national, regional and local levels;

17. Stresses the need for country-specific recommendations on the national responses to the COVID-19 pandemic and their impact on democracy, the rule of law and fundamental rights within the Union; calls on the Commission to continue monitoring and reporting on these national processes, including best practices;

18. Regrets the absence of country-specific recommendations related to Member States' unlawful use of surveillance spyware technologies, such as Pegasus or Predator, in spite of the concrete revelations on, and increasing evidence of, their use against journalists, politicians, law enforcement officials, diplomats, lawyers, business people, civil society actors and other actors; is extremely concerned about the related risks to civil society, democracy, the rule of law and respect for

fundamental rights posed by national governments' uncontrolled use of spyware; regrets the lack of cooperation by some Member States' authorities with Parliament's Committee of Inquiry to investigate the use of Pegasus and equivalent surveillance spyware;

Outstanding calls from Parliament on the annual rule of law report

19. Reiterates its call on the Commission to expand the scope of its reporting to cover all values enshrined in Article 2 TEU; reiterates the existence of an intrinsic link between the rule of law, democracy and fundamental rights; urges the Commission and the Council to immediately enter into negotiations with Parliament on an interinstitutional agreement on an EU mechanism on democracy, the rule of law and fundamental rights, which should cover the full scope of Article 2 TEU values; deplores the fact that the human rights violations against migrants which are taking place at the EU's external borders are not part of the assessment made by the Commission;

20. Calls for the inclusion in the annual report of important missing elements of the Venice Commission's 2016 Rule of Law Checklist, such as prevention of the abuse of powers, equality before the law and non-discrimination;

21. Welcomes the step taken by the Commission of including in its report the implementation of European Court of Human Rights decisions by Member States as an indicator of quality and respect for the rule of law; calls on the Commission to extend this analysis to include the proper implementation process of these rulings at national level;

22. Considers that cooperation with the Council of Europe and other international organisations is of particular relevance for advancing democracy, the rule of law and fundamental rights within the EU; calls on the Commission to analyse individual communications by UN Treaty Bodies;

23. Reiterates its call on the Commission to include a new separate chapter on the Union's institutions, which would assess the situation in relation to the separation of powers, the anti-corruption framework, accountability and checks and balances;

24. Strongly regrets the inability of the Council to make meaningful progress in the ongoing Article 7(1) TEU procedures; urges the Council to address all new developments affecting the rule of law, democracy and fundamental rights; reiterates its call on the Council to address recommendations in the framework of this procedure, underlining that any further delaying of such action would amount to a breach of the rule of law principle by the Council itself; insists that Parliament's role and competences be respected;

25. Strongly condemns Member States' authorities that refuse to engage in the Commission's annual Rule of Law Dialogue;

26. Regrets the fact that the report fails to clearly recognise the deliberate process of backsliding on the rule of law in several Member States; calls on the Commission to make clear that when the Article 2 TEU values are systematically, deliberately, gravely and permanently violated over a period of time, Member States could fail to meet all criteria that define a democracy; recalls that Parliament has already indicated that Hungary has turned into a hybrid regime of electoral autocracy, according to the relevant indices; reiterates the recommendations to the Commission to differentiate between systemic and individual breaches, to avoid the risk of trivialising the most serious breaches of the rule of law and to accompany the country-specific recommendations with deadlines for implementation, targets and concrete actions to be taken;

27. Recalls its position regarding the involvement of a panel of independent experts to advise the three institutions, in close cooperation with the FRA; repeats its call on the Commission to invite the FRA to provide methodological advice and conduct comparative research to add detail in key areas of the annual report, given the intrinsic links between fundamental rights and the rule of law; asks its Bureau, in light of the reluctance of the Commission and the Council, to organise a public procurement procedure in order to create such a panel under the auspices of Parliament, in line with the commitment undertaken in its previous resolutions ([26]), in order to advise Parliament on compliance with Article 2 TEU values in different Member States and to show by example how such a panel could work in practice;

([26]) Resolutions of 24 June 2021 on the Commission's 2020 Rule of Law Report and of 19 May 2022 on the Commission's 2021 Rule of Law Report.

28. Reiterates that the annual rule of law cycle should serve as input for the activation of other instruments to respond to threats or breaches of the rule of law at national level, such as Article 7 TEU, the Rule of Law Conditionality Regulation, the rule of law framework, infringement procedures, including expedited procedures, applications for interim procedures before the Court of Justice of the European Union (CJEU) and actions regarding non-implementation of CJEU judgments, or instruments under EU financial legislation; reiterates its call on the Commission to create a direct link between the annual rule of law reports, among other sources, and the Rule of Law Conditionality Mechanism;

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29. Instructs its President to forward this resolution to the Council, the Commission, the European Union Agency for Fundamental Rights, the Council of Europe, the Organization for Security and Co-operation in Europe, the United Nations and the governments and parliaments of the Member States.