

UNIVERSITY OF MAASTRICHT

EUROPEAN MASTER'S PROGRAMME IN HUMAN RIGHTS AND DEMOCRATISATION

A.Y. 2019/2020

## **THE EUROPEAN VALUES AND THE EUROPEAN PARLIAMENT**

The enforcement of article 2 TEU and the promotion of the rule of law, democracy, and respect for fundamental rights.

Marguerite Arnoux Bellavitis

Supervisor: Dr Diane Fromage

**Abstract:**

The debate surrounding the compliance with the European values stated in article 2 TEU, and especially the rule of law, has been ongoing for a few years and has intensified with the rising of populism and so-called illiberal democracy in Central and Eastern Europe. The European Union is struggling to counter this threat coming from its Member States, and the European institutions have created and are still creating tools to enforce compliance with art. 2 TEU. Because of its limited competences, the European Parliament is not the main actor in this matter. Nevertheless, being the representative of the EU citizens and their interests, it has a symbolic important role to fulfill when it comes to the protection of the values of the EU, which violations directly affect the Union citizens. This thesis aims at exploring what this role is, what the European Parliament has done so far to enforce and promote the values of article 2 TEU, and whether its role could be strengthened in the future. To do so, I will first focus on the existing instruments at the EU level, to then look into the activity of the European Parliament in this field.

**Acknowledgement:**

I would like to thank Dr Fromage for her close supervision, her availability until the last moment, and for being so demanding of my thesis that I pushed myself to do my best. I would also like to thank Dr Broderick for accompanying us in this difficult period, and for checking in on us frequently, and the University of Maastricht for allowing us to finish the semester without any problem. I am grateful to the EMA staff for having been present for us as much as they could during this semester, and lastly, I would like to thank my parents and my brother for proofreading, and for their emotional support, very much needed in those last months.

## TABLE OF CONTENTS

INTRODUCTION	5
CHAPTER I. THE VALUES OF THE EU AND THE MEANS TO ENFORCE THEM	7
A. The values of article 2 of the Treaty on European Union	7
B. Enforcing the respect of the rule of law at the EU level	12
a. <i>The prerogative of the EU in the enforcement of the rule of law</i>	13
b. <i>Rule of law compliance as an accession conditionality</i>	14
c. <i>Article 7 TEU</i>	15
d. <i>The Commission and the assessment of the compliance to the rule of law</i>	15
e. <i>The Rule of Law Dialogue</i>	18
f. <i>The role of the Court of Justice of the EU in the monitoring of the rule of law</i>	19
g. <i>Proposals to improve the current mechanisms regarding the application of the rule of law</i>	21
C. Enforcing the respect of fundamental rights at the EU level	22
a. <i>The Charter of Fundamental Rights of the European Union</i>	23
b. <i>The European Union Fundamental Rights Agency</i>	25
c. <i>EU Equality law as a fundamental rights policy</i>	26
d. <i>The role of the Court of Justice of the European Union in the enforcement of fundamental rights</i>	28
e. <i>The European Convention on Human Rights and the European Union</i>	29
f. <i>Proposals for better protection of fundamental rights</i>	31
D. Enforcing the respect of democracy at the EU level	32
a. <i>The protection of democracy in times of crisis</i>	33
b. <i>Building democratic resilience by protecting the electoral process and tackling disinformation</i>	35
E. Conclusion	36
CHAPTER II. THE EUROPEAN PARLIAMENT AND THE PROTECTION OF THE VALUES OF THE EU	37
A. The European Parliament as a promoter of the European Values	37
a. <i>The European Parliament and the Charter of Fundamental Rights</i>	37
b. <i>The European values in the plenary debates of the European Parliament</i>	39
B. The European Parliament as a monitoring authority of the Member States	41
a. <i>The European Parliament and article 7(1) TEU</i>	41

<i>b. The situation in Hungary and Poland</i>	42
<i>c. The Rule of Law and Fundamental Rights Monitoring Group – Malta and Slovakia</i>	51
C. Improving the monitoring of the EU values through a new mechanism: a proposal by the European Parliament	55
<i>a. An EU mechanism on democracy, the rule of law and fundamental rights</i>	56
<i>b. The Mechanism and the Rule of Law Review Cycle of the Commission. What differs?</i>	61
D. The budget of the EU and the rule of law conditionality	65
<i>a. The Commission’s proposal on a rule of law conditionality to protect the EU budget</i>	66
<i>b. The position of the European Parliament on the rule of law conditionality to the EU budget</i>	69
E. Conclusion	73
GENERAL CONCLUSION	74
SOURCES AND BIBLIOGRAPHY	76

## INTRODUCTION

In her political guidelines in July 2019, President of the European Commission Ursula Von Der Leyen announced: “I want Europe to strive for more when it comes to protecting our citizens and our values.”<sup>1</sup> The core values of the European Union (EU), the rule of law, democracy, and respect for fundamental rights, are stated in article 2 of the Treaty on European Union (TEU). The need to protect them arose in 2000 when a far-right political party (FPÖ) entered a government coalition in Austria.<sup>2</sup> For the last 20 years, threats to the EU values have challenged the essence of the Union on several occasions. In the last decade, the rising of populism and illiberal democracy in the Member States<sup>3</sup> critically affected the EU, and recent events show that this might become even worse in the future. The threat to the rule of law has caused great concerns at the EU level. The EU institutions, and especially the European Commission, created specific instruments to tackle the situation. The role of the Court of Justice of the European Union (CJEU) has also been major. The European Parliament, being the democratically elected institution and representing the EU citizens would be in a particularly symbolic and relevant position to protect the EU values. Nevertheless, in the EU legal framework, the only available tool to the Chamber to protect the values of article 2 is article 7 TEU, which is the sanctioning mechanism in case of breach of the values, and which relies on the cooperation between the EU institutions. The European Parliament nevertheless has a range of powers beyond the enforcement of the EU values.

Given the scarcity of tools available to the Chamber, what role does the European Parliament have in the enforcement of the values of the European Union stated in article 2 TEU? Can its legal powers be used towards compliance with the EU values by the Member States? The first chapter of this thesis will touch upon the values of article 2 TEU in details, and the available instruments at the EU level, to enforce the application for each of them. The second chapter will focus on the role of the European Parliament regarding article 2 TEU, and especially how it acted until now to protect and promote those values, and whether its role has been effective and could eventually be improved. Through this thesis, I will try to argue that even though the European Parliament does not have as many

---

<sup>1</sup> Ursula Von Der Leyen, ‘A Union That Strives for More - My Agenda for Europe’ (2019).

<sup>2</sup> Jan-Werner Müller, ‘Defending Democracy within the EU’, *Journal of Democracy* 24, no. 2 (2013): 138–49.

<sup>3</sup> Thierry Chopin, ‘« Démocratie illibérale » ou « Autoritarisme majoritaire » ?’.

powers as other EU institutions, its implication in the protection of EU values, through the use of the tools at its disposal, and political willingness, is effective, and could overturn the current situation.

## CHAPTER I. THE VALUES OF THE EU AND THE MEANS TO ENFORCE THEM

The values of the EU are listed in article 2 of the Treaty on European Union. The Member States of the EU and the institutions are bound by those values, and so are the candidate States to the EU (I.A). Once a Member State enters the EU, the monitoring of those values is not as effective, which can lead to breaches of those values. This chapter aims at studying what are the existing, and potential mechanisms for the enforcement of the rule of law (I.B), fundamental rights (I.C), and democracy (I.D).

### A. The values of article 2 of the Treaty on European Union

Article 2 TEU states the values and principles on which the Union is based. It is formulated as such:

“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. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail”.

Those values first appeared in the framework of the Council of Europe, in the preamble of its Statute<sup>4</sup>. The Council of Europe was created in 1949, following the end of the Second World War and the violations of freedoms and fundamental rights it had brought<sup>5</sup>. In the Statute of the Council of Europe, the parties reaffirm “their devotion to the spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy”<sup>6</sup>, and they reaffirm it the article 3 in which the members of the Council of Europe commit to “accept the principles of the rule of law and the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms”<sup>7</sup>. On the 4th of November 1950, the Member States of the Council of Europe adopted the Convention for the

---

<sup>4</sup> Council of Europe, ‘Statute of London’.

<sup>5</sup> Robin White, Clare Ovey, Francis Geoffrey Jacobs, *The European Convention on Human Rights*, ed. Bernadette Rainey, Elizabeth Wicks, Clare Ovey, Seventh Edition (Oxford: Oxford University Press, 2017).

<sup>6</sup> Council of Europe, Statute of London.

<sup>7</sup> *Idem*, article 3.

Protection of Human rights and Fundamental freedom (hereunder ‘European Convention on Human rights’), which mostly guarantees the protection of civil and political rights, by the European Court of Human rights (also mentioned as ‘ECtHR’) based in Strasbourg<sup>8</sup>. The Council of Europe is the first European organization when it comes to the protection of human rights and fundamental freedoms, which is its primary goal. Until the Charter of Fundamental Rights of the European Union became legally binding in 2009 (hereunder ‘the Charter’ or ‘EUCFR’), it was the primary source of protection of fundamental rights.

On the other hand, the EU was not initially explicitly created to protect such values. In fact, in 1950 at the first steps of European integration, the objective was peace through economic prosperity by the joint production of coal and steel, in the European Community for Steel and Coal. The principles and values of the EU only came into play decades later.

Article 2 TEU can be considered as the clause of homogeneity of the EU, since it provides a minimum common standard for the Member States constitutional order to respect, similarly to a federal constitution<sup>9</sup>. The values give the EU its constitutional nature and through the wording of the article, the European “society” embodies and perpetuates those values. With this article, the EU is no longer an organization of exclusively economic nature, it becomes a community of law and values. The fact that all the Member States share and respect the values imply the existence of mutual trust between the Member States: EU law will be implemented and respected<sup>10</sup>.

Those values have helped to shape the European identity through different historical events<sup>11</sup>. The question of the European identity was first mentioned after the 1973 enlargement, during the summit of the heads of States and governments in Copenhagen. Through the declaration of European identity, the Nine declare that they “are determined to defend the principles of representative democracy, of the rule of law, of social justice—which is the ultimate goal of economic progress—and of respect for human rights”<sup>12</sup>.

---

<sup>8</sup> White, Ovey, Jacobs, op. cit.

<sup>9</sup> Giacomo DelleDonne, ‘Homogeneity and Constitutional Diversity in the EU : Protecting Fundamental Rights and the Rule of Law’, 2016.

<sup>10</sup> Marcus Klamert, Dimitry Kochenov, ‘Article 2 TEU’, in *The Treaties and the Charter of Fundamental Rights – A Commentary*, Manuel Kellerbauer, Marcus Klamert, Jonathan Tomkin (eds) (Oxford: Oxford University Press, 2019), 22–30.

<sup>11</sup> Hermann-Josef Blanke, Stelio Mangiameli, ‘Article 2 TEU’, in *The Treaty on European Union (TEU): A Commentary*, ed. Hermann-Josef Blanke, Stelio Mangiameli (Berlin Heidelberg: Springer-Verlag, 2013).

<sup>12</sup> ‘Declaration on European Identity, Copenhagen European Summit, 14 December 1973’.

The values initially referred to as “principles”<sup>13</sup>, officially entered the EU legal order with the codification of the democracy as a basis of the Union in the Treaty of Maastricht<sup>14</sup>. The Treaty of Amsterdam then introduced the rule of law and fundamental rights, as “principles” of the EU, to then shift them into “values” in the Constitutional treaty and the Treaty of Lisbon<sup>15</sup>. This new wording does not change their legal value, in fact, in the preamble of the Charter, the values of article 2 TEU are qualified as ‘principles’. Minority protection was added to the list of values with the Treaty of Lisbon<sup>16</sup>.

The values listed in article 2 TEU are six: “human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities”. I have chosen to address the values of human dignity, freedom, equality, and respect for human rights, including the rights of persons belonging to minorities, under the generic term of fundamental rights<sup>17</sup> as those values are all gathered and guaranteed by Human rights treaties<sup>18</sup>, and thus like many scholars and politicians, in this thesis, when referring to the values of article 2 TEU, I will talk about the rule of law, democracy, and fundamental rights. Below, I will give a brief definition and explanation of each of the six values, in the EU context.

In article 2 TEU, respect for Human dignity comes first. It is a fundamental right<sup>19</sup>, and one of the structural principles of the EU. It refers to the respect for the integrity of the Human being as a physical and moral entity and is strictly linked to the rights to life<sup>20</sup>. The respect for human dignity comes from a Christian vision of the man, and the philosophy of the Enlightenment. Its presence in article 2 as the first of the EU values stems from the atrocities committed during the Second World War. It puts the human being and his/her life at the centre of the actions of the State, and it conditions the entire system of the EU without exceptions<sup>21</sup>.

Freedom as a value was present in the Treaties of Rome since the very beginning. At that moment, it referred to the four fundamental freedoms of movement (goods, people, services, and

---

<sup>13</sup> Oliver Mader, ‘Enforcement of EU Values as a Political Endeavour: Constitutional Pluralism and Value Homogeneity in Times of Persistent Challenges to the Rule of Law’, *Hague Journal on the Rule of Law* 11, no. 1 (April 2019): 133–70.

<sup>14</sup> Klamert, Kochenov, op. cit.

<sup>15</sup> Blanke, Mangiameli, op. cit.

<sup>16</sup> Klamert, Kochenov, op. cit.

<sup>17</sup> Jonas Grimheden, Gabriel N. Toggenburg, ‘The Rule of Law and the Role of Fundamental Rights: Seven Practical Pointers’, in *Reinforcing Rule of Law Oversight in the European Union*, ed. Carlos Closa, Dimitry Kochenov, Cambridge University Press, 2016, 147-171.

<sup>18</sup> Official Journal of the European Union, Charter of Fundamental Rights of the European Union, 2012, C326/02.

<sup>19</sup> *Idem*, Title I.

<sup>20</sup> *Idem*, article 2 ; Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances.

<sup>21</sup> Blanke, Mangiameli, op. cit.

capital). Freedom of movement is guaranteed by the Charter of Fundamental Rights<sup>22</sup>, but with the clause of homogeneity, the term of “freedom” gains another meaning of classical liberal constitutionalism with negative aspects (no interference from the public authorities) and positive aspects (possibility for the individual to self-determination)<sup>23</sup>.

When it comes to the value of democracy, this notion can raise debates when it is applied to the EU. First of all, although there have been direct elections to the European Parliament since 1979, the value of democracy has only been mentioned in the European legal order since the treaty of Maastricht, in 1992, with a strong link to the notion of European citizenship<sup>24</sup>. The EU has been criticized for its so-called “democratic deficit” whose concept refers to the lack of legitimacy of a political system. This legitimacy of the system is measured by the fact that it is democratic and effective, and that it is perceived as legitimate by the people<sup>25</sup>. In the case of the EU, the “democratic deficit” usually refers to the lack of power of the European Parliament<sup>26</sup> and the perceived loss of powers of national parliaments<sup>27</sup>. The various Treaties have been trying to address this issue. In fact, title II of the TEU is dedicated to democratic principles.

The principle of equality refers to the treatment of citizens before the law, and in this case, of the European citizens before the European legal order. It is an organizing principle of the EU, in line with the principle of equality of the Member States before the Treaties<sup>28</sup>. The principle of equality was one of the values first expressed in the Treaties of Rome through the principle of non-discrimination and equal pay between men and women<sup>29</sup>. It is now consolidated in the EU treaties in the second part of the Treaty on the Functioning of the European Union (hereunder ‘TFEU’). “Non- discrimination and Union citizenship”, more specifically in the articles 18, 19, and in the article 157 TFEU.

---

<sup>22</sup> Charter of Fundamental Rights of the European Union, article 45

<sup>23</sup> Blanke, Mangiameli, op. cit.

<sup>24</sup> *Ibidem*.

<sup>25</sup> Jan Rovný, ‘Approaches to the Democratic Deficit of the European Union’, ed. Michael Newman, Philippe C. Schmitter, and Joseph H. H. Weiler, *Perspectives*, no. 19 (2002): 109–19.

<sup>26</sup> Berthold Rittberger, ‘Integration without Representation? The European Parliament and the Reform of Economic Governance in the EU’, *JCMS: Journal of Common Market Studies* 52, no. 6 (2014): 1174–83.

<sup>27</sup> Katrin Auel, Oliver Höing, ‘Parliaments in the Euro Crisis: Can the Losers of Integration Still Fight Back?’, *JCMS: Journal of Common Market Studies* 52, no. 6 (2014): 1184–93.

<sup>28</sup> Official Journal of the European Union, Consolidated Version of the Treaty on European Union, 2012, C 326/13, article 4.2.

<sup>29</sup> Sonya Walkila, *Horizontal Effect of Fundamental Rights in EU Law*, (Groningen: Europa Law Pub Netherlands, 2015), chap. 5.

The rule of law is one of the most important values of the EU, and surely, the most discussed, due to the recurring challenges it faces<sup>30</sup>. The rule of law has been one of the unwritten European principles long before its first codification in the Treaty of Nice. It derives from the assertion of constitutionalism in the European legal tradition, like the division of powers and the recognition of fundamental rights<sup>31</sup>. In its decision *Les Verts v Parliament* from 1986, the Court of Justice of the EU declared that the rule of law was one of the founding principles of the European Community, and the European Union now<sup>32</sup>. Nevertheless, even though there is a general agreement on the importance of this value, its definition remains vague. The Council of Europe is particularly active in the protection of the rule of law, especially through the European Commission on democracy through the Law (hereunder ‘Venice Commission’)<sup>33</sup>, which provides legal advice to its Member States to “bring their legal and institutional structures into line with European standards and international experience in the fields of democracy, human rights and the rule of law”<sup>34</sup>. In 2011, the Venice Commission published a Report on the rule of law<sup>35</sup> stating that the rule of law is directed to State authorities in the first place, but not exclusively. According to the Venice Commission, the rule of law is composed of the following criteria:

- «i) Legality, which includes transparent, accountable and democratic processes for enacting laws;
- ii) Legal certainty, which is deemed essential to ensure confidence in the judicial system, and includes accessibility and ‘foreseeability’;
- iii) Prohibition of arbitrariness on the part of the State and its authorities;
- iv) Access to justice for those subject to administrative action before independent and impartial courts, including judicial review of administrative acts;
- v) Respect for human rights by State authorities and the guaranteeing of human rights for everyone within the State authorities’ jurisdiction; and finally,
- vi) Non-discrimination and equality before the law guaranteed and assured by the State»<sup>36</sup>.

---

<sup>30</sup> Sophie in’t Veld, ‘Europe’s Rule-of-Law Emergency’, *Politico*, 10 December 2019, <https://www.politico.eu/article/europe-rule-of-law-emergency-malta-daphne-caruana-galizia/>.

<sup>31</sup> Blanke, Mangiameli, op. cit.

<sup>32</sup> Court of Justice of the European Union, *Les Verts v Parliament*, C- 294/83. (23 April 1986).

<sup>33</sup> See section I.B.

<sup>34</sup> ‘Venice Commission : Council of Europe’, [https://www.venice.coe.int/WebForms/pages/?p=01\\_Presentation](https://www.venice.coe.int/WebForms/pages/?p=01_Presentation).

<sup>35</sup> European Commission for democracy through Law (Venice Commission), Report on the Rule of Law, Strasbourg, 4 April 2011, Study No. 512/2009.

<sup>36</sup> Sergio Carrera, Elspeth Guild, Nicholas Hernanz, *The triangular relationship between Fundamental Rights, Democracy and the Rule of Law in the EU - Towards an EU Copenhagen Mechanism* (Brussels: CEPS, 2013).

The expertise and reports of the Venice Commission are used by the European Commission and the European Parliament in case of rule of law backsliding in a Member State<sup>37</sup>.

The *respect for human rights, including the rights of persons belonging to minorities* specifically underlines the rights of every citizen to claim their rights in front of the CJEU<sup>38</sup>. This value links the European legal order to the European Convention on Human Rights, which has been the primary source for a long time when it comes to the protection of human rights and fundamental freedoms. Member States and institutions of the EU have a duty to comply with the respect of human rights stemming from the provisions of article 2 TEU, and not only their national constitutions, or the Charter of Fundamental Rights within the scope of application of EU law.

The enforcement of the values of the EU is theoretically protected by article 7 TEU and its sanctions mechanism<sup>39</sup>. Article 7 TEU gives power to the EU institutions to monitor the respect of the values, through the identification of risks of serious breaches, the determination of the existence of the breach, and lastly a sanction mechanism<sup>40</sup>. In 2003, one year before the enlargement of 2004 when ten Member States, mostly from Central and Eastern Europe, acceded the EU, the Commission released a communication about the article 7 of the TEU at the time, saying it intended “to exercise its new right in full and with a clear awareness of its responsibility”<sup>41</sup>. Yet, as we will see in the following section, article 7 is a difficult tool to trigger, particularly when it comes to the steps following the determination of a risk of breach of the values of article 2 TEU.

## **B. Enforcing the respect of the rule of law at the EU level**

In the last decade, the constitutional crisis in EU Member States such as Poland and Hungary led to rule of law backsliding. There were several reactions to those situations at the EU level. I will first address why the EU intervenes in Member States’ domestic situations (I.B.a), and I will then discuss the existing EU instrument to enforce the respect of the rule of law in the EU Member States including the article 7 TEU (I.B.b), the tools developed by the Commission (I.B.c), and the Council

---

<sup>37</sup> See I.B.

<sup>38</sup> Blanke, Mangiameli, op. cit.

<sup>39</sup> Klamert, Kochenov, op. cit.

<sup>40</sup> Consolidated Version of the Treaty on European Union, articles 7 (1)- 7 (4).

<sup>41</sup> European Commission, ‘Article 7 of the Treaty on European Union. Respect for and Promotion of the Values on Which the Union Is Based’, Communication from the Commission to the European Parliament and the Council, Brussels, 15 October 2003.

(I.B.d), and the proactive role of the CJEU in the field (I.B.e). I will then present some of the many scholars' proposals to improve the situation (I.B.f).

a. *The prerogative of the EU in the enforcement of the rule of law*

In the “trinity” of the EU values: the rule of law, democracy, and fundamental rights, the rule of law has a specific position, as the whole system relies on its respect. It can be considered as an “umbrella principle”<sup>42</sup> as it encompasses the other values through the concept of legality.

According to Carlos Closa<sup>43</sup>, the involvement of the EU in the monitoring of the compliance of the Member States with rule of law, and the research for reinforced mechanisms to this aim can be justified by three arguments. Firstly, the EU is a community of law, which effectiveness relies on mutual recognition of each Member States' legal structure and governance, and mutual trust that the common standards in terms of the rule of law, democracy, and fundamental rights are met. The mutual recognition and mutual trust should guarantee that in any Member State European citizens are protected from abuse. However, if in any Member State there is a concern about the rule of law compliance, the other Member States and the EU have an interest in getting involved to prevent the abuses towards EU citizens. The second argument follows from the first one, and could be referred to as the “all-affected principle”: a Member State that does not comply with the rule of law can affect all citizens and States of the EU, but also the EU itself, as the Member State participates in the decision-making process and the policymaking. The last argument is the principle of consistency: it refers to the fact that the EU theoretically projects its values both internally and externally<sup>44</sup>. According to article 49 TEU, the EU requires the candidate countries to comply with the values of article 2 TEU to become an EU member<sup>45</sup>, those same criteria are applied to countries wishing to establish association agreements with the EU<sup>46</sup>. The paradox is that once they enter the EU, there is no ongoing monitoring for the maintenance of the enforcement of those values. This lack of consistency has been referred to as the “Copenhagen dilemma”<sup>47</sup>. Requiring that the states continue to comply with the values of article 2 TEU once they

---

<sup>42</sup> Mader, *op. cit.*

<sup>43</sup> Carlos Closa, ‘Reinforcing EU Monitoring of the Rule of Law’, in Closa, Kochenov, *op. cit.*, 15–35.

<sup>44</sup> *Ibidem.*

<sup>45</sup> Consolidated Version of the Treaty on European Union, article 49.

<sup>46</sup> Kaarlo Tuori, ‘From Copenhagen to Venice’, in Closa, Kochenov, *op. cit.*, 225–46.

<sup>47</sup> Viviane Reding, ‘Speech: Safeguarding the Rule of Law and Solving the “Copenhagen Dilemma”: Towards a New EU-Mechanism’, General Affairs Council/Luxembourg, 22 April 2013, SPEECH/13/348 (2013).

become a member of the EU, and introducing new mechanisms of monitoring would show consistency between EU's values and policies<sup>48</sup>.

*b. Rule of law compliance as an accession conditionality*

The review regarding the values of the EU starts before the accession of the Member States. As mentioned above, according to article 49 TEU, any State complying with the values of article 2 can apply to become a member of the European Union. This condition was decided during the 1993 Copenhagen summit<sup>49</sup> when Member States declared that “Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union”<sup>50</sup>. This list is usually referred to as the “Copenhagen criteria” and applies to any State wishing to apply to enter the EU. Thus, before acceding to the EU, there is monitoring to assess compliance with the values of the EU, nevertheless, this permanent monitoring stops once the State becomes a member of the EU<sup>51</sup>.

Only in the case of Romania and Bulgaria, a post-accession conditionality has been introduced in 2007, through the Cooperation and Verification Mechanism (CVM), set up by the European Commission<sup>52</sup>. At the time of Romania and Bulgaria's accession in 2007, the Commission was not satisfied with the progress in the area of the fight against corruption, organized crime, and judicial reform, regarding the implementation of EU law, and the pre-accession conditionality. With this transitional mechanism, the Commission assesses the situation in Romania and Bulgaria in particular policy areas (the fight against organized crime and corruption and the justice system) linking their progress to potential sanctions through reports issued regularly, every six months<sup>53</sup>. The CVM evaluates

---

<sup>48</sup> Closa, *op. cit.*

<sup>49</sup> European Council, ‘Conclusion of the Presidency’ (Copenhagen, 21 June 1993).

<sup>50</sup> *Ibidem.*

<sup>51</sup> Mader, *op. cit.*

<sup>52</sup> European Commission, ‘Progress Report on the Cooperation and Verification Mechanism – Procedural Aspects’, Memo (Brussels: 27 June 2007).

<sup>53</sup> Eli Gateva, ‘Post-Accession Conditionality – Translating Benchmarks into Political Pressure?’, *East European Politics* 29, no. 4 (December 2013): 420–42.

the past situations, but contains also perspective about the future, to make sure that EU law is correctly implemented and enforced<sup>54</sup>.

While the CVM only applies to Romania and Bulgaria, the EU has other tools in place in case of threats to the rule of law in the Member States.

*c. Article 7 TEU*

Article 7 TEU is a political tool, supposed to be triggered by the EU institutions. It is a three-phase procedure consisting in the determination of a “clear risk of a serious breach by a Member State of the values referred to in Article 2”, the determination of “the existence of a serious and persistent breach by a Member State of the values referred to in Article 2”, and the suspension of “certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council”<sup>55</sup>. Those three steps are all triggered by the European institutions. So far, the procedure of article 7(1) has been started for Hungary and Poland. The triggering of article 7(2) is way more challenging as there is a need for a unanimous vote in the Council. At a time where several Member States risk to face this procedure, article 7(2) seems impossible to activate as they support each other thus becoming an obstacle to a unanimous vote.

This obstacle showed the need to adopt less constraining instruments, such as those developed by the Commission to address those violations.

*d. The Commission and the assessment of the compliance to the rule of law*

In 2012, the former president of the European Commission José Manuel Durão Barroso stated that there was a need for a “better developed set of instruments” to address the threats to democracy and the rule of law in Member States, to have an alternative beyond “political persuasion” and the “nuclear

---

<sup>54</sup> Mader, op. cit.

<sup>55</sup> Consolidated Version of the Treaty on European Union, article 7(1); 7(2); 7(3).

option of article 7<sup>56</sup>. This nickname might have contributed to the reluctance to trigger article 7 since it presents it as an aggressive last resort weapon<sup>57</sup>.

In 2013, Viviane Reding, former EU Justice Commissioner announced that the Commission was working on a new mechanism<sup>58</sup> and in 2014, the Commission Rule of Law Framework was adopted.

The objective of this new mechanism is to provide a tool before the activation of the procedure of article 7 TEU because past experiences showed that the existing instruments couldn't "address effectively the threats to the rule of law"<sup>59</sup>. The Rule of Law Framework introduces the category of "threats to the rule of law which are of a systemic nature". The framework had been activated for Poland<sup>60</sup>, before the activation of article 7 TEU in 2017<sup>61</sup>. This mechanism is a three phases procedure led by the Commission, based on a dialogue with the Member State concerned to find a solution. If the Commission identifies a systemic threat to the rule of law in a Member State, the Commission initiates a confidential dialogue with the Member State to express its concerns, and runs an assessment of the situation, with the contribution of independent stakeholders such as the Fundamental Rights Agency, the Venice Commission, judicial networks and other civil society organisations. If there are no improvements in the situation, the Commission then issues "rule of law recommendations". Those recommendations may include specific demands on measures to implement. In the last stage, the Commission will monitor the follow-ups on those recommendations. If the crisis is not resolved, the Commission can then proceed to trigger the first step of article 7 TEU. However, the Commission explicitly states in its communication about the Rule of Law Framework that it is in its power "to address specific situations falling within the scope of EU law", whereas the scope of application of article 2 TEU and its values is not constrained to EU law<sup>62</sup>.

The actions implemented by the Commission to safeguard the EU values and particularly the rule of law is welcomed as it is the guardian of the treaties. Scholars have been considering this tool as

---

<sup>56</sup> José Manuel Durão Barroso, 'State of the Union 2012 Address Plenary Session of the European Parliament', 12 September 2012.

<sup>57</sup> Günter Wilms, European University Institute, and Robert Schuman Centre for Advanced Studies, *Protecting Fundamental Values in the European Union through the Rule of Law Articles 2 and 7 TEU from a Legal, Historical and Comparative Angle.*, 2017.

<sup>58</sup> Viviane Reding, 'Speech: The EU and the Rule of Law – What Next?', 4 September 2013, SPEECH/13/677.

<sup>59</sup> European Commission, 'A New EU Framework to Strengthen the Rule of Law', COM/2014/0158 final.

<sup>60</sup> European Commission, 'Recommendation Regarding the Rule of Law in Poland', 2016/1374, C/2016/5703 (2016).

<sup>61</sup> European Commission, 'Proposal for a Council Decision on the Determination of a Clear Risk of a Serious Breach by the Republic of Poland of the Rule of Law', COM(2017) 835 final-2017/0360 (NLE) (2017).

<sup>62</sup> European Commission, A new EU Framework to strengthen the Rule of Law.

weak, given the non-binding nature of the recommendations, and the confidentiality of the exchanges between the Member State and the European Commission, as this avoids naming and shaming which can prove to be very effective<sup>63</sup>. In fact, according to the Organisation for the Security and Cooperation in Europe (hereunder ‘OSCE’) and the Council of Europe, the situation in Poland where the framework was applied has worsened after the activation of article 7 TEU<sup>64</sup>.

Besides the Rule of Law Framework, the EU assesses compliance with the rule of law through thematic reports. In 2014, the Commission published an Anti-corruption report which shows the nature and the scope of the corruption in every Member State<sup>65</sup>. The data from this report serves as a basis for dialogue with the authorities from the Member States, to improve the situation through the “Anti-corruption experience sharing programme” managed by the Commission<sup>66</sup>. This programme aims at supporting the local authorities and NGOs in improving the situation identified in the report through workshops ran regularly. The EU Justice Scoreboard is another indicator that serves to evaluate the independence, quality, and efficiency of the national justice system in the Member States on an annual basis. When needed, findings from the EU justice scoreboard can be included in the Member States’ assessments in the framework of the European Semester, to improve their national judicial system<sup>67</sup> since it is a priority for the Commission<sup>68</sup>. Assessing the national judicial system part of the European Semester allows the Commission to assess the implementation of the recommendation in the Member State concerned.

As those mechanisms present some shortcomings and lack effectiveness, the European Commission presented new proposals to improve the monitoring of the Rule of Law.

The European Commission also proposed a new tool in the form of a Rule of Law Review Cycle, which includes a Rule of Law Report presented in September 2020<sup>69</sup>. The EU Justice

---

<sup>63</sup> Dimitry Kochenov, Laurent Pech, ‘Monitoring and Enforcement of the Rule of Law in the EU: Rhetoric and Reality’, *European Constitutional Law Review* 11, no. 3 (December 2015): 512–40.

<sup>64</sup> European Parliament, ‘Resolution on the Ongoing Hearings under Article 7(1) of the TEU Regarding Poland and Hungary’, 2020/2513(RSP), 16 January 2020.

<sup>65</sup> European Commission, ‘EU Anti-Corruption Report’, COM(2014) 38 final (2014).

<sup>66</sup> European Commission, ‘Anti-Corruption Experience Sharing Programme’, Migration and Home Affairs - European Commission, 6 December 2016, [https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/experience-sharing-programme\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/experience-sharing-programme_en).

<sup>67</sup> European Commission, ‘2020 EU Justice Scoreboard’, COM(2020) 306 final (2020).

<sup>68</sup> European Commission, ‘Improving the Effectiveness of National Justice Systems’, [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/improving-effectiveness-national-justice-systems\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/improving-effectiveness-national-justice-systems_en).

<sup>69</sup> See Chapter II.C.b.

Scoreboard will be particularly useful to feed the Rule of Law Report. The compliance to the rule of law has also been included in the soon to be adopted Multiannual financial framework for 2021-2027<sup>70</sup>.

Besides the monitoring by the Commission, other EU institutions attempted to establish their own rule of law monitoring mechanism, such as the Council with the Rule of Law Dialogue which will be discussed in the following sub-section.

*e. The Rule of Law Dialogue*

Shortly after the Commission proposed its Rule of Law Framework in 2014, the Council decided to inaugurate its own system of monitoring of the rule of law in 2014, with the annual Rule of Law Dialogue<sup>71</sup>. This Council's Dialogue aims to promote and safeguard the rule of law through political dialogue between the Member States. The dialogue has been proposed as an alternative to the Commission's framework. In fact, the legal services of the Council concluded that the Commission's Framework, as a pre-article 7 procedure<sup>72</sup>, was not compatible with the principle of conferral and the respect for national identities<sup>73</sup>. Despite this opinion, the Rule of Law Framework remained in place. The annual Council Rule of Law Dialogue is a soft-power mechanism which aim is to "to promote and safeguard the rule of law in the framework of the Treaties"<sup>74</sup>. It involves the representatives of the Member States, and it takes place once a year in the framework of the General Affairs' Council and is prepared in advance by the COREPER. The role of the other EU institutions is not specified, and the Commission Rule of Law Framework is not mentioned anywhere in the document. This mechanism is meant to be complementary to "existing means which the EU might use in the field of rule of law, namely the infringement procedure in the case of a breach of EU law and the so-called article 7 procedure of the Lisbon Treaty"<sup>75</sup>. The Dialogue has been criticized for being too soft, and too vague<sup>76</sup>. In fact, the wording of the Council's conclusion formalizing the Dialogue appears to be extremely careful regarding the specificity of the Member States, and the "the principle of conferred competences,

---

<sup>70</sup> European Commission, 'Amended Proposal for a Council Regulation Laying down the Multiannual Financial Framework for the Years 2021 to 2027', COM(2020) 443 final-2018/0166 (APP).

<sup>71</sup> Council of the European Union, 'Press Release, 3362nd Council Meeting General Affairs', (Brussels: 16 December 2014).

<sup>72</sup> Kochenov, Pech, *op. cit.*

<sup>73</sup> Consolidated version of the Treaty on European Union; article 4 and 5.

<sup>74</sup> Council of the European Union, 'Press Release, 3362nd Council Meeting General Affairs'.

<sup>75</sup> *Ibidem.*

<sup>76</sup> Kochenov, Pech, *op. cit.*

as well as the respect of national identities of the Member States inherent in their fundamental political and constitutional structures, inclusive of regional and local self-government, and their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security, and should be brought forward in light of the principle of sincere cooperation”<sup>77</sup>. This precaution is necessary, but the Dialogue shows its shortcomings as it does not come with any kind of information about the procedure, nor the structure. The Rule of Law Dialogue has been reviewed twice by the Council, in 2016 during the Slovak Presidency and in 2019 during the Finnish Presidency. The document drafted during the Finnish Presidency did not reach a consensus, but the drafted document emphasizes on the need for a “stronger, more result-oriented and better structured” dialogue, for it to be “more systematic, and for proper follow-up to be ensured”, which could be reached through a “yearly stocktaking exercise concerning the state of play and key developments as regards the rule of law”<sup>78</sup>. The drafted document also proposes to initiate a collaboration with the Commission through the new tools proposed by Ursula Von Der Leyen, the Commission’s annual Rule of Law Report<sup>79</sup>. The document, which was not adopted, shows a need for the Dialogue to be strengthened to prevent rule of law issues “in an inclusive and constructive manner through discussion and the exchange of best practice, as well as to ensuring proper follow-up and continuity”<sup>80</sup>, thus trying to add on the procedural aspect of the Council’s Dialogue.

The Rule of Law Dialogue’s aim is to complement existing mechanisms, such as the infringement procedures before the CJEU of articles 258 and 259 TFEU.

*f. The role of the Court of Justice of the EU in the monitoring of the rule of law*

The CJEU is one of the institutions which has a really effective role when it comes to the sanctioning of the violation of the rule of law. The use of infringement procedures before the CJEU can be a way to counter illiberal measures taken by EU Member States. In the case of Hungary<sup>81</sup>, the Court of Justice could address the threats to justice independence and the rule of law on the grounds of the

---

<sup>77</sup> Council of the European Union, ‘Press Release, 3362nd Council Meeting General Affairs’.

<sup>78</sup> Council of the European Union, ‘Presidency Conclusions - Evaluation of the Annual Rule of Law Dialogue’, (Brussels: 19 November 2019).

<sup>79</sup> See Chapter II.C.

<sup>80</sup> Council of the European Union, ‘Presidency Conclusions - Evaluation of the Annual Rule of Law Dialogue’.

<sup>81</sup> Court of Justice of the European Union, *European Commission v Hungary*, C-286/12 (First Chamber 6 November 2012).

EU directive on non-discrimination<sup>82</sup> since the Hungarian law had lowered the age of retirement of the judges. The use of infringement procedures requires the violation of EU norms, while the violations of the values of article 2 TEU can also occur outside the scope of application of the EU law<sup>83</sup>, thus limiting the possibility to use infringement procedure in case of violations of the rule of law.

On the 27 of February 2018, the CJEU ruled on the case *Associação Sindical dos Juizes Portugueses*<sup>84</sup>, where a trade union representing Portuguese judges decided to challenge their reduction of salary based on judicial independence guaranteed in EU law by article 19(1) TEU and article 47 of the Charter of Fundamental Rights. This case has been considered particularly important. The rule of law backsliding in Hungary and Poland had been characterized in the first place by a threat to the independence of the judiciary, and particularly to the Constitutional court. Through this case, the CJEU responded to the situation in Poland and Hungary, as it establishes in its conclusion an obligation for the Member States to guarantee and respect the independence of their courts and tribunal<sup>85</sup>. To rule in this case, the CJEU focused on article 19(1) TEU which is about the obligation of Member States to “provide remedies sufficient to ensure effective legal protection in the fields covered by Union law”<sup>86</sup>. This article, according to the CJEU “gives concrete expression to the value of the rule of law stated in article 2 TEU”<sup>87</sup>. With this decision, the CJEU broadens the scope of application of article 19(1) TEU, since it reminds the Member States of their responsibility to apply this provision, not only in the EU legal order but also in “national courts and tribunals”<sup>88</sup>. This decision is also particularly groundbreaking as it allowed the Commission to start an infringement procedure<sup>89</sup> against Poland about the law on the lowering of the retirement age of the judges of the Polish Constitutional court, like in Hungary, except that this time, the Commission could use the conclusions of the CJEU claiming that there was a violation of judicial independence of article 19(1) TEU, and article 47 of the Charter of

---

<sup>82</sup> ‘Council Directive 2000/78/EC of 27 November 2000 Establishing a General Framework for Equal Treatment in Employment and Occupation’, OJ L 303, 2.12.2000.

<sup>83</sup> Kochenov, Pech, op. cit.

<sup>84</sup> Court of Justice of the European Union, *Associação Sindical dos Juizes Portugueses v Tribunal de Contas*, C-64/16 (Grand chamber 27 February 2018).

<sup>85</sup> *Ibidem*.

<sup>86</sup> Consolidated version of the Treaty on European Union, article 19(1).

<sup>87</sup> Court of Justice of the European Union, *Associação Sindical dos Juizes Portugueses v Tribunal de Contas*.

<sup>88</sup> Sébastien Platon, Laurent Pech, ‘EU Law Analysis: Rule of Law Backsliding in the EU: The Court of Justice to the Rescue? Some Thoughts on the ECJ Ruling in *Associação Sindical Dos Juizes Portugueses*’, *EU Law Analysis* (blog), 13 March 2018, <http://eulawanalysis.blogspot.com/2018/03/rule-of-law-backsliding-in-eu-court-of.html>.

<sup>89</sup> Court of Justice of the European Union, *Commission v Republic of Poland*, C-619/18 (Grand Chamber 24 June 2019).

Fundamental Rights<sup>90</sup>. Those claims were supported by the CJEU's conclusions in a decision adopted on the 24th of June 2019<sup>91</sup>.

Besides those existing mechanisms, there are a number of proposals to improve the current framework for the protection of the rule of law.

*g. Proposals to improve the current mechanisms regarding the application of the rule of law*

There have been several proposals to find new approaches to improve the EU tools to tackle rule of law backsliding. More effective use of the infringement procedure has been one of the recurrent proposals.

Kim Lane Scheppele suggested a systemic use of the infringement procedure. This action would apply when a Member State's conduct could amount to a systemic violation of the article 2 values. The systemic infringement procedure would allow the European Commission to bring a package of cases to the CJEU through article 258 TFEU, thus bundling up multiple single breaches of the EU values. If violations were found, instead of financial sanctions, the Commission could withdraw EU funds from the Member State. According to Scheppele, this could be possible under the current treaty framework, as this would be a matter of interpretation of the provision of article 260 TFEU which is the legal basis for the financial penalty for the infringement procedures under articles 258 and 259 TFEU. Since the text does not specify how the fine should be collected, Scheppele argues that it would be possible to interpret the text in a sense that would allow the Commission to withhold the sum due by the Member State, from the EU funds that it is owed to. Another option would be to adopt ad-hoc secondary legislation for the Member States failing to remedy infringement procedure, similar to the Excessive deficit procedure which allows funds to be blocked for non-compliance to EU law<sup>92</sup>. A similar kind of legislation could be adopted to reduce or block EU funds for the Member States which refuse to remedy systemic infringements<sup>93</sup>.

---

<sup>90</sup> *Ibidem.*

<sup>91</sup> *Ibidem.*

<sup>92</sup> Kim Lane Scheppele, 'Enforcing the Basic Principles of EU Law through Systemic Infringement Actions', in Closa, Kochenov, op. cit., 105–32.

<sup>93</sup> *Ibidem.*

Another similar approach would be to bring systemic infringement cases based on article 259 TFEU, by other Member States<sup>94</sup>, instead of article 258 TFEU. This approach would be particularly interesting as it would cancel the narrative of the EU trying to control the Member States, a case brought in front of the CJEU by other Member States might be an effective peer-pressure scenario, and the Treaties empower them to do so, through article 259 TFEU. Nevertheless, the Council Rule of Law Dialogue, as another case of peer-pressure scenario, but with soft-power tools, hasn't proved to be very effective, thus relying on Member States to start an infringement procedure does not appear to bring a lot of results.

Other proposals are based on treaty changes. The creation of a “Copenhagen Commission”<sup>95</sup> to monitor the application of the Copenhagen Criteria would be a long-term solution. This institution, theorized by the scholar Jan-Werner Müller would be analogous to the Council of Europe Venice Commission, but its decision would be binding and would lead to sanctions such as fines, or the activation of article 7 TEU. This commission would be composed of legal experts and statesmen/stateswomen with a mandate to offer a comprehensive political judgment of the situation, which would then eventually lead to sanctions<sup>96</sup>.

In Müller's proposal, this Copenhagen Commission would also monitor the respect for democracy. It does not mention the respect for fundamental rights, however, it emphasizes the collaboration with the Fundamental Rights Agency, which is the main institution when it comes to the monitoring of fundamental rights compliance in the EU, which will be discussed in the next section.

### **C. Enforcing the respect of fundamental rights at the EU level**

In this section, the term fundamental rights will encompass the values of human dignity, equality, freedom, and human rights including the rights of persons belonging to minorities. The sources for the protection of fundamental rights in the EU legal order are set out in article 6 TEU. This provision gives its legally binding nature to the Charter of Fundamental Rights (II.C.a), which will be discussed in this section along with the European Union Fundamental Rights Agency (hereunder

---

<sup>94</sup> Dimitry Kochenov, ‘Biting Intergovernmentalism: The Case for the Reinvention of Article 259 TFEU to Make It a Viable Rule of Law Enforcement Tool’, *Hague Journal on the Rule of Law* 7, no. 2 (December 2015): 153–74.

<sup>95</sup> Jan-Werner Müller, ‘Protecting the Rule of Law (and Democracy!) In the EU’, in Closa, Kochenov, op. cit., 206–24.

<sup>96</sup> Jan-Werner Müller, ‘The EU as a Militant Democracy, or: Are There Limits to Constitutional Mutations within EU Member States?’, *Revista de Estudios Políticos*, no. 165 (2014).

‘FRA’) (II.C.b), which monitors the application of the Charter. In this section, I will also briefly present the EU equality law, as the first fundamental rights policy elaborated by the EU (II.C.c). I will then address the role of the CJEU as a leading actor in the protection of fundamental rights (II.C.d) and the accession of the EU to the ECHR (II.C.e), to then look into the proposals to improve the protection of fundamental rights (II.C.f).

*a. The Charter of Fundamental Rights of the European Union*

The Charter of Fundamental Rights came into force in 2000 and became legally binding in 2009 with the Lisbon Treaty. It is considered to be the EU’s own “bill of rights”<sup>97</sup>. The enforcement of fundamental rights in the EU legal order is primarily addressed to the EU institutions, to ensure that the EU legislation complies with those standards to protect the European citizens<sup>98</sup>. The Charter of Fundamental Rights applies only in the scope of EU law. This document gathers the EU acquis in the field of fundamental rights and covers in detail most of the values of the article 2<sup>99</sup>. As in article 2, human dignity is the first right of the Charter of Fundamental Rights and it is covered in the first title of the Charter, the value of “Freedom” is covered in the second title, equality is covered in the third title<sup>100</sup>, and the rights of persons belonging to minorities is covered in the article 21 EUCFR about non-discrimination, and article 22 EUCFR about respect for cultural, religious, and linguistic diversity. As the preamble of the Charter restates the terms of article 2 TEU reminding of the values on which the Union is founded, the rule of law and democracy are also quoted in the Charter. This document gives the character of exceptionality to fundamental rights among the values of article 2, as the other values cannot rely on such a detailed document for their enforcement. The Charter is a very symbolic step for the EU, it aims to be the Union’s “bill of rights” for the European citizens and aims to strengthen their sense of belonging, solidarity, and citizenship within the EU<sup>101</sup>. The Charter is composed of 54 articles divided into seven titles: Dignity, Freedoms, Equality, Solidarity, Citizenship, Justice and the seventh title “General provisions governing the interpretation and application of the Charter” contains general

---

<sup>97</sup> European Union Agency for Fundamental Rights, ‘Fundamental Rights Report 2020’ (European Union Agency for Fundamental Rights, 2020).

<sup>98</sup> Walkila, op. cit.

<sup>99</sup> Toggenburg, Grimheden, op. cit.

<sup>100</sup> Charter of Fundamental Rights of the European Union, Title I, “Dignity”; Title II, “Freedoms”; Title III, “Equality”.

<sup>101</sup> Walkila, op. cit.

dispositions about the Charter such as its scope of application<sup>102</sup>, its interpretation<sup>103</sup>, and the level of protection<sup>104</sup>. This last title aims to determine the way the Charter's rights will be applied<sup>105</sup>. The Charter binds the EU institutions in every situation, and it provides an internal scrutiny mechanism to both the EU institutions and the Member States, outside of the ECHR<sup>106</sup>, which jurisdiction does not apply to the EU institutions but only to the Member States. The Charter not only covers civil and political rights as the ECHR does, but it also covers economic, social, and cultural rights, mainly in its fourth title Solidarity<sup>107</sup>. It is an innovative document, as it provides specific protection to European citizens regarding their sexual orientation, disabilities, age, and other areas. The need for the protection of fundamental rights "in the light of changes in society, social progress, and scientific and technological developments"<sup>108</sup> is emphasized in the preamble of the Charter. The Charter also contains rights that were already guaranteed by the EU's secondary legislation, to make them more visible and to strengthen the fundamental right status. According to article 52(3) CFR, the rights of the ECHR provide a minimum level of protection, based on which the Charter might provide a higher level of protection.

To fall under the scope of application of EU law and for the Charter to apply, several aspects need to be taken into consideration: the territorial scope (the Member States), the temporal scope (the day of accession to the EU of the Member State), the personal scope, and the most critical one: the connection to an EU legislation<sup>109</sup>. Determining whether an act falls under the scope of application of EU law is the responsibility of the CJEU<sup>110</sup>. According to the CJEU, a situation can fall under the scope of application of EU law, when the Member State is implementing an EU legislation<sup>111</sup>, or when a national measure restricts an EU legislation, thus derogating from it<sup>112</sup>. EU citizens cannot rely on dispositions of the Charter in purely internal situations, non-related to EU legislation. Nevertheless, the

---

<sup>102</sup> Charter of Fundamental Rights of the European Union, article 51

<sup>103</sup> *Idem*, article 52.

<sup>104</sup> *Idem*, article 53.

<sup>105</sup> Walkila, *op. cit.*

<sup>106</sup> Ottavio Marzocchi, 'The Protection of Fundamental Rights in the EU', Factsheet (European Parliament, 2020).

<sup>107</sup> Walkila, *op. cit.*

<sup>108</sup> Charter of Fundamental Rights of the European Union, Preamble.

<sup>109</sup> Walkila, *op. cit.*

<sup>110</sup> *Ibidem*.

<sup>111</sup> Court of Justice of the European Communities, *Hubert Wachauf v Bundesamt für Ernährung und Forstwirtschaft*, 5/88 (Third Chamber 13 July 1989).

<sup>112</sup> Court of Justice of the European Communities, *Elliniki Radiophonia Tiléorassi AE and Panellinia Omospondia Syllogon Prossopikou v Dimotiki Etairia Pliroforissis and Sotirios Kouvelas and Nicolaos Avdellas and others*, C-260/89 (18 June 1991).

CJEU has a broad approach to the scope of application of EU law, through a notion of ‘sufficient connection to EU law’<sup>113</sup>.

The Fundamental Rights Agency has had a crucial role in the monitoring of the application of the Charter, and regularly publishes investigations and opinions about its use, and how it could be expanded<sup>114</sup>.

*b. The European Union Fundamental Rights Agency*

The Fundamental Rights Agency is an independent EU expert institution, which was established in 2007. It is the only one which specific objective is to monitor and address the protection of human rights in the EU. FRA’s decisions are not legally binding, and it is not allowed to take individuals’ complaints, it solely has an advisory role, to support the European institutions in their decision-making role, to fully respect fundamental rights and implement a human rights perspective<sup>115</sup>. The Agency has a mission to gather and analyze data in relevant areas to draw conclusions and report them, in various forms (reports, opinions, forms, workshops) to the EU institutions. In its advisory mission, FRA developed a series of indicators in areas such as the right of the child, or the right of Roma people, at the request of the EU Commission, to take them into account in the EU decision-making process. FRA is particularly active in the area of non-discrimination<sup>116</sup>.

The Agency monitors the application of the Charter of Fundamental Rights. It regularly releases publications about the implementation of the Charter and its enforcement in the Member States. FRA continuously investigates how the Charter could be used<sup>117</sup> and implemented at its full potential<sup>118</sup> to better protect the EU citizens.

The Agency also has strong contact with civil society organisations’ networks to promote and raise awareness about fundamental rights<sup>119</sup>. The Fundamental Rights Platforms in particular allows stakeholders working in the human rights sector, whether in the civil society or institutions to exchange

---

<sup>113</sup> Walkila, op. cit.

<sup>114</sup> European Union Agency for Fundamental Rights, *Ten years on: unlocking the Charter’s full potential*, 2020.

<sup>115</sup> Gabriel Toggenburg, ‘Fundamental Rights and the European Union: How Does and How Should the EU Agency for Fundamental Rights Relate to the EU Charter of Fundamental Rights?’, *SSRN Electronic Journal*, 2013.

<sup>116</sup> Toggenburg, Grimheden, op. cit.

<sup>117</sup> European Union Agency for Fundamental Rights, ‘Challenges and Opportunities for the Implementation of the Charter of Fundamental Rights’, (28 September 2018).

<sup>118</sup> European Union Agency for Fundamental Rights, ‘Ten Years On: Unlocking the Charter’s Full Potential’ (2020).

<sup>119</sup> Toggenburg, Grimheden, op. cit.

information and share knowledge and best practices. This device allows for the cooperation between FRA and those field actors, who can also make suggestions to the Management Board of FRA<sup>120</sup>. FRA is very active in its monitoring and fact-finding mission, but despite this important role, the work of FRA is relatively unknown. Its conclusions very rarely end up in the draft of legislative decisions, or infringement procedures<sup>121</sup>.

In 2019, in collaboration with the United Nations and the Council of Europe, the EU launched the EU Fundamental Rights Information System (EFRIS), developed by the Fundamental Rights Agency. This tool gathers data from the existing human rights database (e.g. the United Nations, the Council of Europe, the Organisation for Security and Cooperation in Europe) and “enables viewing and analysis of relevant assessments of fundamental rights in the EU”<sup>122</sup>.

Since its creation, FRA has been particularly active in the monitoring of the compliance of the principle of equality and non-discrimination in the Member States<sup>123</sup>.

*c. EU Equality law as a fundamental rights policy*

Equality is one of the values of article 2 TEU and it is guaranteed by fundamental rights law<sup>124</sup>. The principle of equality and non-discrimination have been part of the EU legal order since the entry into force of the Treaties of Rome<sup>125</sup>. EU non-discrimination or equality law is made out of a variety of sources<sup>126</sup>: EU constitutional law through the Charter of Fundamental Rights<sup>127</sup> and article 18 TFEU, the general principles of the EU law<sup>128</sup>, and the secondary legislation. Until 2000, the legislation on non-discrimination in the EU was limited to discrimination based on sex in employment<sup>129</sup>. However, the CJEU has always been very active in the field of promotion of gender equality and non-discrimination

---

<sup>120</sup> Lorenza Violini, ‘The Fundamental Rights Agency of the EU: A Step on the Way toward an Integrated EU Policy in the Domain of Fundamental Rights’, in *The Fragmented Landscape of Fundamental Rights Protection in Europe*, by Lorenza Violini and Antonia Baraggia (Edward Elgar Publishing, 2018), 139–52.

<sup>121</sup> *Ibidem*.

<sup>122</sup> ‘EU Fundamental Rights Information System’, EFRIS, <https://fra.europa.eu/en/databases/efris/>.

<sup>123</sup> Toggenburg, Grimheden, op. cit.

<sup>124</sup> Charter of Fundamental Rights of the European Union, Title III, “Equality”.

<sup>125</sup> Walkila, op. cit.

<sup>126</sup> Elise Muir, *EU Equality Law: The First Fundamental Rights Policy of the EU*, (Oxford University Press), 2018.

<sup>127</sup> Charter of Fundamental Rights of the European Union, Title III.

<sup>128</sup> Consolidated Version of the Treaty on European Union, article 6(3).

<sup>129</sup> Council of Europe, and European Union Agency for Fundamental Rights, eds., *Handbook on European Non-Discrimination Law*, (Luxembourg: Publications Office of the European Union, 2018).

based on nationality<sup>130</sup>. This field is considered to be the first fundamental rights policy of the EU, in the sense that it is an area completely unrelated to the internal market, and can thus be considered as a fully autonomous field and can thus testify of the capacity of the EU in the protection and elaboration of a fundamental rights policy<sup>131</sup>. In 2000, the same year that the Charter of Fundamental Rights was adopted, two directives on anti-discrimination came into force: the Employment Equality Directive<sup>132</sup>, which prohibits discrimination in employment based on sexual orientation, religion or belief, age, and disability, and the Racial Equality Directive<sup>133</sup> which prohibits discrimination based on race and ethnicity in employment, the access to the welfare system and social security, and goods and services. The Gender Goods and Services Directive<sup>134</sup> was adopted in 2004, this directive extended the non-discrimination based on gender to the area of goods and services. The Gender Equality Directive<sup>135</sup> adopted two years later guarantees equality based on gender in access to social security. In 2008, the Commission proposed to adopt a new anti-discrimination directive<sup>136</sup>, which aims at enforcing equality outside of the labour market, and through a horizontal approach. A consensus has not been found in the Council yet<sup>137</sup>. The adoption of those secondary legislations gives now a much broader scope of application to EU equality law. The CJEU has had an important role in the constitutionalisation of the principle of equality. This process has notably evolved through a series of decisions of the CJEU about age-discrimination, where the Court didn't only base its reasoning on the relevant anti-discrimination directive, but also on the constitutional traditions of the Member States, and "international instruments"<sup>138</sup> as the source for a general principle of equality. The Court then started to use article 21

---

<sup>130</sup> Raphaelé Xenidis, 'Shaking the Normative Foundations of EU Equality Law: Evolution and Hierarchy between Market Integration and Human Rights Rationales', *SSRN Electronic Journal*, 2017.

<sup>131</sup> Muir, op. cit.

<sup>132</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

<sup>133</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, 19.7.2000.

<sup>134</sup> Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L 373, 21.12.2004.

<sup>135</sup> Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ L 204, 26.7.2006.

<sup>136</sup> European Commission, Proposal for a Council Directive on implementing the principle of equal treatment outside the labour market, irrespective of age, disability, sexual orientation or religious belief, COM(2008)0426 - 2008/0140(CNS).

<sup>137</sup> 'Legislative Train Schedule - Anti-Discrimination Directive', European Parliament, <https://www.europarl.europa.eu/legislative-train>.

<sup>138</sup> Court of Justice of the European Union, *Werner Mangold v Rüdiger Helm*, C-144/04 (Grand Chamber 22 November 2005).

CFR, instead of the EU non-discrimination law in its case-law<sup>139</sup>, thus going beyond the scope of application of the directives and changing the perspective on the principle of equality. Through this constitutionalisation process led by the CJEU, it acquires a Fundamental right status, with a much broader scope of application than the EU non-discrimination secondary legislations<sup>140</sup>.

*d. The role of the Court of Justice of the European Union in the enforcement of fundamental rights*

The CJEU is not a Human rights court like the European Court of Human rights, yet, like for the rule of law, the role of the CJEU for the protection of fundamental rights has become more and more important. The integration of fundamental rights into the EU legal order has been done through the CJEU jurisprudence<sup>141</sup>. This expansion goes hand in hand with the increasing competences of the EU in areas such as the Justice and Home Affairs, which include asylum and migration, which deal a lot with human rights related issues, and others such as criminal law, and data protection<sup>142</sup>. The fact that the EU now has its own tool to protect fundamental rights also contributes to the CJEU involvement in the human rights protection, nevertheless, the ECHR has been an external source of protection of fundamental rights in the EU legal order since 1975 when the CJEU referred to it in a judgment, to interpret an EU legislation<sup>143</sup>. Since 2009, the CJEU has actively referred to the Charter of Fundamental Rights, especially in the area of freedom, security, and justice. By frequently using this document, the Court has contributed to the realization of the protection of fundamental rights in the EU legal order<sup>144</sup>.

As we mentioned above, the EU also adopted several directives for the protection of European citizens in the areas of equality and non-discrimination which embody the essence of EU values. When it comes to fundamental rights, it is much easier for the Commission to intervene and address the situation through infringement procedure, than for the rule of law backsliding. For example, the Racial

---

<sup>139</sup> Court of Justice of the European Union, *Association Belge des Consommateurs Test-Achats ASBL and Others v Conseil des ministres.*, No. C-236/09 (Grand Chamber 1 March 2011).

<sup>140</sup> Xenidis, *op. cit.*

<sup>141</sup> Walkila, *op. cit.*

<sup>142</sup> Šejla Imamović, 'The Role of the Court of Justice in the Fragmented European Fundamental Rights Landscape', in *The Fragmented Landscape of Fundamental Rights Protection in Europe*, eds. Lorenza Violini and Antonia Baraggia (Edward Elgar Publishing, 2018), 73–93.

<sup>143</sup> Court of Justice of the European Communities, *Roland Rutili v Ministre de l'intérieur*, 36–75 (28 October 1975).

<sup>144</sup> Walkila, *op. cit.*

Equality Directive was used as a basis to send a Letter of Formal Notice to Hungary and Slovakia for the segregation of Roma children in schools<sup>145</sup>.

The CJEU and the European Commission also used legal tools to protect fundamental rights to tackle rule of law issues. In the case of Hungary, the European Commission opened an infringement procedure about a law about the retirement age of the judges, threatening the independence of the justice system, as it was expected that the composition of the courts would change, allowing the government to appoint new judges. The CJEU concluded that there was a violation of the Employment equality directive, thus concluding to discrimination on the ground of age<sup>146</sup>.

When it comes to the EU legislation, as long as the EU has not joined the ECHR, it can only go through the internal scrutiny of the CJEU.

*e. The European Convention on Human Rights and the European Union*

As the EU was initially not an international organization focused on the protection of fundamental rights, the ECHR had particular importance for the EU, as it was the only Human Rights Court in the region, and all Member States are parties to the ECHR. The fundamental rights guaranteed by the ECHR are part of the general principles of EU law according to article 6(3) TEU and the case-law of the ECHR has been used and is still used by the CJEU. The Convention is an external source of protection of human rights in the EU legal order, and its relation with it is governed by article 6(3) TEU. The relationship between the ECHR and the Charter is governed by article 52(3) of the Charter which provides that some of the rights contained in the Charter correspond and have an equivalent meaning and scope as the rights guaranteed by the ECHR<sup>147</sup>. This article also states that the EU can provide even more extensive protection. Thus, the rights guaranteed by the ECHR, and the jurisprudence of the European Court of Human Rights represent the minimum level of protection in the EU legal order. The decisions of the judges of the CJEU tend to be in alignment with the decision of the ECtHR, and vice-versa, resulting in a constructive dialogue between the two Courts and legal

---

<sup>145</sup> Olivier De Schutter, 'Infringement Proceedings as a Tool for the Enforcement of Fundamental Rights in the European Union' (Open Society European Policy Institute, October 2017).

<sup>146</sup> *Ibidem*.

<sup>147</sup> Charter of Fundamental Rights of the European Union, article 52(3).

orders<sup>148</sup>. The accession of the EU to the ECHR has been discussed for many years. The Commission proposed to do so on several occasions, as early as 1979, to link the EU legal order to fundamental rights compliance. Before the entry into force of the Treaty of Lisbon in 2009, the EU didn't have the competence to "enact rules on human rights or to conclude international conventions in this field"<sup>149</sup>. Article 6(2) TEU made the accession to the ECHR possible and obligatory. In the case of the accession of the EU to the ECHR, it would become subject to the scrutiny of an external judicial right, like its Member States, meaning that EU legal acts could be reviewed in front of the ECtHR by European citizens and third-country nationals.

Shortly after the entry into force of the Lisbon Treaty, the EU started the accession process to the ECHR and reached a consensus about a draft Accession Agreement<sup>150</sup>. The accession to the ECHR has been challenged by the CJEU's Opinion 2/13, in which the CJEU rejected the draft Accession Agreement of the EU to the ECHR. In this decision, the Court states that the agreement is not compatible with the article 6(2) TEU as "it is liable adversely to affect the specific characteristics and the autonomy of EU law" and that it "does not avert the risk that the principle of Member States' mutual trust under EU law may be undermined"<sup>151</sup>. Given this opinion and considering the obligation of the EU to accede to the ECHR according to article 6(2) TEU, the only available option is to reopen the negotiations to reach a new accession agreement. Nevertheless, as the negotiations between the two parties have been difficult, this might take some time before the EU can be subject to external scrutiny when it comes to its fundamental rights obligations<sup>152</sup>.

In parallel with this debate about the accession to the ECHR, there have been ongoing discussions concerning possible improvement to the EU protection of fundamental rights.

---

<sup>148</sup> Chiara Amalfitano, *General Principles of EU Law and the Protection of Fundamental Rights* (Edward Elgar Publishing, 2018).

<sup>149</sup> Court of Justice of the European Union, 'Opinion 2/94 of the Court - Accession by the Community to the European Convention for the Protection of Human Rights and Fundamental Freedoms' (28 March 1996).

<sup>150</sup> Marzocchi, *op. cit.*

<sup>151</sup> Court of Justice of the European Union, Opinion 2/13 of the Court (28 December 2014).

<sup>152</sup> Tonje Meinich, 'EU Accession to the European Convention on Human Rights – Challenges in the Negotiations', *The International Journal of Human Rights*, (17 April 2019): 1–5.

f. *Proposals for better protection of fundamental rights*

There have been numerous researches to improve the legal framework of protection of fundamental rights. One of the most important, which sparked a lot of discussions, is the Reverse Solange<sup>153</sup> doctrine theorized by Armin von Bogdandy et al. This theory comes from the Solange doctrine from the German Federal Constitutional Court which established it through a series of decisions<sup>154</sup>. In its Solange II decision<sup>155</sup> in 1986, the German Federal Constitutional Court announces that it will no longer control the European legislation, as long as the level of protection of fundamental rights in the European legal order remains as high as in the German legal order. Through this doctrine emerges a presumption of compliance of the EU legal order with fundamental rights. This presumption also stems from the EU principle of mutual trust between the Member States<sup>156</sup>. Armin von Bogdandy, in his proposal, argues that the fundamental rights guaranteed by article 2 TEU are part of the rights conferred by EU citizenship. This idea is based on the Ruiz Zambrano case by the CJEU. In this case, the Court argues that article 20 TFEU precludes national measures “which have the effect of depriving citizens of the Union of the genuine enjoyment of the substance of the rights conferred by their status as citizens of the Union”<sup>157</sup>. The Solange part of the proposal comes from the presumption of compliance of the national authorities of the EU Member States with the values of article 2. If this presumption is rebutted, in case of a serious systemic threat to the values of article 2 TEU in domestic situations, beyond the scope of article 51(1) of the Charter, European Citizens could invoke their citizenship and the “substance of fundamental rights” attached to it, and trigger the jurisdiction of the CJEU through article 267 TFEU<sup>158</sup>. So far, this approach has not been picked up by the Court. Nevertheless, the Court used a similar approach in the *Associação Sindical dos Juízes Portugueses*<sup>159</sup>, by making a “value-oriented” approach of article 19(1) TEU, combining it with article 2 TEU. As we mentioned before, the Court expanded the scope of application of article 19(1) TEU, guaranteeing the independence of justice, to all tribunals and courts of the Member States. Through this jurisprudence,

---

<sup>153</sup> Armin von Bogdandy et al., ‘Reverse Solange - Protecting the Essence of Fundamental Rights against EU Member States’, *Common Market Law Review* 49, no. 2, (2012).

<sup>154</sup> Franz C. Mayer, ‘The European Constitution and the Courts’ (2003).

<sup>155</sup> BVerfGE 73, 339 - Solange II

<sup>156</sup> Armin von Bogdandy, Luke Dimitrios Spieker, ‘Countering the Judicial Silencing of Critics: Article 2 TEU Values, Reverse Solange, and the Responsibilities of National Judges’, *European Constitutional Law Review* 15, no. 3 (September 2019): 391–426.

<sup>157</sup> Court of Justice of the European Union, *Gerardo Ruiz Zambrano v Office national de l’emploi*, No. C-34/09 (Grand Chamber 8 March 2011).

<sup>158</sup> von Bogdandy et al., op. cit.

<sup>159</sup> Court of Justice of the European Union, *Associação Sindical dos Juízes Portugueses v Tribunal de Contas*.

the Court inaugurated an activation and operationalization of the values of article 2 TEU, through article 19(1) TEU<sup>160</sup>.

Another proposal formulated by Viviane Reding, former Vice-President of the European Commission and Justice Commissioner, was to abolish article 51 of the Charter of Fundamental Rights to make fundamental rights directly applicable in the Member States outside of the scope of application of EU law<sup>161</sup>. This proposal would be a very big step in the federalization process of the EU and would need a treaty change. As article 51 has sparked a lot of controversy at the time of the negotiations for the adoption of the Charter, it is unlikely that it will be abolished anytime soon<sup>162</sup>. The Fundamental Rights Agency also emphasizes on the fact that the first need is to raise awareness in the Member States to ensure a proper application of the Charter, and to improve its impact<sup>163</sup>.

More generally the institutional mechanisms to enforce the respect of the rule of law such as article 7 TEU, the Rule of Law Framework, or the Rule of Law Dialogue, can also tackle the violation of the other values of article 2 TEU, fundamental rights, and democracy. The protection of democracy in the EU will be addressed in the following section.

#### **D. Enforcing the respect of democracy at the EU level**

In situations of emergency, such as a pandemic or terrorist attack, emergency measures can be taken, safeguards are needed to protect the democratic regime (I.D.a). At the European level, democracy is symbolized by the European Parliament, there is thus a need to protect the electoral process from external threats such as disinformation (I.D.b).

---

<sup>160</sup> von Bogdandy, Spieker, op. cit.

<sup>161</sup> Viviane Reding, Speech: The EU and the Rule of Law – What next?

<sup>162</sup> European Union Agency for Fundamental Rights, ‘Ten Years On: Unlocking the Charter’s Full Potential’.

<sup>163</sup> *Ibidem*.

a. *The protection of democracy in times of crisis*

The general understanding of the basic definition of democracy is that it is based on popular sovereignty and collective-decision making<sup>164</sup>, it is a “system involving effective competition between political parties for positions and power”<sup>165</sup>. One of the main features of democracy are regular and fair elections: citizens decide the legitimacy and stability of democracy<sup>166</sup>. However, in Europe after the Second World War, States delegated some powers to institutional watchdogs and particularly constitutional courts<sup>167</sup>. The idea underlying was to avoid that an elected body could hand the power to a leader without any kind of constraint<sup>168</sup>. The weakening of the Constitutional Court which constitutes a backsliding of the rule of law directly affects the quality of a democracy.

In a liberal democracy, fundamental rights are preserved and promoted, and some of them are key to a functioning democracy, and particularly the freedom of expression, media freedom, and the freedom of association. The quality of a democracy is thus interlinked to the protection of fundamental rights and the rule of law. Most of the tools abovementioned to protect the fundamental rights and the rule of law could be used to protect democracy in the Member States: especially article 7 TEU, the Rule of Law Framework, and the Rule of Law Dialogue, as well as the Charter of Fundamental Rights, guarantee the protection of fundamental rights, necessary in a democracy, including the right to vote and to stand for European and local elections<sup>169</sup>.

The scholars’ proposals mentioned in the previous chapters could also be applied to the protection of democracy, such as the Copenhagen Commission’s proposal by Jan-Werner Müller, the Reverse Solange Doctrine, or the abolition of article 51 CFR.

The restriction of certain fundamental rights can be admitted on an exceptional basis, in a situation of emergency. Article 52(1) of the Charter allows for such limitations which must be “provided for by law and respect the essence of those rights and freedoms”, they must respect the principle of proportionality, be necessary, and they must “meet objectives of general interest recognised

---

<sup>164</sup> Todd Landmann, ‘Concepts Matter: Delineating Democracy, Governance and Human Rights’ (International Idea, 2009).

<sup>165</sup> Josip Kregar, ‘Regime Change & Democratisation’ (Week 10 - Regime Change, Democracy, Democratisation, Threats to Democracy and Representation of Minorities, Global Campus of Human Rights, 20 November 2019).

<sup>166</sup> Werner Merkel, Werner Krause, ‘Crisis of Democracy? Views of Experts and Citizens’, in *Democracy and Crisis: Challenges in Turbulent Times*, ed. Wolfgang Merkel, Sascha Kneip (Springer International Publishing, 2018).

<sup>167</sup> Müller, ‘Defending Democracy within the EU’.

<sup>168</sup> *Ibidem*.

<sup>169</sup> Charter of Fundamental Rights of the European Union, articles 39-40.

by the Union or the need to protect the rights and freedoms of others”<sup>170</sup>. Those restrictions come with safeguards, to protect democracy. The equivalent of article 52(1) EUCFR in the ECHR is article 15 “Derogation in times of emergency”<sup>171</sup>. In a situation of emergency, those limitations can affect in the first-place rights that are necessary for a democracy, such as the freedom of assembly. The ongoing health crisis due to the COVID-19 has led the governments of countries all over the world to limit drastically the freedom of assembly and the freedom of movement. While some of those measures are necessary, some governments seem to exploit an opportunity to continue to erode civic rights and democratic standards<sup>172</sup>. Decisions taken by the governments and the parliaments in Hungary and Poland presumably to tackle the pandemic pose real challenges to democracy. The Commission condemned those measures and announced that it would monitor the emergency measures to the COVID-19<sup>173</sup>. Vice-president of the Commission Vera Jourova announced the creation of a new European Democracy Action Plan<sup>174</sup>. According to the roadmap, this action-plan aims at improving the resilience of democracy and addresses the threats faced by the European democratic system. It will be focused on election integrity, guaranteeing media freedom, tackling disinformation, and supporting society<sup>175</sup>. The Commission’s communication on the action-plan should be presented by the end of 2020.

The EU had already tried to address some of those issues in view of the 2019 European Elections.

---

<sup>170</sup> *Idem*, article 52(1).

<sup>171</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, article 15.

<sup>172</sup> Rebecca Wagner, ‘Internal Threats to EU’s External Democracy Support in Times of a Pandemic – Can the New EU Council Conclusions on Democracy still Kick-off?’, *PRIF BLOG* (blog), 16 April 2020, <https://blog.prif.org/2020/04/16/internal-threats-to-eus-external-democracy-support-in-times-of-a-pandemic-can-the-new-eu-council-conclusions-on-democracy-still-kick-off/>.

<sup>173</sup> Ursula Von Der Leyen, ‘Statement by President von Der Leyen on Emergency Measures in Member States’, STATEMENT/20/567 (2020).

<sup>174</sup> Věra Jourová, ‘Remarks by Vice-President Věra Jourová - Threats to democracy during the COVID-19 crisis’, SPEECH/20/861 (2020).

<sup>175</sup> ‘Protecting European Democracy from Interference and Manipulation – European Democracy Action Plan’, European Commission, <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12506-European-Democracy-Action-Plan>.

*b. Building democratic resilience by protecting the electoral process and tackling disinformation*

The right to free elections is one of the pillars of democracy. In the context of the European Union and its governance, it mostly concerns the European elections and the national elections, whether legislative or presidential, since they designate the members of the Council.

In 2019, the European Union doubled its efforts to protect the elections of the European Parliament and to “bolster democratic resilience”<sup>176</sup>. In 2018, the European Commission proposed a European election package<sup>177</sup>. One of the items of this package was the European cooperation network on election<sup>178</sup>. The objective of the network, which was composed of representatives of Member States with competence in electoral matters, was to exchange on a range of topics to ensure free and fair elections (i.e. cyber-security, data protection, and transparency). The Commission also addressed transparency in political advertisement, cybersecurity threats, political party funding, the respect of electoral rules, and data protection. The report on the European elections showed good results of this strategy to safeguard democracy in view of the elections, the exchange of information among the Member States through the European cooperation network on election worked particularly well<sup>179</sup>. However, one of the biggest challenges encountered during elections in the last years is online disinformation, by national and foreign interferences<sup>180</sup>, which is also an ongoing issue in the case of the COVID-19 health crisis<sup>181</sup>.

One of the ways proposed by the Commission to tackle disinformation is by supporting fact-checkers, independent, free, and plural media to foster the democratic debate while ensuring that freedom of expression is guaranteed<sup>182</sup>. Freedom of expression and freedom and pluralism of the media are enshrined in the Charter<sup>183</sup> and the ECHR<sup>184</sup>. The Commission has been supporting media freedom through funds and grants with the European Centre for Press and Media Freedom and the Centre for

---

<sup>176</sup> European Commission, ‘State of the Union 2018: European Commission Proposes Measures for Securing Free and Fair European Elections’, IP/18/5681 (2018).

<sup>177</sup> *Ibidem*.

<sup>178</sup> European Commission, ‘European Cooperation Network on Elections’, [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/eu-citizenship/electoral-rights/european-cooperation-network-elections\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/eu-citizenship/electoral-rights/european-cooperation-network-elections_en).

<sup>179</sup> European Commission, ‘Report on the 2019 Elections to the European Parliament’, COM(2020) 252 final (2020).

<sup>180</sup> ‘Truth or Tale? Fact-Checking, Disinformation and Fake News in European and National Election Campaigns - Outcomes Report’ (Barcelona: Mercator European Dialogue, 2 May 2019).

<sup>181</sup> European Commission, ‘Tackling COVID-19 Disinformation - Getting the Facts Right’, JOIN(2020) 8 final (2020).

<sup>182</sup> *Ibidem*.

<sup>183</sup> Charter of Fundamental Rights of the European Union, article 11.

<sup>184</sup> *Idem*, article 10.

Media Pluralism and Media Freedom<sup>185</sup>. In our digital age, disinformation remains a widespread threat to democracy.

## E. Conclusion

The crisis of the values in the EU has been presented in the media and by several politicians as a “rule of law crisis”<sup>186</sup>, this is however a misleading representation given the interdependency of the values of the EU<sup>187</sup>. The relationship between the rule of law, fundamental rights, and democracy is triangular, and one cannot exist without the other. The rule of law is conditional to a functioning democracy and the framework for the protection of fundamental rights, while fundamental rights are necessary for democracy if only for the right to the democratic participation through the right to vote, the freedom of assembly, and expression<sup>188</sup>. A crisis related to one of the EU values will affect the other values of article 2 TEU<sup>189</sup>.

Most of the tools mentioned in the previous sections can cover the violations of the rule of law, democracy, and fundamental rights. As we mentioned before, the Court of Justice is a key player in the protection of the EU values, when their violations happen in the scope of EU law. This restricted scope of application limits the possibility to start infringement procedure, even though the CJEU. Article 7 TEU can thus become an option in case of systemic breaches of the values. The Rule of Law Framework and the Rule of Law Dialogue show a willingness by the Council and the Commission to act on the topic, but they also appear to focus on the rule of law, thus silencing the need to act on the violations of the other values.

The European Parliament has been very active in the field of protection of the core values of the EU, even before it was directly elected. In recent years, it has gained an important role in that area, as we will see in the next chapter.

---

<sup>185</sup> European Commission, ‘Media Freedom and Pluralism’, Shaping Europe’s digital future, 17 February 2014, <https://ec.europa.eu/digital-single-market/en/policies/media-freedom-and-pluralism>.

<sup>186</sup> Michal Šimečka, ‘Inability to Solve the EU’s Rule of Law Crisis Will Lead to Disintegration’, *Euronews*, 16 March 2020, sec. View, <https://www.euronews.com/2020/03/16/michal-simecka-inability-to-solve-the-rule-of-law-crisis-will-lead-to-disintegration-view>.

<sup>187</sup> Mader, op. cit.

<sup>188</sup> Carrera, Guild, Hernanz, op. cit.

<sup>189</sup> *Ibidem*.

## CHAPTER II. THE EUROPEAN PARLIAMENT AND THE PROTECTION OF THE VALUES OF THE EU

The European Parliament has always been an active promoter of the European values (II.A). Over the years it used its power to act as a monitoring body of the Member States (II.B). The European Parliament has been requesting a permanent monitoring of compliance to the EU values to the Commission for several years now (II.C), and currently has a major role in the debate about the EU budget rule of law conditionality.

### A. The European Parliament as a promoter of the European Values

The European Parliament started to advocate for the protection of the European core values, and particularly for the protection of fundamental rights in 1973<sup>190</sup>. It actively supported the adoption of the Charter of Fundamental Rights (II.A.a) and addressed the situation of fundamental rights in the EU through its plenary debates (II.A.b).

#### a. *The European Parliament and the Charter of Fundamental Rights*

The European Parliament has always been in favor of strong protection of fundamental rights in the EU<sup>191</sup>, in particular through the adoption of an EU bill of rights, and supporting the accession of the EU to the ECHR since 1979<sup>192</sup>. The accession of the EU to the ECHR was also set as an objective in the draft treaty establishing the European Union<sup>193</sup> by the Member of the European Parliament (MEP) Altiero Spinelli. This report that was adopted by the European Parliament but not by the Council nor the Commission, talked for the first time about human rights in a constitutional context, within the framework of a treaty<sup>194</sup>. The discussions in the Parliament that surrounded its adoption led in 1989 to

---

<sup>190</sup> Amelia Conte, European Parliament, and Archive and Documentation Centre, *A Europe of Rights: History of the EU Charter* (Luxembourg: Publications Office of the European Union, 2012); Annex: Resolution of 4 April 1973 concerning the protection of the fundamental rights of member States' citizens when Community law is drafted.

<sup>191</sup> Marzocchi, op. cit.

<sup>192</sup> Conte, op.cit.; Annex: Resolution of the 22 April 1979 embodying the opinion of the European Parliament on the memorandum from the Commission of the European Communities on the accession of the European Communities to the Convention for the Protection of Human Rights and Fundamental Freedoms.

<sup>193</sup> *Idem*; Annex: Preliminary Draft Treaty Establishing the European Union.

<sup>194</sup> *Ibidem*.

the Declaration of Fundamental Rights and Freedoms<sup>195</sup>, establishing a catalogue of fundamental rights to be respected by the institutions. This was the first step towards the Charter of Fundamental Rights<sup>196</sup>. During the discussions prior to the drafting of the Treaty of Maastricht, the European Parliament tried unsuccessfully to make this Declaration binding<sup>197</sup>. Even though the core principles and values of the EU were gaining more weight in the treaties of Maastricht and Amsterdam, a binding list of fundamental rights as requested by the European Parliament was still lacking. In its resolution about the Amsterdam Treaty, the European Parliament called again on “a specific charter of fundamental rights of the Union to be drawn up”<sup>198</sup>. At the same time, the institution kept advocating for the accession of the EU to the ECHR<sup>199</sup>.

When the European Council in Cologne decided to draw a Charter of Fundamental Rights of the Union in June 1999, the European Parliament endorsed this decision. The Chamber insisted on being properly represented in the Convention responsible for the drafting of the Charter along with members of national parliaments, the Commission, and representatives of the Member States. For the first time, the European Parliament was associated with a project with potential constitutional implications.<sup>200</sup>

Once the Charter was proclaimed by the Convention, the European Parliament endorsed it through a resolution and called for the Charter to be incorporated in the Treaties<sup>201</sup>, to be fully effective. The European Parliament also stated that it would assess the situation regarding the rights provided by the Charter in the Member States and the EU Institutions<sup>202</sup>.

While the Charter has become legally binding with the entry into force of the Treaty of Lisbon, the European Parliament keeps assessing the situation regarding fundamental rights and the EU values through its debates and its annual resolution about the situation of fundamental rights in the European Union.

---

<sup>195</sup> European Parliament, ‘Resolution Adopting the Declaration of Fundamental Rights and Freedoms’, A2-3189 (1989).

<sup>196</sup> *Ibidem*.

<sup>197</sup> Conte, op.cit.; Annex: Report on the Intergovernmental Conference in the context of Parliament’s strategy for European Union.

<sup>198</sup> *Idem*; Annex: Resolution of 19 November 1997.

<sup>199</sup> *Idem*; Annex: Resolution of 18 January 1994.

<sup>200</sup> *Idem*.

<sup>201</sup> European Parliament, ‘Resolution on the European Union Charter of Fundamental Rights’, B5- 0767/2000.

<sup>202</sup> Conte, op. cit.

b. *The European values in the plenary debates of the European Parliament*

The plenary of the European Parliament has hosted debates regarding fundamental rights since 1973<sup>203</sup>. Since 1993, the Chamber holds an annual debate on the situation of fundamental rights in the EU, based on a report drafted by the Committee on Civil Liberties, Justice and Home Affairs (hereunder ‘LIBE Committee’)<sup>204</sup>. Those reports take into account various resources such as European legislation, communications of the Commission, resolutions adopted by the European Parliament, FRA reports, and sources from international organisations (e.g. UN treaties and resolutions)<sup>205</sup>. The annual fundamental rights resolutions address various topics. During the legislative term of 2014 to 2019, the European Parliament adopted four resolutions regarding the situation of fundamental rights in the EU for the years 2013-2014<sup>206</sup>, 2015<sup>207</sup>, 2016<sup>208</sup>, and 2017<sup>209</sup>. Those resolutions tackle different issues, even though some specific topics are recurring. For the resolution addressing the situation in the years 2013-2014, the text mostly regards the topic of non-discrimination by touching upon the protection of minorities, gender equality, the rights of children, the LGBTI community, and people with disabilities, the situation of Roma people, age discrimination, or the rights of migrants and refugees<sup>210</sup>. The resolution also addresses the effect of the financial crisis on “economic, civil, social and cultural rights”, and reminds that the Member States and EU institutions must respect their international obligations when they implement “structural reforms in their social and economic system”<sup>211</sup>. The resolution also mentions the situation in the fields of justice with the fight against criminality and corruption, the conditions in prisons, and the protection of victims<sup>212</sup>. The resolution for the years 2015 addresses similar topics but also includes the thematic of “digital rights”, and the right to privacy and freedom of expression online<sup>213</sup>. This resolution also dedicates one specific section to the rule of law. The European Parliament divides its report on the year 2016 in three topics: rule of law, migration and

---

<sup>203</sup> European Parliament, Resolution of 4 April 1973 concerning the protection of the fundamental rights of member States’ citizens when Community law is drafted.

<sup>204</sup> Marzocchi, op. cit.

<sup>205</sup> European Parliament, ‘Resolution on the Situation of Fundamental Rights in the EU (2013-2014)’, 2014/2254(INI) (08.09.2015).

<sup>206</sup> *Ibidem*.

<sup>207</sup> European Parliament, ‘Resolution on the Situation of Fundamental Rights in the European Union in 2015’, 2016/2009(INI) (13.12.2016).

<sup>208</sup> European Parliament, ‘Resolution on the Situation of Fundamental Rights in the EU in 2016’, 2017/2125(INI) (01.03.2018).

<sup>209</sup> European Parliament, ‘Resolution on the Situation of Fundamental Rights in the European Union in 2017’, 2018/2103(INI) (16.01.2018).

<sup>210</sup> European Parliament, Resolution on the situation of fundamental rights in the EU (2013-2014).

<sup>211</sup> *Ibidem*.

<sup>212</sup> *Ibidem*.

<sup>213</sup> European Parliament, Resolution on the situation of fundamental rights in the European Union in 2015.

integration, and discrimination, whereas those topics are touched upon in every report on the situation of fundamental rights, this resolution presents them as the most pressing issues faced by the EU and emphasizes on the need to address them.<sup>214</sup> The resolution on the situation of fundamental rights in 2017<sup>215</sup> reiterates on the same issues, adding women's rights, racism and xenophobia, and media freedom<sup>216</sup>. This text also underlines the role of FRA, and welcomes its work, and recommends to EU legislators to “request independent and external human rights advice from the FRA whenever a legislative file raises serious fundamental rights issues”<sup>217</sup>.

Through those resolutions, the Parliament keeps track of the situation regarding fundamental rights in the EU, but it also drafts and adopts annual reports on human rights and democracy in the world and assesses the EU policy on the matter<sup>218</sup>. More generally the debates in the European Parliament plenary and the resolutions adopted enable to discuss sensitive topics affecting the European values, such as the integration of Roma people in the EU and the fight of anti-Gypsyism<sup>219</sup>, racism with the adoption of a resolution on the fundamental rights of people of African descent<sup>220</sup> and recently about the anti-racism protest in the US and the EU following the death of George Floyd<sup>221</sup>. Through those activities, the European Parliament can express its position but also advocate to change the situation at the EU level. The fact that the abolition of the death penalty is one of the criteria for EU membership is due to the advocacy work of the European Parliament on the matter between 1980 and 1998<sup>222</sup>.

The European Parliament also addresses events happening in the EU Member States. For example, a debate had been dedicated to the “Constitution, rule of law and fundamental rights in Spain”<sup>223</sup>, after the independence referendum in Catalonia in 2017; the right to peaceful protest and the

---

<sup>214</sup> European Parliament, Resolution on the Situation of Fundamental Rights in the EU in 2016.

<sup>215</sup> European Parliament, Resolution on the Situation of Fundamental Rights in the European Union in 2017.

<sup>216</sup> *Ibidem*.

<sup>217</sup> *Ibidem*.

<sup>218</sup> European Parliament, ‘Resolution on the Human Rights and Democracy in the World and the European Union’s Policy on the Matter - Annual Report 2018’, 2019/2125(INI) (15.01.2020).

<sup>219</sup> European Parliament, ‘Resolution on Fundamental Rights Aspects in Roma Integration in the EU: Fighting Anti-Gypsyism’, 2017/2038(INI) (25.10.2017).

<sup>220</sup> European Parliament, ‘Resolution on Fundamental Rights of People of African Descent’, 2018/2899(RSP) (26.03.2019).

<sup>221</sup> European Parliament, ‘Resolution on the Anti-Racism Protests Following the Death of George Floyd’, 2020/2685(RSP) (19.06.2020).

<sup>222</sup> Conte, op. cit.

<sup>223</sup> European Parliament, ‘Constitution, Rule of Law and Fundamental Rights in Spain in the Light of the Events in Catalonia’ (Debate) (4 October 2017).

proportionate use of force has also been restated through a resolution<sup>224</sup> adopted in February 2019, after the Yellow vests protests in France, or the rule of law situation in Romania after the adoption of new judicial and criminal legislation<sup>225</sup>. Those resolutions can lead to more thorough surveillance by the European Parliament if the situation doesn't improve. This monitoring role will be discussed in the next sub-section.

## **B. The European Parliament as a monitoring authority of the Member States**

The European Parliament has the power to activate the procedure of article 7(1) TEU (II.B.a), it could do so for Hungary and supported the Commission who launched the procedure about Poland (II.B.b). To better assess the situation regarding the values of article 2 TEU, the LIBE Committee set up a working group on the matter (II.B.c).

### *a. The European Parliament and article 7(1) TEU*

When it comes to the enforcement of EU law, the European Commission and the CJEU are the most effective institutions, thanks to the infringement procedure or the Rule of Law Framework<sup>226</sup>. The European Parliament has less efficient tools in this regard since its resolutions are not binding. However, the institution can act through article 7(1) TEU. Article 7(1) is about the determination of “a clear risk of a serious breach by a Member State of the values”<sup>227</sup> of the article 2 TEU. The procedure of article 7(1) starts with a reasoned proposal by “one third of the Member States, by the European Parliament or by the European Commission”<sup>228</sup>, which needs to be approved by the European Parliament and acted by four fifths of the Member States in the Council.

The European Parliament thus has an important power for the activation of the first step of the procedure of article 7 TEU. In fact, out of the two times that article 7(1) TEU has been activated for Poland and Hungary so far, the procedure for Hungary has been started by the European Parliament

---

<sup>224</sup> European Parliament, ‘Resolution on the Right to Peaceful Protest and the Proportionate Use of Force’, 2019/2569(RSP) (14.02.2019).

<sup>225</sup> European Parliament, ‘Resolution on the Rule of Law in Romania’, 2018/2844(RSP) (13.11.2018).

<sup>226</sup> See chapter I.

<sup>227</sup> Consolidated version of the Treaty on European Union, article 7(1).

<sup>228</sup> *Ibidem*.

after years of discussions in the hemicycle. The Hungarian case in the European Parliament will be discussed in detail in the next sub-section.

*b. The situation in Hungary and Poland*

In 2010, Fidesz, Viktor Orbán's political party, came to power in Hungary. Since this date, the situation regarding the rule of law, democracy, and Fundamental rights has deteriorated rapidly, because of the measures taken by Orbán's government<sup>229</sup>. The European Parliament has been the most vocal EU institution regarding the situation in Hungary, and adopted seven resolutions about the state of the rule of law, democracy, and fundamental rights in the country, before it adopted the reasoned proposal<sup>230</sup>, starting the procedure of article 7(1) in September 2018.

The situation in Hungary critically evolved in a very short timeframe. As early as March 2011, the European Parliament adopted a resolution<sup>231</sup> denouncing the changing Media Law which was threatening media pluralism and independence in the country. Most of the measures of Orbán's government have been adopted because the country has a new constitution, which allowed a major shift in the governance of Hungary<sup>232</sup> and that has been widely criticized by NGOs and European governments<sup>233</sup>. The Venice Commission wrote an Opinion stating its concerns on the matter. The main issues raised were the constitution-making process, which lacked transparency and pluralism, the number of sensible matters that have been enshrined in cardinal laws, the limitation of the power of the Constitutional court, and the constitutional protection of fundamental rights which lacked precision. The Opinion also pointed its worries about "the wording on the protection of the rights of Hungarians abroad"<sup>234</sup>, which could have generated diplomatic tensions. The European Parliament has rapidly taken a stance regarding the situation in the State, and in 2011 adopted a resolution on the "Revised Hungarian Constitution"<sup>235</sup> before it entered into force on the 1st of January 2012. The Resolution starts

---

<sup>229</sup> Matthijs Bogaards, 'De-Democratization in Hungary: Diffusely Defective Democracy', *Democratization* 25, no. 8 (17 November 2018): 1481–99.

<sup>230</sup> European Parliament, 'Resolution on a Proposal Calling on the Council to Determine, Pursuant to Article 7(1) of the Treaty on European Union, the Existence of a Clear Risk of a Serious Breach by Hungary of the Values on Which the Union Is Founded', 2017/2131(INL) (12.09.2018).

<sup>231</sup> European Parliament, 'Resolution on Media Law in Hungary', P7\_TA(2011)0094 (10.03.2011).

<sup>232</sup> Filippov Gábor, 'Hungary', Freedom House, <https://freedomhouse.org/country/hungary/nations-transit/2020>.

<sup>233</sup> European Parliament, 'Resolution on the Revised Hungarian Constitution', P7\_TA(2011)0315 (05.07.2011).

<sup>234</sup> Christoph Grabenwarter et al., 'Opinion on the New Constitution of Hungary', Opinion 621/2011 (Strasbourg: European Commission for Democracy Through Law, 17-18 June 2011).

<sup>235</sup> European Parliament, Resolution on the Revised Hungarian Constitution.

by reminding the obligation of Hungary regarding fundamental rights, rule of law, and democracy, when it comes to EU law, and particularly EU values and the Charter of Fundamental Rights, and international human rights law, such as the ECHR, or the International Covenant on Civil and Political Rights of the UN in the introductory clause. It then notes that the “adoption of a new Constitution falls within the remit of Member States’ competences”<sup>236</sup>, thus reminding the sovereignty of the Member State in this field, but that the EU has “a duty to ensure that the contents and processes are in conformity with EU values, the Charter of Fundamental Rights and the ECHR”<sup>237</sup>. The resolution points out how this new Constitution might be in violation of those obligations<sup>238</sup>, and repeatedly mentions the opinion of the Venice Commission<sup>239</sup> regarding the Constitution, thus putting forward the cooperation between the Council of Europe and the European Parliament<sup>240</sup>. In the operative clause of the resolution, the Parliament calls on the Hungarian government to act, in order “to address the issues and concerns raised by the Venice Commission and to implement its recommendation”<sup>241</sup>, and addresses recommendations to the Commission to “conduct a thorough review and analysis of the new Constitution and of the cardinal laws to be adopted in the future to check that they are consistent with the *acquis communautaire*, and in particular the Charter of Fundamental Rights of the European Union, and with the letter and spirit of the Treaties”<sup>242</sup>. In 2012, neither the Rule of Law Framework nor the Rule of Law Dialogue had entered into force, thus at the time of the adoption of this resolution, the only option available to the EU institutions was the infringement procedure<sup>243</sup> and the article 7 TEU, which was only quoted in the sources of the resolution, and which activation was not suggested at this point<sup>244</sup>.

On the 16th of February 2012, the European Parliament adopted a second resolution<sup>245</sup> as the situation kept evolving in Hungary, and a few weeks after the entry into force of the new Hungarian Constitution. It follows the launch of infringement procedures by the Commission “over the independence of the central bank and data protection authorities as well as over measures affecting the

---

<sup>236</sup> *Ibidem*.

<sup>237</sup> *Ibidem*.

<sup>238</sup> *Ibidem*.

<sup>239</sup> Grabenwarter et al., op. cit.

<sup>240</sup> European Parliament, Resolution on the Revised Hungarian Constitution.

<sup>241</sup> *Ibidem*.

<sup>242</sup> *Ibidem*.

<sup>243</sup> Consolidated version of the Treaty on the functioning of the European Union, article 258.

<sup>244</sup> *Ibidem*.

<sup>245</sup> European Parliament, ‘Resolution on the Recent Political Developments in Hungary’, P7\_TA(2012)0053 (16.02.2012).

judiciary”<sup>246</sup>. This resolution particularly addresses the clauses of the Constitution which might be a threat to the independence of the judiciary system. In the sources of the Resolution, the European Parliament mentions article 7 TEU, as well as the Communication of the Commission on article 7 TEU<sup>247</sup>. The Parliament reminds the duty for the Member States to stand by the Copenhagen criteria they had to comply with at the time of their accession<sup>248</sup>. In the introductory clause, the European Parliament also reminds of its role “in monitoring respect for fundamental rights, freedoms, and principles in all the 27 Member States, as enshrined in the European acquis”<sup>249</sup>. This paragraph refers to the power conferred to the European Parliament by article 7(1) TEU to submit a reasoned proposal in case of a risk of violation of the values of article 2 TEU by a Member State. The European Parliament also holds an annual debate about the situation on fundamental rights in the EU. By combining the competence granted to the European Parliament in article 7(1) TEU and those annual debates, the European Parliament becomes a monitoring authority of the domestic situation of the Member States and instructs its LIBE Committee to follow-up on the situation along with the European Commission, the Council of Europe, and the European Parliament<sup>250</sup>.

Following the adoption of this resolution, the LIBE Committee worked actively, led by the Green MEP Rui Tavares<sup>251</sup>. A delegation of MEP went to Budapest on a fact-finding mission and drafted two reports on the independence of the judiciary<sup>252</sup> and the fundamental principles and fundamental rights<sup>253</sup>. Those two working documents contributed to the drafting of the so-called Tavares Report<sup>254</sup> adopted in July 2013. This resolution tackles in a very detailed way the various fundamental rights violations stemming from the reforms of the Hungarian government, such as the weakening of checks and balances, the independence of the judiciary, media freedom, the respect of the

---

<sup>246</sup> *Ibidem*.

<sup>247</sup> European Commission, Article 7 of the Treaty on European Union. Respect for and promotion of the values on which the Union is based.

<sup>248</sup> European Parliament, Resolution on the Recent Political Developments in Hungary.

<sup>249</sup> *Ibidem*.

<sup>250</sup> *Ibidem*.

<sup>251</sup> European Parliament, ‘Hungary: “The EP Should Make Sure There Are No Double Standards” | News | European Parliament’, 4 October 2012, <https://www.europarl.europa.eu/news/en/headlines/security/20120928STO52499/hungary-the-ep-should-make-sure-there-are-no-double-standards>.

<sup>252</sup> Rui Tavares, Frank Engel, ‘Working Document 1 on the Situation of Fundamental Rights: Standards and Practices in Hungary (Pursuant to the EP Resolution of 16 February 2012) - Independence of Judiciary’, (European Parliament, 5 September 2012).

<sup>253</sup> Rui Tavares, Juan Fernando Lopez Aguilar, ‘Working Document 2 on the Situation of Fundamental Rights: Standards and Practices in Hungary (Pursuant to the EP Resolution of 16 February 2012) - Fundamental Principles and Fundamental Rights’, (European Parliament, 6 September 2012).

<sup>254</sup> European Parliament, ‘Resolution on the Situation of Fundamental Rights: Standards and Practices in Hungary’, P7\_TA(2013)0315 (16.02.2013).

rights of persons belonging to minorities, freedom of religion, the electoral reform and the decision-making process. The first part of the report is dedicated to the European values laid down in article 2 TEU, which are “the core of the rights enjoyed by persons living within the EU and especially by EU citizens”<sup>255</sup>. The respect of those values is an “explicit obligation”<sup>256</sup> to fully preserve “membership prerogatives”<sup>257</sup>. The report also mentions the fact that the scope of application of article 2 TEU and article 7 TEU is not limited to areas covered by EU law, thus, in case of violation of those values, the EU can act even “in areas falling under Member States’ competences”<sup>258</sup>. This document has been considered a very “consequential condemnation”<sup>259</sup> of Fidesz’s actions since its arrival to power: the list of violations and the recommendations to the Hungarian government to resolve them is impressively long. The report has also been perceived as a turning point because it suggested the creation of new instruments to the European institutions to address the situation in Hungary. It particularly calls on the Commission to create an “Article 2 TEU/Alarm Agenda”<sup>260</sup> to monitor the situation “in the various EU sectoral policies, until full compliance with Article 2 TEU is restored”<sup>261</sup>. The Parliament also suggests the creation of a new mechanism to ensure compliance with article 2 TEU, in the form of a “Copenhagen Commission”<sup>262</sup> based on the proposal of the scholar Jan-Werner Müller. This suggestion comes from the need to regularly assess the compliance of the Member States “with the fundamental values of the Union and the requirements of democracy and the rule of law”<sup>263</sup> to avoid any kind of double standard between the Member States of the Union<sup>264</sup>. To ensure the follow-up of the Resolution, the Parliament invites the Commission and the Council to join the Parliament in an “Article 2 trilogue”<sup>265</sup>, to monitor the evolution of the situation, based on the information sent by Hungarian authorities. The report concludes with the possibility of using article 7(1) TEU if the requirements to comply with article 2 TEU are not fulfilled by the Hungarian authorities<sup>266</sup>. The Tavares report received large support from MEPs from both left-wing and right-wing parties<sup>267</sup> and shows the commitment of

---

<sup>255</sup> *Ibidem*.

<sup>256</sup> *Ibidem*.

<sup>257</sup> *Ibidem*.

<sup>258</sup> *Ibidem*.

<sup>259</sup> Kim Lane Scheppele, ‘In Praise of the Tavares Report: Europe finally said No to Viktor Orbán’, *Verfassungsblog* (blog), 5 July 2013, <https://verfassungsblog.de/in-praise-of-the-tavares-report-europe-finally-said-no-to-viktor-orban/>.

<sup>260</sup> European Parliament, Resolution on the Situation of Fundamental Rights: Standards and Practices in Hungary.

<sup>261</sup> *Ibidem*.

<sup>262</sup> Müller, ‘Protecting the Rule of Law (and Democracy!) In the EU’.

<sup>263</sup> European Parliament, Resolution on the Situation of Fundamental Rights: Standards and Practices in Hungary.

<sup>264</sup> Closa, *op. cit.*

<sup>265</sup> European Parliament, Resolution on the Situation of Fundamental Rights: Standards and Practices in Hungary.

<sup>266</sup> *Ibidem*.

<sup>267</sup> Scheppele, ‘In Praise of the Tavares Report’.

the European Parliament to the enforcement of the European values and the extent of its monitoring competences.

In 2015, the European Parliament adopted two new resolutions. It is worth reminding that the European Commission had previously adopted its Rule of Law Framework in 2014<sup>268</sup>. The first resolution focuses mostly on the condemnation of the words of Viktor Orban about “the need for public debate on the death penalty”<sup>269</sup>, and the public consultation about migration, which established a link between migration and security threats<sup>270</sup>. Through this document, the Parliament warns about the possibility of an “emerging systemic threat to the rule of law”<sup>271</sup>. The resolution calls on the Commission to “activate the first stage of the EU framework to strengthen the rule of law”, and thus starting monitoring of the situation in Hungary. The European Parliament also invites the Commission to propose an “EU mechanism on democracy, the rule of law and fundamental rights”<sup>272</sup>. The second resolution is adopted on the 16th of December 2015<sup>273</sup>. It raises concerns about the changes in the asylum and migration law in Hungary, but this resolution is mostly a wake-up call to the other EU institutions and in particular the Commission concerning its refusal to activate the Rule of Law Framework. The Commission is blamed for “ignoring the trends, patterns and combined effect of the measures on the rule of law and fundamental rights”<sup>274</sup>. The Resolution calls once again the Commission to take action, and to evaluate “the emergence of a systemic threat in that Member State which could develop into a clear risk of a serious breach within the meaning of article 7 TEU”<sup>275</sup>. Through this resolution, the Parliament shows again its commitment to the enforcement of article 2 TEU, as it states that “Hungary is a test for the EU to prove its capacity and political willingness to react to threats and breaches of its own founding values by a Member State”<sup>276</sup>. It also raises awareness about similar situations in other EU Member States, referring to the Polish election in 2015, and the

---

<sup>268</sup> European Commission, A new EU Framework to strengthen the Rule of Law.

<sup>269</sup> European Parliament, ‘Resolution on the Situation in Hungary’, 2015/2700(RSP) (10.06.2015).

<sup>270</sup> *Ibidem*.

<sup>271</sup> *Ibidem*.

<sup>272</sup> See Chapter II.C.

<sup>273</sup> European Parliament, ‘Resolution on the Situation in Hungary: Follow-up to the European Parliament Resolution of 10 June 2015’, (2015/2935(RSP) (16.12.2015).

<sup>274</sup> *Ibidem*.

<sup>275</sup> *Ibidem*.

<sup>276</sup> *Ibidem*.

arrival to power of the Law and Justice political party, which rapidly mimicked the actions taken by Fidesz in Hungary<sup>277</sup>.

The procedure established by article 7(1) TEU was launched by a resolution adopted on the 17th of May 2017<sup>278</sup>. In this report, the Parliament raised its concerns on a growing number of issues including “the use of public spending, attacks against civil society organisations and human rights defenders, the rights of asylum seekers, mass surveillance of citizens, freedom of association, freedom of expression, media pluralism [...], Roma rights [...], LGBTI rights, women’s rights, the judiciary system”<sup>279</sup>, the resolution also addresses the ‘Stop Brussels’ public consultation held in Hungary on immigration and terrorism. This resolution restates what was said in the resolution adopted in December 2015<sup>280</sup> regarding the inaction of the Commission, and goes on to instruct the LIBE Committee to draw a report in view of the launch of the proceedings of article 7(1) TEU.

On the 12th of September 2018, the European Parliament adopted a resolution<sup>281</sup> on the proposal for a Council decision determining “the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded”<sup>282</sup>. The report, led by the Green MEP Judith Sargentini, was the result of thorough research on the situation in Hungary through a dialogue with “human rights groups and international organisations including the Council of Europe, the European Union Agency for Fundamental Rights and the United Nations”<sup>283</sup>. It was adopted by a large majority with 448 MEPs in favour and 197 against<sup>284</sup>. In this report the European Parliament raises its concerns regarding the following issues:

- “the functioning of the constitutional and electoral system;
- the independence of the judiciary and of other institutions and the rights of judges;

---

<sup>277</sup> European Commission, Proposal for a Council decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law.

<sup>278</sup> European Parliament, ‘Resolution on the Situation in Hungary’, 2017/2656(RSP) (17.05.2017).

<sup>279</sup> *Ibidem*.

<sup>280</sup> European Parliament, Resolution on the Situation in Hungary: Follow-up to the European Parliament Resolution of 10 June 2015.

<sup>281</sup> European Parliament, Resolution on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded.

<sup>282</sup> *Idem*; Annex to the Resolution.

<sup>283</sup> ‘Hungary: Q&A on Sargentini Report on the Rule of Law’, Greens/EFA, 6 September 2018, <https://www.greens-efa.eu/en/article/document/hungary-q-a-on-sargentini-report-on-the-rule-of-law/>.

<sup>284</sup> Nóra Köves, ‘The Sargentini Report – Its Background and What It Means for Hungary and for the EU | Heinrich Böll Stiftung’, Heinrich-Böll-Stiftung, 19 September 2018, <https://www.boell.de/en/2018/09/19/sargentini-report-its-background-and-what-it-means-hungary-and-eu>.

- corruption and conflicts of interest;
- privacy and data protection;
- freedom of expression;
- academic freedom;
- freedom of religion;
- freedom of association;
- the right to equal treatment;
- the rights of persons belonging to minorities, including Roma and Jews, and protection against hateful statements against such minorities;
- the fundamental rights of migrants, asylum seekers and refugees;
- economic and social rights<sup>285</sup>.

In the annex to the resolution, which constitutes the text of the reasoned proposal destined to the Council to vote on article 7(1) TEU, the abovementioned matters are presented in detail, proving the extent of the violations of the EU values in Hungary<sup>286</sup>;

The Sargentini Report is the result of an eight years-long process, showing that the European Parliament has real power when it comes to the monitoring of the domestic situation in the Member States.

Similar to Hungary, Poland's government also took measures which critically undermined the European Values<sup>287</sup>. In October 2015, the political party Law and Justice won the legislative election<sup>288</sup>. However, in the case of Poland, the Commission started the dialogue with Poland within the Rule of Law Framework, as early as January 2016<sup>289</sup>, when it adopted measures concerning the Constitutional court and the media<sup>290</sup>. The European Parliament mainly acted as a support to the Commission in this

---

<sup>285</sup> European Parliament, Resolution on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded.

<sup>286</sup> *Idem*; Annex to the Resolution.

<sup>287</sup> Laurent Pech and Sébastien Platon, 'Systemic Threats to the Rule of Law in Poland: Between Action and Procrastination', *Fondation Robert Schuman*, European Issues, no. 451 (13 November 2017), <https://www.robert-schuman.eu/en/european-issues/0451-systemic-threats-to-the-rule-of-law-in-poland-between-action-and-procrastination>.

<sup>288</sup> *Ibidem*

<sup>289</sup> European Commission, Recommendation 2016/1374 regarding the rule of law in Poland.

<sup>290</sup> *Ibidem*.

dialogue, through a series of resolutions<sup>291</sup>. In its resolution of the 15th of November of 2017, it instructed the LIBE Committee to draw a report “with a view to holding a plenary vote on a reasoned proposal calling on the Council to act pursuant to Article 7(1) of the TEU”<sup>292</sup> as the situation was not improving in Poland particularly in the field of the independence of the judiciary, and the threats to women’s rights<sup>293</sup>. One month later, the Commission launched the procedure of article 7(1) sending a proposal to the Council<sup>294</sup>, which was welcomed by the European Parliament in March 2018. The LIBE Committee sent a rule of law mission to Poland in September 2018, the findings from the mission concurred with the analysis of the Commission regarding the “clear risk of a serious breach of the rule of law by the Polish authorities”<sup>295</sup>.

Before the vote on the reasoned proposal under article 7(1) TEU, the Council may conduct hearings with the Member State subject to the procedure. So far, the Council only organized three hearings of Poland and two hearings of Hungary<sup>296</sup>. In January 2020, the European Parliament voted on a text concerning the “Ongoing hearings under article 7(1) of the TEU regarding Poland and Hungary”<sup>297</sup>. In the resolution, the European Parliament lament the lack of organization, and regularity regarding the hearings, and the fact that they did not result in any “significant progress by the two Member States in question with regard to redressing clear risks of a serious breach of the values referred to in Article 2 of the TEU”<sup>298</sup>. In July 2019, the Council adopted an informal note regarding the “Standard modalities for hearings referred to in Article 7(1) TEU”<sup>299</sup>. According to those modalities, the European Parliament is not given the possibility to express its comments on the matter, even when it drafted the reasoned proposal, whereas the Commission is allowed to comment on the situation. The European Parliament is only present to the hearings through the report of the Council presidency

---

<sup>291</sup> European Parliament, ‘Resolution on the Situation in Poland’, 2015/3031(RSP) (13.04.2016); European Parliament, ‘Resolution on the Recent Developments in Poland and Their Impact on Fundamental Rights as Laid down in the Charter of Fundamental Rights of the European Union’, 2016/2774(RSP) (14.09.2016); European Parliament, ‘Resolution on the Situation of the Rule of Law and Democracy in Poland’, 2017/2931(RSP) (15.11.2017).

<sup>292</sup> European Parliament, Resolution on the Situation in Poland.

<sup>293</sup> *Ibidem*.

<sup>294</sup> European Commission, Proposal for a Council decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law.

<sup>295</sup> Committee on Civil Liberties, Justice and Home Affairs, ‘Draft Mission Report, Following the Ad Hoc Delegation to Poland on the Situation of the Rule of Law, 19 - 21 September 2018’ (European Parliament, 19 November 2018).

<sup>296</sup> *Ibidem*.

<sup>297</sup> European Parliament, Resolution on the ongoing hearings under article 7(1) of the TEU regarding Poland and Hungary.

<sup>298</sup> *Ibidem*.

<sup>299</sup> European Parliament, Resolution on the ongoing hearings under article 7(1) of the TEU regarding Poland and Hungary, 10641/2/19, Brussels, 9 July 2019.

resulting from the informal dialogue between the Presidency and the Parliament<sup>300</sup>. In its resolution, the Parliament expresses its concerns regarding this difference of treatment between the institutions, whereas article 7(1) TEU “provides for equal rights and procedural status”<sup>301</sup> for the Parliament, the Commission, and the Council when it comes to the launch of the procedure. Through this resolution, the European Parliament denounces the lack of willingness of the Council to act on article 7(1) TEU regarding Poland and Hungary, but also the lack of effort towards inter-institutional cooperation as it is enshrined in article 4(3) TEU regarding the principle of sincere cooperation between institutions<sup>302</sup>, which appears to be the main obstacle to the safeguarding of the EU values.

In this resolution, the Parliament also calls on the Council to “address allegations of violations of fundamental rights” in the hearings, as the scope of the proposal of the Commission is limited to the threats to the independence of the judiciary and the rule of law<sup>303</sup>. The inclusion of fundamental rights in the hearings with Poland had already been requested by the Parliament in 2019 in two resolutions on the “criminalization of sexual education”<sup>304</sup> and the “Public discrimination and hate speech against LGBTI people, including LGBTI free zones”<sup>305</sup>. The LIBE Committee is currently working on a new report<sup>306</sup> in order “to give a new impulse in the Article 7(1) TEU procedure”, this proposal addresses the narrow scope of the reasoned proposal drafted by the Commission and asks the Commission and the Council “to refrain from narrowly interpreting the principle of the rule of law, and to use the procedure under Article 7(1) TEU to its full potential by addressing the implications of the Polish government’s action for all the principles enshrined in Article 2 TEU, including democracy and fundamental rights as highlighted in this report”<sup>307</sup>.

The measures adopted during the COVID-19 health crisis by Hungary to “prolong the state of emergency indefinitely, to authorise the Government to rule by decree without time limit, and to

---

<sup>300</sup> European Parliament.

<sup>301</sup> *Ibidem*.

<sup>302</sup> Consolidated version of the Treaty on European Union, article 4(3).

<sup>303</sup> European Commission, Proposal for a Council decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law.

<sup>304</sup> European Parliament, ‘Resolution on the criminalisation of Sexual Education in Poland’, 2019/2891(RSP) (14.10.2019).

<sup>305</sup> European Parliament, ‘Resolution on Public Discrimination and Hate Speech against LGBTI People, Including LGBTI Free Zones’, 2019/2933(RSP) (18.12.2019).

<sup>306</sup> European Parliament, ‘Motion for a European Parliament Resolution on the Proposal for a Council Decision on the Determination of a Clear Risk of a Serious Breach by the Republic of Poland of the Rule of Law’, (COM(2017)0835 – 2017/0360R(NLE)) (2020).

<sup>307</sup> *Ibidem*.

weaken the emergency oversight of the Parliament”<sup>308</sup> and by Poland “to hold Presidential elections in the middle of a pandemic”<sup>309</sup> has been condemned by the European Parliament and deemed “totally incompatible with European values”<sup>310</sup>.

In its approach to the Polish and Hungarian situation, the European Parliament has been showing to care about the whole of the values of article 2 TEU and emphasize breaches in several areas in those Member States, thus addressing violations of the rule of law, fundamental rights, and democracy.

To better address the threats to the rule of law in the Member States, the LIBE Committee set up a specific Monitoring group whose role will be explored in the following paragraph.

*c. The Rule of Law and Fundamental Rights Monitoring Group – Malta and Slovakia*

In June 2018, the LIBE Committee created the Democracy, Rule of Law and Fundamental Rights Monitoring Group<sup>311</sup> (hereunder ‘ROLMG’). This working group, which mandate has been expanded until December 2021<sup>312</sup>, was created following the murder of the Maltese investigative journalist Daphne Caruana Galizia, and the Slovakian investigative journalist Ján Kuciak and his partner Martina Kušnírová, also a journalist. It aims to monitor “breaches of democracy, the rule of law and fundamental rights, and the fight against corruption within the EU”<sup>313</sup>, and to address “specific situations in one or more EU Member States”<sup>314</sup>. According to the mandate, the scope of the working group is wide, however, it focuses specifically on corruption and press freedom, and has so far been reporting mostly on the situation in Malta and Slovakia. The situations in the two Member States have been dealt with simultaneously as they present the same kind of issues, including corruption, attacks on

---

<sup>308</sup> European Parliament, ‘Resolution on EU Coordinated Action to Combat the COVID-19 Pandemic and Its Consequences’, 2020/2616(RSP) (17.04.2020).

<sup>309</sup> *Ibidem*.

<sup>310</sup> *Ibidem*.

<sup>311</sup> European Parliament, ‘Rule of Law: Civil Liberties MEPs to Report on Corruption and Press Freedom | News | European Parliament’, 5 June 2018, <https://www.europarl.europa.eu/news/en/press-room/20180605IPR05046/rule-of-law-civil-liberties-meps-to-report-on-corruption-and-press-freedom>.

<sup>312</sup> Committee on Civil Liberties, Justice and Home Affairs, ‘Democracy, Rule of Law and Fundamental Rights Monitoring Group (DFRMG) - Mandate Adopted by LIBE Coordinators on 5 September 2019’ (European Parliament).

<sup>313</sup> *Ibidem*.

<sup>314</sup> *Ibidem*.

journalists, and threats to the independence of the judiciary<sup>315</sup> and sometimes together in resolutions<sup>316</sup> and fact-finding missions<sup>317</sup>. Caruana Galizia and Kuciak were both journalists investigating topics such as large-scale corruption and tax evasion in Malta<sup>318</sup> and Slovakia<sup>319</sup>.

The European Parliament adopted two resolutions regarding the Maltese case, in 2017<sup>320</sup> following the assassination of Caruana Galizia and in 2019<sup>321</sup>, and a resolution about the rule of law in Malta and Slovakia in 2019<sup>322</sup>. The murder of Caruana Galizia has been considered by the European Parliament as a threat to the rule of law<sup>323</sup>. The Parliament has been asking the Commission to start a dialogue with Malta under the rule of law Framework since 2017<sup>324</sup>. The concerns of the European Parliament regard mostly the protection of investigative journalists and whistle-blowers, the independence of the justice and the judiciary, and allegations of corruption and breach of anti-money laundering and banking supervision obligations<sup>325</sup>. The LIBE Committee sent delegations on a fact-finding mission in 2017<sup>326</sup>, and the ROLMG went on two other missions 2018<sup>327</sup> and 2019<sup>328</sup>. On those occasions, the delegations monitored the developments in the investigation on the journalist's murder since 2017, the fight against corruption, and the independence of the judiciary<sup>329</sup>. During those missions, the MEPs met with representatives from banking and financial institutions, with members from judiciary institutions and the governments, including the Prime Minister and the Minister of

---

<sup>315</sup> European Parliament, 'Resolution on the Situation of Rule of Law and Fight against Corruption in the EU, Specifically in Malta and Slovakia', 2018/2965(RSP) (28.03.2019).

<sup>316</sup> *Ibidem*.

<sup>317</sup> Committee on Civil Liberties, Justice and Home Affairs, 'Mission Report Following the Ad-Hoc Delegation to Slovakia and Malta 17-20 September 2018', European Parliament, 16 November 2018.

<sup>318</sup> 'Platform to Promote the Protection of Journalism and Safety of Journalists', Council of Europe Portal, <https://www.coe.int/en/web/media-freedom/all-alerts/-/soj/alert/29768461>.

<sup>319</sup> Agata Palickova, 'Investigation of Slovak Journalist Murder Uncovers Other Serious Crimes', *Euractiv*, 20 August 2019, sec. Justice & Home Affairs, <https://www.euractiv.com/section/justice-home-affairs/news/investigation-of-slovak-journalist-murder-uncovers-other-serious-crimes/>.

<sup>320</sup> European Parliament, 'Resolution on the Rule of Law in Malta', 2017/2935(RSP) (15.11.2017).

<sup>321</sup> European Parliament, 'Resolution on the Rule of Law in Malta, after the Recent Revelations around the Murder of Daphne Caruana Galizia', 2019/2954(RSP) (18.12.2019).

<sup>322</sup> European Parliament, Resolution on the Situation of Rule of Law and Fight against Corruption in the EU, Specifically in Malta and Slovakia.

<sup>323</sup> Committee on Civil Liberties, Justice and Home Affairs et al., 'Mission Report Following the Ad-Hoc Delegation to Malta (30 November - 1 December 2017)', European Parliament, 11 January 2018.

<sup>324</sup> European Parliament, Resolution on the rule of law in Malta.

<sup>325</sup> *Ibidem*.

<sup>326</sup> Committee on Civil Liberties, Justice and Home Affairs et al., 'Mission Report Following the Ad-Hoc Delegation to Malta (30 November - 1 December 2017)'.

<sup>327</sup> Committee on Civil Liberties, Justice and Home Affairs, 'Mission Report Following the Ad-Hoc Delegation to Slovakia and Malta (17-20 September 2018)'.

<sup>328</sup> Committee on Civil Liberties, Justice and Home Affairs, 'Mission Report Following the Ad-Hoc Delegation to Malta (2-4 December 2019)', European Parliament, 16 December 2019.

<sup>329</sup> European Parliament, Resolution on the Rule of Law in Malta, after the Recent Revelations around the Murder of Daphne Caruana Galizia.

Justice, and with journalists and members of the civil society. The last mission was sent in December 2019 following the recent developments in the investigation, linking members of the government to the murder of Caruana Galizia. This mission was solely dedicated to the progress assessment in the investigation. On the 18th of December 2019, following this mission, the European Parliament adopted a new resolution<sup>330</sup> condemning the situation in Malta, but also the lack of response by the Commission, “despite repeated calls by the European Parliament urges the new Commission to enter into dialogue with the Maltese Government in the context of the rule of law Framework without further undue delay”<sup>331</sup>, and asked for the immediate resignation of Prime Minister Joseph Muscat, who planned to step down a few months later. During this plenary, when talking about the situation in Malta, Commissioner Vera Jourova underlined “that any reform must comply with EU law and European standards relating to the rule of law”<sup>332</sup>, thus waving the banner of article 7 TEU, which the Parliament acknowledged in its resolution<sup>333</sup>. This resolution was backed by a very strong majority of 581 votes in favor<sup>334</sup> thus showing the political support and commitment to the issue, which could predict further development from the European Parliament, maybe towards a launch of article 7(1) TEU if there are no improvements in Malta.

In the case of Slovakia, the LIBE Committee went on a fact-finding mission<sup>335</sup> in March 2018, after the murder of the journalists Jan Kuciak and Martina Kušnírová, which took place on the 25th of February 2018. During the mission, the delegation met with members from the government, including the Prime Minister, representatives from the financial and judicial authority, and members from the civil society and journalists<sup>336</sup>. In a resolution adopted in April 2018<sup>337</sup>, the European Parliament reminds that “free, independent and unhindered media constitute one of the cornerstones of a democratic society”<sup>338</sup>, that “Member States have the duty to ensure that press freedom and journalists

---

<sup>330</sup> *Ibidem.*

<sup>331</sup> *Ibidem.*

<sup>332</sup> Jourová, Věra, ‘Speech of Vice-President Jourová at the European Parliament Plenary Debate on the Rule of Law in Malta, after the Recent Revelations around the Murder of Daphne Caruana Galizia’, SPEECH/19/6790.

<sup>333</sup> European Parliament, Resolution on the Rule of Law in Malta, after the Recent Revelations around the Murder of Daphne Caruana Galizia.

<sup>334</sup> Lili Bayer, ‘European Parliament Requests Rule-of-Law Talks with Malta’, *Politico*, 18 December 2019, <https://www.politico.eu/article/european-parliament-requests-rule-of-law-talks-with-malta/>.

<sup>335</sup> Committee on Budgetary Control and Committee on Civil Liberties, Justice and Home Affairs, ‘Report on the Ad Hoc Delegation to Slovakia, 7-9 March 2018’, Brussels: European Parliament, 12 March 2018.

<sup>336</sup> *Ibidem.*

<sup>337</sup> European Parliament, ‘Resolution on the Protection of Investigative Journalists in Europe: The Case of Slovak Journalist Ján Kuciak and Martina Kušnírová’, 2018/2628(RSP) (19.04.2019).

<sup>338</sup> *Ibidem.*

are protected on their territory”<sup>339</sup>, and that the EU has the power to act in case its common values are threatened. In its conclusion, the European Parliament calls on Slovakia to pursue the investigation regarding the Kuciak and Kušnírová’s murders, and on the Commission to promote and safeguard the values of the EU, and in this context, “to monitor and address challenges to media freedom and pluralism across the EU, while respecting the principle of subsidiarity”<sup>340</sup>. The ROLMG went on another mission to Slovakia in September 2018<sup>341</sup> to meet with the police authorities in charge of the investigation on the murders, with members of the government, the President of Slovakia, and representatives of the civil society and journalists<sup>342</sup>. The report concluded that the progress of the investigation was encouraging but that the fight against corruption and organized crime appeared to be insufficient<sup>343</sup>.

The ROLMG has done an extensive work of monitoring and research to keep up about the situation in Malta and Slovakia<sup>344</sup>. The visits in the Member States allowed the European Parliament to assess the situations on the ground, and to confront the governments of the Member States about the topic. This working group is also a means to express concretely the role of the European Parliament in the monitoring of the values “as enshrined in the EU acquis”<sup>345</sup>. During a mission to Malta in September 2018, the ROLMG clarified that it aimed to “to look across a large range of policy areas across the EU, not just in Malta, to identify failure of the EU to implement its values and law”<sup>346</sup>. The group would also exchange about the protection of journalists in Bulgaria, regarding the murder of a journalist Viktoria Marinova, and the detention of two journalist Attila Biro and Dimitar Stoyanov<sup>347</sup>.

During the COVID-19 health crisis, the ROLMG monitored the “impact of COVID-19 measures on Democracy, the rule of law and fundamental rights in the EU”<sup>348</sup> in areas of relevance including: “state of emergency and exceptional powers, the functioning of national parliaments and of

---

<sup>339</sup> *Ibidem*.

<sup>340</sup> *Ibidem*.

<sup>341</sup> Committee on Civil Liberties, Justice and Home Affairs, ‘Mission Report Following the Ad-Hoc Delegation to Slovakia and Malta 17-20 September 2018’.

<sup>342</sup> *Ibidem*.

<sup>343</sup> *Ibidem*.

<sup>344</sup> European Parliament, Resolution on the Rule of Law in Malta, after the recent revelations around the murder of Daphne Caruana Galizia.

<sup>345</sup> European Parliament, Resolution on the Recent Political Developments in Hungary.

<sup>346</sup> Committee on Civil Liberties, Justice and Home Affairs, ‘Mission Report Following the Ad-Hoc Delegation to Slovakia and Malta 17-20 September 2018’.

<sup>347</sup> European Parliament, Resolution on the situation of rule of law and fight against corruption in the EU, specifically in Malta and Slovakia.

<sup>348</sup> Ottavio Marzocchi, ‘The Impact of Covid-19 Measures on Democracy, the Rule of Law and Fundamental Rights in the EU’, Briefing (European Parliament, 23 April 2020).

the judiciary; freedom of movement; freedom of expression and of the media; freedom of assembly; privacy and data protection; asylum; prisons; discrimination and vulnerable groups; other issues of relevance for Article 2 TEU<sup>349</sup>. The protection of the European values has also been addressed in a resolution regarding the “EU coordinated action to combat the COVID-19 pandemic and its consequences”<sup>350</sup>, where the MEPs reminded that the actions undertaken to address the pandemic “must be in line with the rule of law, strictly proportionate to the exigencies of the situation, clearly related to the ongoing health crisis, limited in time and subjected to regular scrutiny”<sup>351</sup>, and called the Commission to assess the conformity of the measures taken with the treaties, and the Member States to address the issues raised by the ROLMG in the relevant abovementioned areas of relevance<sup>352</sup>.

Above all, the constant monitoring of the Member States by the European Parliament is also a way to support a request that has been expressed by the Chamber in 2016, and that has been repeated in every resolution regarding the values of article 2 TEU, to introduce a mechanism of monitoring of compliance with the values of article 2, in the form of an inter-institutional agreement<sup>353</sup>.

### **C. Improving the monitoring of the EU values through a new mechanism: a proposal by the European Parliament**

In order to improve the monitoring of the compliance to the EU values, the European Parliament proposed the adoption of a permanent mechanism in the form of an interinstitutional agreement (II.C.a), following this proposal, the Commission elaborated a similar mechanism in the form of a Rule of Law Review Cycle, which differs from the Parliament’s proposal (II.C.b).

---

<sup>349</sup> *Ibidem*.

<sup>350</sup> European Parliament, Resolution on EU coordinated action to combat the COVID-19 pandemic and its consequences.

<sup>351</sup> *Ibidem*.

<sup>352</sup> *Ibidem*.

<sup>353</sup> European Parliament, Resolution on an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights, 2015/2254(INL) (25.10.2016).

a. *An EU mechanism on democracy, the rule of law and fundamental rights*

The majority of the tools presented in the first chapter are vertical options<sup>354</sup>, which means that they are “crisis-oriented”, and meant to use as a reaction towards one Member State in a given situation. In June 2015, in a resolution<sup>355</sup> regarding the situation in Hungary, the European Parliament expressed a request to the Commission “to present a proposal for the establishment of an EU mechanism on democracy, the rule of law and fundamental rights, as a tool for compliance with and enforcement of the Charter and Treaties as signed by all Member States, relying on common and objective indicators, and to carry out an impartial, yearly assessment on the situation of fundamental rights, democracy and the rule of law in all Member States, indiscriminately and on an equal basis, involving evaluation by the EU Agency for Fundamental Rights, together with appropriate binding and corrective mechanisms, to fill existing gaps and to allow for an automatic and gradual response to breaches of the rule of law and fundamental rights at Member State level”<sup>356</sup>. The European Parliament expresses the need for a horizontal tool, which objective would be to “monitor and improve the compliance with the values of article 2 TEU”<sup>357</sup> regularly through a cyclical process, and in all the Member States. In this resolution, the plenary of the European Parliament instructs the LIBE Committee to come up with a proposal to develop this new tool<sup>358</sup>.

On the 25th of October 2016, the European Parliament adopted a resolution with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law, and fundamental rights, and recommendations for Treaty changes<sup>359</sup>. This report by MEP Sophie in’t Veld presents in its introductory clause why there is a need for an “EU Pact for democracy, the rule of law and fundamental rights”<sup>360</sup> (hereunder ‘EU Pact for DRF’). It particularly states that the Member States, the EU institutions, and the candidate countries have a duty to respect the values of article 2 TEU and that the EU has the “possibility to act to protect its ‘constitutional core’ and the common values”<sup>361</sup> that are at its foundation. The European Parliament also states that while the non-compliance of a candidate country with the values can result in the postponement of its accession until

---

<sup>354</sup> Laurent Pech et al., ‘An EU Mechanism on Democracy, the Rule of Law and Fundamental Rights - Annex I’, European Parliament Research Service (Brussels: European Parliament, March 2016).

<sup>355</sup> European Parliament, Resolution on the situation in Hungary, 2015.

<sup>356</sup> *Ibidem*.

<sup>357</sup> Laurent Pech et al., *op. cit.*

<sup>358</sup> European Parliament, Resolution on the situation in Hungary, 2015.

<sup>359</sup> European Parliament, Resolution on an EU mechanism on democracy, the rule of law and fundamental rights.

<sup>360</sup> *Ibidem*.

<sup>361</sup> *Ibidem*.

it meets the requirements, the consequences when a Member State fails to meet them are little<sup>362</sup>. According to the European Parliament's resolution, the EU Pact for DRF should be "evidence based; objective and not subject to outside influence, in particular political influence, non-discriminatory and assessing on an equal footing; respecting the principle of subsidiarity, necessity and proportionality; addressing both Member States and institutions of the Union; and based on a graduated approach, including both a preventative and corrective arm"<sup>363</sup>, this mechanism should also incorporate the existing mechanisms and instruments to avoid the duplication of data and tools and should constitute a single framework which would close the gaps between the existing mechanisms. Such a mechanism would not have prejudice to the application of article 7 TEU, as it is a crisis mechanism, while the EU Pact for DRF would be a permanent monitoring mechanism. In the resolution, the European Parliament proposed the EU Pact for DRF to take the form of an inter-institutional agreement, based on article 295 TFEU<sup>364</sup>. The European Parliament also insists on the involvement of all the relevant stakeholders and particularly the civil society in contributing to the proposal, thus calling for an approach of inclusivity of the EU citizens, beyond the EU institutions. The EU Pact for DRF should "address to all Member States" and the three main EU institutions: the Council, the Parliament, and the Commission, "while respecting the principles of subsidiarity, necessity and proportionality"<sup>365</sup>, but it should also act as a deterrent through a possible sanctioning mechanism. The resolution stresses the role of the Parliament and the national parliaments in "measuring the progress of, and monitoring compliance with [...] article 2 TEU"<sup>366</sup>, and it emphasizes the key role of the European Parliament "in maintaining the necessary continuous debate within the common Union consensus on democracy, rule of law and fundamental rights taking into account the changes in our society"<sup>367</sup>. The European Parliament calls for the following modification of the Treaties to improve the monitoring of the values of the article 2 TEU, including the provision for article 2 TEU and the Charter to become legal basis for the EU legislation, to enable the national courts to rely on those legal provisions (the Charter and article 2 TEU) to bring cases related to the Member States' actions before the CJEU. The European Parliament also asks for article 7 TEU to be recasted to allow provide for relevant and applicable sanctions against "any Member State"<sup>368</sup>, those sanctions could include cuts in EU funds. The European Parliament asks for

---

<sup>362</sup> *Ibidem.*

<sup>363</sup> *Ibidem.*

<sup>364</sup> Consolidated version of the Treaty on the Functioning of the European Union, article 295

<sup>365</sup> European Parliament, Resolution on an EU mechanism on democracy, the rule of law and fundamental rights.

<sup>366</sup> *Ibidem.*

<sup>367</sup> *Ibidem.*

<sup>368</sup> *Ibidem.*

the possibility to refer EU legislation before the CJEU before its implementation. The Chamber also requests for articles 258 and 259 TFEU to be amended to allow natural and legal persons affected by a violation of the Charter to bring actions before the CJEU and to abolish article 51 EUCFR to expand the scope of application of the Charter. Lastly, the Parliament calls for the change of the unanimity requirement in areas related to the protection of fundamental rights (i.e. equality and non-discrimination).

The European Parliament accompanies the resolution by a recommended draft version of this inter-institutional agreement<sup>369</sup> laying down the proposed mechanism and its arrangement. The introductory clause of the draft agreement also highlights the importance of an interactive process based on public debates, consultations, and reviews to elaborate on the specific “definitions, standard and benchmarks”<sup>370</sup> of democracy, the rule of law, and fundamental rights. This clause shows the willingness of the Parliament to make this process as inclusive as possible, but also to demonstrate the openness of the EU institutions to a bottom-up approach, constructed with every stakeholder, including the Member States. The objective is for the EU citizens to eventually “take ownership of the process”<sup>371</sup>. Once again, this aim is coherent with the role of the European Parliament of representative of the EU citizens, but it is also an empowering approach towards the citizens, which also aims at including them in the monitoring process.

In its article 2, the draft agreement lays down the different components of the EU Pact for DRF as such:

- “an annual report on democracy, the rule of law and fundamental rights (European DRF Report) with country-specific recommendations incorporating the reporting done by the FRA, the Council of Europe, and other relevant authorities in the field,
- an annual inter-parliamentary debate on the basis of the European DRF Report,
- arrangements for remedying possible risks and breaches, as provided for by the Treaties, including the activation of the preventative or corrective arms of Article 7 TEU,

---

<sup>369</sup> European Parliament, Resolution on an EU mechanism on democracy, the rule of law and fundamental rights. Annex, Detailed recommendations for a draft Inter-institutional Agreement on arrangements concerning monitoring and follow up procedures on the situation of Democracy, the Rule of Law and Fundamental Rights in the Member States and EU institutions.

<sup>370</sup> *Ibidem*.

<sup>371</sup> *Ibidem*.

- a policy cycle for democracy, the rule of law and fundamental rights (DRF Policy Cycle) within the Union institutions<sup>372</sup>.

The draft agreement restates what had already been said in the resolution, and particularly the need to avoid the duplication of instruments and to integrate all the existing ones in the same framework. Article 3<sup>373</sup> of the draft agreement thus states that the Commission rule of law Framework and the Council’s rule of law Dialogue will be integrated into the EU Pact for DRF. The abovementioned annual report (or ‘DRF European Report’) would be drawn up by the Commission in collaboration with a panel of independent experts, which composition is detailed in article 8 of the draft agreement. The report would contain a general part and recommendations for each Member States. This report will be transmitted to the European Parliament, the Council, and the national parliaments, and available to the public<sup>374</sup>. The DRF European Report will “incorporate and complement existing instruments”<sup>375</sup> of the EU, such as the CVM for Bulgaria and Romania, or the justice scoreboard, and it will be “drawn up” based on different sources and “the existing tools for assessment, reporting and monitoring of Member States activities”. Article 6 of the draft agreement then provides a list of possible sources for monitoring such as the FRA, the Council of Europe, the case-law of international courts, including the CJEU and the ECtHR, etc.<sup>376</sup>. The interinstitutional draft agreement then gives a list of 19 topics on which the report should especially be focused on, touching upon the rule of law, democracy, and fundamental rights with specific references to the Charter and the ECHR and its protocols<sup>377</sup>. According to article 8 of the agreement, the assessment of the situation regarding the rule of law, democracy, and the fundamental rights shall be done by a panel of independent experts based on the available data. The experts composing the panel shall be one per Member State who is a former “qualified constitutional court or supreme court judge”, nominated by the national parliaments, and ten experts appointed by the European Parliament at a two-third majority, chosen from a list of experts drawn up by a network of international organisations and NGOs, including the UN, the Council of Europe and the European Network of National Human Rights Institutions<sup>378</sup>. The assessment of the

---

<sup>372</sup> *Ibidem*.

<sup>373</sup> *Idem*, article 3

<sup>374</sup> *Idem*, article 4.

<sup>375</sup> *Idem*, article 5

<sup>376</sup> *Idem*, article 6

<sup>377</sup> *Idem*, article 7.

<sup>378</sup> *Idem*, article 8.1.

Member States shall be done on an “anonymous and independent basis”, to guarantee the independence and neutrality of the panel<sup>379</sup>.

The report shall then lead to an interparliamentary debate, and a debate in the Council to address its results and the recommendations. At this step, the role of the European Parliament becomes particularly important as it gains a strong monitoring power: in fact, the debate should set “benchmarks and goals to be attained and to provide the means to evaluate changes from one year to another within the existing Union consensus on democracy, the rule of law and fundamental rights”<sup>380</sup>, based on those elements, the European Parliament shall adopt a resolution. This debate is part of a multiannual dialogue between the Parliament, the Commission, the Council, and the national parliaments, with the participation of the civil society, the FRA, and the Council of Europe.

The debate in the Council shall build upon the already existing Rule of Law Dialogue. Following this debate, the Council shall adopt conclusions and invite the national parliaments to establish reforms or proposals in response to the DRF European Report<sup>381</sup>.

Following the adoption of the report, the agreement also contains a policy cycle aimed at monitoring the compliance with the rule of law, democracy, and fundamental rights, both within the Member States and the EU institutions. Based on the report, and the country-specific recommendations, four outcomes are possible. In the first case, the Member State complies with all the topics listed in the abovementioned article 7, thus no action is required<sup>382</sup>. In the second scenario, some improvements might be needed on one or more topics of the list stated in the article 7, the Commission thus starts a dialogue with the Member State, taking into account the recommendations<sup>383</sup>. In the third scenario, the expert panel identifies “a clear risk of a serious breach of the values referred to in article 2 TEU” with grounds for invoking article 7(1) TEU, those suspicions lead to a discussion in the EU institutions to reach a decision<sup>384</sup>. In the last scenario, the expert panel identifies a “serious and persistent breach” of the values of art 2, with sufficient ground to invoke article 7(2) TEU, which shall lead to a discussion in the EU institution to decide on the matter without delay<sup>385</sup>. The European Commission might also

---

<sup>379</sup> *Idem*, article 9.

<sup>380</sup> *Idem*, article 10.

<sup>381</sup> *Ibidem*.

<sup>382</sup> *Idem*, article 10.1.

<sup>383</sup> *Idem*, article 10.2

<sup>384</sup> *Idem*, article 10.2.1

<sup>385</sup> *Idem*, article 10.3

decide to launch an infringement procedure<sup>386</sup>, based on the report, and to bundle them up in case there is more than one infringement case. Lastly, the EU Pact for DRF also includes a policy cycle within the EU institutions, in the form of a working group to improve “interinstitutional cooperation on impact assessments, and creating a fundamental rights and rule of law compliance culture”<sup>387</sup>.

The legislative initiative report by MEP Sophie in’t Veld is accompanied by an assessment on the added value of an EU mechanism on democracy, the rule of law, and fundamental rights<sup>388</sup>, and noting that the cost of non-compliance with the values of article 2 TEU is significant at the economic, social and political levels. This lack of compliance is also caused by weaknesses in the EU legal and policy framework on democracy, the rule of law, and fundamental rights. The Member States cannot act alone to overcome those weaknesses, thus the inter-institutional agreement where responsibilities could be directly allocated to the EU institutions would be a way to overcome those shortcomings<sup>389</sup>.

Following the adoption of this resolution, the Commission replied to the European Parliament in February 2017, about the proposal. This response and the actions undertaken by the Commission will be examined in the following sub-section.

*b. The Mechanism and the Rule of Law Review Cycle of the Commission. What differs?*

The Commission replied to the resolution<sup>390</sup> of the European Parliament on 17 January 2017<sup>391</sup>. In the follow-up response, the Commission states that it supports the “inclusive approach”<sup>392</sup> requested by the European Parliament, involving the EU institutions, the Member States and the civil society, as well as the interparliamentary dialogue between the European Parliament and the national parliaments. Regarding the proposal for treaty changes, the Commission considers them to be unrealistic, and

---

<sup>386</sup> Consolidated version of the Treaty on the functioning of the European Union, article 258.

<sup>387</sup> European Parliament, Resolution on an EU mechanism on democracy, the rule of law and fundamental rights. Annex, Detailed recommendations for a draft Inter-institutional Agreement on arrangements concerning monitoring and follow up procedures on the situation of Democracy, the Rule of Law and Fundamental Rights in the Member States and EU institutions, article 12

<sup>388</sup> Wouter Van Ballegooij, Tatjana Evas, ‘An EU Mechanism on Democracy, the Rule of Law and Fundamental Rights - European Added Value Assessment Accompanying the Legislative Initiative Report (Rapporteur: Sophie in’t Veld)’, European Parliament Research Service, Brussels: European Parliament, October 2016.

<sup>389</sup> *Ibidem*.

<sup>390</sup> European Parliament, Resolution on an EU mechanism on democracy, the rule of law and fundamental rights.

<sup>391</sup> European Commission, ‘Follow up to the European Parliament Resolution on with Recommendations to the Commission on the Establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights’, 17 January 2017.

<sup>392</sup> *Ibidem*.

particularly the proposal to abolish the article 51 EUCFR to expand the scope of application of the Charter beyond EU law.

Regarding the feasibility of the EU Pact for DRF, the Commission expresses strong doubts about the need for an independent expert panel, which, according to the Commission, “raises serious questions of legality, institutional legitimacy and accountability”<sup>393</sup>. The Commission also questions the added value of an inter-institutional agreement on this specific topic, since finding a “common ground”<sup>394</sup> on this subject between all institutions might be difficult because of practical and political concerns. The Commission concludes the response by stating that it will continue to make the “best possible use of existing” mechanisms to promote the rule of law, democracy, and fundamental rights.

On the 14th of November 2018, the European Parliament adopted a new resolution<sup>395</sup> to restate the need to adopt a “comprehensive, permanent and objective EU mechanism”<sup>396</sup>, insisting that such a mechanism is needed now more than ever. In fact, during the year 2018, the procedure of article 7(1) TEU had been launched for both Poland and Hungary, and the European Parliament had been monitoring the situation in Malta and Slovakia through its ROLMG<sup>397</sup>. The Parliament also warns that if there were no follow-up on this proposal by the Commission and the Council, it would launch an interparliamentary debate and a pilot DRF Report on its initiative.

Following this resolution, the Commission launched a debate to reinforce the existing mechanisms to protect the rule of law<sup>398</sup> and came up with a communication in July 2019<sup>399</sup> with new proposals, and particularly the Rule of Law Review Cycle which aims to “deepen the monitoring of rule of law related developments in the Member States”. This monitoring intends to have a broad scope to “cover all the different components of the rule of law”, from the legislative process to the fight against corruption. This new tool aims at including several stakeholders: institutions, the civil society, and international organisations (Council of Europe, Organisation for Security and Cooperation in Europe, Organisation for Economic Cooperation and Development), to gather information, and have the

---

<sup>393</sup> *Ibidem*.

<sup>394</sup> *Ibidem*.

<sup>395</sup> European Parliament, ‘Resolution on the Need for a Comprehensive Democracy, Rule of Law and Fundamental Rights Mechanism’, 2018/2886(RSP) (14.11.2018).

<sup>396</sup> *Ibidem*.

<sup>397</sup> *Ibidem*.

<sup>398</sup> European Commission, ‘Further Strengthening the Rule of Law within the Union - State of Play and Possible next Steps’, COM(2019) 163 final (2019), Brussels, 3.4.2019.

<sup>399</sup> European Commission, ‘Strengthening the Rule of Law within the Union A Blueprint for Action’, COM/2019/343 final (2019), Brussels, 17.7.2019.

position of those stakeholders heard. The Commission also wishes to involve all the Member States to “engage further in a mutual exchange of information and a dialogue on rule of law related topics”, and to set up a “network of national contact points in Member States” to serve as a forum to discuss rule of law related topics. Those exchanges of information would result in the Annual Rule of Law Report<sup>400</sup>. This document would present the State of Play of the rule of law situation in the Member States, and besides the data obtained from the dialogues and consultations with the relevant stakeholders, it would also include the case-law of the CJEU, and parts of the EU Justice Scoreboard and the European Semester. The first Rule of Law Report should be presented in front of the European Parliament in September 2020, after its adoption by the Commission<sup>401</sup>. Through this report, the Commission hopes to strengthen the inter-institutional dialogue and cooperation and to trigger debates within the Council and the European Parliament.

In this communication, the Commission also commits to promote and to build a “common rule of law culture”<sup>402</sup>, by supporting the civil society and academia with more funding and cooperating with judicial networks to promote rule of law standards and strengthening the cooperation with international organisations. In this part dedicated to the promotion of the rule of law, the Commission also invites the European Parliament and the national parliaments to launch an interparliamentary debate on the topic, to which the Commission could participate.

The Rule of Law Review Cycle takes up some of the elements of the European Parliament’s proposal<sup>403</sup>, and especially the idea of an annual report which would include a variety of relevant stakeholders. There are nevertheless differences between the approach proposed by the European Parliament and the approach proposed by the Commission. The LIBE Committee held a debate with EU Commissioner for Justice, Didier Reynders on the EU mechanism on democracy, the rule of law, and fundamental rights, and to react on the Commission’s Rule of Law Review Cycle.

The Rule of Review Cycle proposed by the Commission does not entail an inter-institutional agreement even though this would have been possible based on article 295 TFEU. This leaves the entire monitoring in the hands of one institution, being the Commission, like for the Rule of Law

---

<sup>400</sup> Dimitry Kochenov, ‘Elephants in the Room: The European Commission’s 2019 Communication on the Rule of Law’, *Hague Journal on the Rule of Law* 11, no. 2–3 (November 2019): 423–38.

<sup>401</sup> Committee on Civil Liberties, Justice and Home Affairs, Didier Reynders, and Rik Daems, *Establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights: Extracts from the Statements*, 29 June 2020, [https://multimedia.europarl.europa.eu/en/eu-mechanism-on-democracy-rule-of-law-reynders\\_I192540-V\\_v](https://multimedia.europarl.europa.eu/en/eu-mechanism-on-democracy-rule-of-law-reynders_I192540-V_v).

<sup>402</sup> European Commission, ‘Strengthening the Rule of Law within the Union A Blueprint for Action’.

<sup>403</sup> European Parliament, Resolution on an EU mechanism on democracy, the rule of law and fundamental rights.

Framework, and does not allow all the EU institutions to truly cooperate on a horizontal basis. This has been particularly criticized by the European Parliament since it has not been allowed to participate in the hearings in the Council for the procedure of article 7(1) TEU<sup>404</sup>. An inter-institutional agreement would also have been a way to promote the enforcement of the values of article 2 TEU within the EU institutions through regular exchanges between the institutions, and to reach a common understanding of the methodology to assess the compliance with those values.

Another difference lies in the scope of the two reports. The Rule of Law Report is focused on four areas which are: justice systems, anti-corruption, media pluralism, and “institutional issues related to checks and balances”<sup>405</sup>, and exclusively related to the rule of law. The European DRF Report proposed by the European Parliament would encompass 19 topics<sup>406</sup> touching upon democracy, the rule of law, and fundamental rights. This limited scope of application for this annual report has been underlined by MEPs<sup>407</sup>, who insist on a need for a comprehensive approach when talking about the EU values given their interdependency and triangular relationship, but also because the values mutually reinforce each other and protect the constitutional basis of the EU and the Member States<sup>408</sup>. The European Commission already produces an annual report on the application of the Charter<sup>409</sup> and has launched on 15th July 2020 a public consultation for the elaboration of a European Democracy Action Plan<sup>410</sup>. While those are extremely useful tools and steps forward, this shows that the Commission aims at tackling the values individually.

A third difference between the two approaches is the refusal of the Commission to involve a panel of independent experts, claiming that this would not be compatible with its role as guardian of the

---

<sup>404</sup> Council of the European Union, ‘Standard Modalities for Hearings Referred to in Article 7(1) TEU’.

<sup>405</sup> Van Ballegooij, Evas, op. cit.

<sup>406</sup> European Parliament, Resolution on an EU mechanism on democracy, the rule of law and fundamental rights Annex, article 7.

<sup>407</sup> Committee on Civil Liberties, Justice and Home Affairs, Reynders, and Daems, *Establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights*.

<sup>408</sup> Carrera, Guild, Hernanz, op. cit.

<sup>409</sup> ‘Annual Reports on the Application of the Charter’, European Commission, [https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/application-charter/annual-reports-application-charter\\_en](https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/application-charter/annual-reports-application-charter_en).

<sup>410</sup> European Commission, ‘Public Consultation: Commission Seeks Citizens’ Views in Preparation of New European Democracy Action Plan’, European Commission, 15 July 2020, [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_1352](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1352).

treaties. The Commission states that this poses a problem regarding both legitimacy and accountability<sup>411</sup>.

The last difference regards the outcome of the report. In fact, in the case of the proposal of the Parliament, it envisaged the adoption of Council conclusions and a resolution by the Parliament following an interparliamentary debate. There were also 4 possible options with possible sanctioning mechanisms for the Member States when it came to the country-specific recommendations. The Commission on the other hand encourages interparliamentary debates and debates within the Council, but without mentioning how those debates will be relevant in the future, or how this could reinforce the enforcement of the European values.

To truly evaluate the proposal of the Commission it is necessary to wait for the publication of the Rule of Law Report in September 2020. In the meantime, the Parliament launched the work on a second legislative own-initiative report on an EU mechanism on democracy, the rule of law, and fundamental rights<sup>412</sup>.

In parallel to the debates regarding the elaboration of a new monitoring mechanism, the European Commission launched a new proposal for the 2021-2027 Multiannual Financial Framework (hereunder ‘MFF’ or ‘EU budget’), supported by the European Parliament involving a rule of law conditionality. Introducing this conditionality in the EU budget would allow the Commission to cut or reduce EU funds in case of threats to the rule of law. This conditionality is currently under discussion between the EU institutions and will be explained in the following section.

#### **D. The budget of the EU and the rule of law conditionality**

In 2018, the European Commission proposed a legislative package regarding the 2021 Multiannual Financial Framework with a proposal for a regulation on a rule of law conditionality to the EU funds (II.D.a). The Parliament has adopted its position in April 2019, nevertheless, as it has been tied to the adoption of the MFF, no agreement could be found in the Council, until recently (II.D.b)

---

<sup>411</sup> Committee on Civil Liberties, Justice and Home Affairs, Reynders, and Daems, *Establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights*.

<sup>412</sup> Van Ballegooij, Evas, op. cit.

a. *The Commission's proposal on a rule of law conditionality to protect the EU budget*

The use of conditionality has been recurrent in European history and is frequently used. It is used in the EU external policy in EU enlargement policy with the Copenhagen criteria<sup>413</sup>, it is also used in the neighbourhood policy<sup>414</sup> and development cooperation and foreign trade policies<sup>415</sup>. It is frequently used in the internal dimension of the EU, in the budgetary framework, and the regulations governing European Structural and Investment funds. Through this conditionality, the EU uses financial leverage to push the Member States to meet the policy objectives as defined by the EU.

Conditioning the reception of the EU funds to the respect for the values of article 2 TEU, and more particularly the rule of law, has been discussed for a few years. In 2016 already, two MEPs Ingeborg Gräßle and Alexander Graf Lapsdorff, members of the committee on budgetary control stated that there needed to be “stronger rules”<sup>416</sup> for the allocation of funds and that the next budget needed to require more solidarity and respect for the EU values from the Member States that are net recipients. In 2017, the European Parliament adopted a resolution regarding the situation in Hungary, in which it called the European Commission to “strictly monitor the use of EU funds by the Hungarian Government” to make sure that they were “fully compliant with both EU primary and secondary law”<sup>417</sup>. EU Commissioner Vera Jourová also took a stand in this direction stating that a “conditionality between the rule of law and the cohesion funds”<sup>418</sup> would be considered for the 2021-2027 EU budget. This conditionality had been supported by some Member States such as Germany and Austria<sup>419</sup>. The idea underlying is not only to protect the EU values but also the EU financial interests, as there can be financial losses caused by breaches of the EU values, due to misuse and mismanagement of the funds<sup>420</sup>.

---

<sup>413</sup> See Chapter I. B

<sup>414</sup> Tom Theuns, ‘Promoting Democracy through Economic Conditionality in the ENP: A Normative Critique’, *Journal of European Integration* 39, no. 3 (16 April 2017): 287–302.

<sup>415</sup> Marco Fisicaro, ‘Rule of Law Conditionality in EU Funds: The Value of Money in the Crisis of European Values’, *European Papers* 4, no. 3 (2019).

<sup>416</sup> Gábor Halmai, ‘The Possibility and Desirability of Rule of Law Conditionality’, *Hague Journal on the Rule of Law* 11, no. 1 (April 2019): 171–88.

<sup>417</sup> European Parliament, Resolution on the situation in Hungary, 2017.

<sup>418</sup> Věra Jourová, ‘Speech by Commissioner Jourová - 10 Years of the EU Fundamental Rights Agency: A Call to Action in Defence of Fundamental Rights, Democracy and the Rule of Law’, SPEECH/17/403 (2017).

<sup>419</sup> Halmai, *op. cit.*

<sup>420</sup> European Commission, ‘Proposal for a Regulation 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’, COM(2018) 324 final-2018/0136 (COD) (02.05.2018).

In May 2018, the European Commission proposed a legislative package<sup>421</sup> for the 2021-2027 MFF. In this package, the Commission presented a 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”<sup>422</sup>. In the explanatory memorandum of the proposal, the Commission argues that “Effective respect for the rule of law is a prerequisite for confidence that EU spending in Member States is sufficiently protected”<sup>423</sup>, and that the EU should be provided with appropriate tools to protect effectively its financial interests from losses caused by “generalized deficiencies as regards the rule of law in a Member State”<sup>424</sup>. Those losses could be prevented through a “sound financial management”<sup>425</sup> which can be ensured if the administrative and judicial framework of a Member State is functioning and independent, and thus if the rule of law is respected. In this context, business initiatives, investment, and the proper functioning of the internal market can flourish. The proposed regulation provides in its article 3 measures to be taken in case “generalized deficiency as regards the rule of law in a Member States affects or risks affecting the principles of sound financial management or the protection of the financial interests of the Union”<sup>426</sup> and proposes a list of conditions which could constitute such deficiencies or risks. The measures proposed are negative, or ex post reactions as they would suspend or reduce the funding, as opposed to ex ante conditionality which requires criteria to be fulfilled to receive the funds<sup>427</sup>. Article 5 of the proposal defines the procedure for the measures to be implemented. Based on it, if the Commission has reasons to believe that there is a generalized deficiency as regards the rule of law, it shall notify the concerned Member State, after taking into account the opinions of the relevant institutions (CJEU, Courts of auditors, and other international organisations), and eventually assessing the information provided by the Member State if it does so. After that, the Commission shall decide whether or not to “submit a proposal for an implementing act on the appropriate measures to the Council”<sup>428</sup>. The Commission bases its proposal on a reverse qualified majority voting, meaning that the proposal is deemed to have been adopted by the Council unless it rejects it by a qualified majority vote. The lifting of the measures<sup>429</sup> shall be done once the

---

<sup>421</sup> ‘EU Budget for the Future’, European Commission, [https://ec.europa.eu/commission/future-europe/eu-budget-future\\_en](https://ec.europa.eu/commission/future-europe/eu-budget-future_en).

<sup>422</sup> European Commission, Proposal for a Regulation 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.

<sup>423</sup> *Ibidem*.

<sup>424</sup> *Ibidem*.

<sup>425</sup> *Ibidem*.

<sup>426</sup> *Idem*, article 3.

<sup>427</sup> *Idem*, article 4.

<sup>428</sup> *Idem*, article 5(1).

<sup>429</sup> *Idem*, article 6.

Member State has submitted evidence that the generalized deficiency has ceased to exist. The Commission shall then submit a new proposal to the Council for a decision lifting those measures, through the same procedure stated in article 5<sup>430</sup>.

The use of rule of law conditionality for the reception of EU funds could be a breakthrough. It is the easiest way to effectively protect the budget and the EU financial interest. Spending conditionality has also proven to be effective in terms of compliance<sup>431</sup>. Lastly, the EU Member States most affected by the rule of law backsliding, Poland, and Hungary, are two of the biggest EU funds recipients<sup>432</sup>. Such a conditionality could be a good way to convince them to comply with the EU values.

The proposal has also received negative comments. One of the biggest critics is the fact that it might be a breach of the principle of equality since it would affect primarily some of the poorer Member States. In his analysis of the proposal, Friedrich Heinemann argued that since richer Member States also receive significant fundings from EU funds, this conditionality could be a deterrent for all Member States, whether they are net recipients or net contributors<sup>433</sup>. There is nevertheless the risk that financial sanctions would impact the citizens of the Member States in the first place, and not the autocratic regime<sup>434</sup>.

Some also argued that such a measure could increase the European polarization and the East-West divide. This position was also shared by former European Commission President Jean-Claude Juncker who stated that it would be “poison for the continent”<sup>435</sup>. However, sanctions could also lead to a political change through the mobilization of the citizens in times of elections<sup>436</sup>.

When it comes to the content of the proposal, the very significant discretionary power that the Commission has can raise concerns given the political nature of the institution<sup>437</sup>. On the same line, the definitions, and especially article 3 defining the “general deficiencies as regards the rule of law”<sup>438</sup>

---

<sup>430</sup> *Idem*, article 5.

<sup>431</sup> Fiscaro, *op. cit.*

<sup>432</sup> Tamara Kovacevic, ‘EU Budget: Who Pays Most in and Who Gets Most Back?’, *BBC News*, 28 May 2019, <https://www.bbc.com/news/uk-politics-48256318>.

<sup>433</sup> Friedrich Heinemann, ‘Going for the Wallet? Rule-of-Law Conditionality in the Next EU Multiannual Financial Framework’, *Intereconomics* 2018, no. 6 (2018): 297–301.

<sup>434</sup> Halmai, *op. cit.*

<sup>435</sup> Florian Eder, ‘Juncker: German Plan to Link Funds and Rules Would Be “Poison”’, *Politico*, 6 January 2017, <https://www.politico.eu/article/juncker-german-plan-to-link-funds-and-rules-would-be-poison/>.

<sup>436</sup> Heinemann, *op. cit.*

<sup>437</sup> Fiscaro, *op. cit.*

<sup>438</sup> European Commission, Proposal for a Regulation 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.

lacks precision, and the basis for the launch of the procedure is not clearly defined. It should be noted that the Parliament is not involved at any point in the procedure.

The European Parliament tackled those questions in its amendments<sup>439</sup> to the proposal, adopted in April 2019.

*b. The position of the European Parliament on the rule of law conditionality to the EU budget*

The Commission based its proposal on article 322(1)(a) TFEU related to “financial rules which determine in particular the procedure to be adopted for establishing and implementing the budget”<sup>440</sup>. Those rules are adopted in accordance with the ordinary legislative procedure meaning that the European Parliament and the Council are co-legislators. On 4 April 2019, the European Parliament reached a first-reading position<sup>441</sup> and adopted 68 amendments. The European Parliament adds a reference to the Copenhagen Criteria, and the Copenhagen dilemma, stating that there should be a regular assessment to monitor the compliance of the Member States to the EU values<sup>442</sup>. The parliament also reiterates in the introductory clause the need for a rule of law monitoring framework, which would be a more effective “control mechanism for the protection of the financial interest of the Union”<sup>443</sup>, to prevent losses, mismanagement of EU funds, or cases of fraud or corruption.

The European Parliament introduces a new article defining the “generalised deficiencies as regards the rule of law”<sup>444</sup> including five specific situations: “a) endangering the independence of judiciary, [...] b) failing to prevent, correct and sanction arbitrary or unlawful decisions by public authorities, [...] c) limiting the availability and effectiveness of legal remedies, [...] d) endangering the administrative capacity of a Member State to respect the obligations of Union membership, [...] e)

---

<sup>439</sup> European Parliament, ‘Legislative Resolution on the Proposal for a Regulation 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’, (COM(2018)0324 – C8-0178/2018 – 2018/0136(COD)) (2019).

<sup>440</sup> Consolidated version of the Treaty on the functioning of the European Union, article 322(1)(a).

<sup>441</sup> European Parliament, Legislative Resolution on the Proposal for a Regulation 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.

<sup>442</sup> *Ibidem*.

<sup>443</sup> *Ibidem*.

<sup>444</sup> *Idem*, article 2a, am. 32.

measures that weaken the protection of the confidential communication between lawyer and client<sup>445</sup>. Following this article, the European Parliament also gives a list of situations where the financial interests of the EU might be affected due to a generalized deficiency as regards the rule of law<sup>446</sup>.

The European Parliament tackles the question of the potential excessive discretionary power of the Commission by introducing a panel of experts in the monitoring procedure<sup>447</sup>, as it had already done in its EU mechanism on democracy, the rule of law and fundamental rights proposal<sup>448</sup>. The Panel would be composed of “experts in constitutional law and financial and budgetary matters”, with one expert appointed per Member State, and five experts appointed by the European Parliament. Representatives of international organisations might be invited as observers on the Panel. According to the Parliament’s amendment, the expert panel would have an advisory task and assist the Commission in “identifying generalised deficiencies as regards the rule of law in a Member State that affect or risk affecting the principles of sound financial management or the protection of the financial interests of the Union”, based on qualitative and quantitative data. The Commission would have to take this opinion into account before notifying the Member State. This panel would make an annual report of its findings and express an opinion about a generalized deficiency as regards the rule of law in a Member State.

One significant modification of the Parliament is to put the Parliament and the Council as co-legislators in the sanctioning procedure. The proposal of the Commission only relied on the Council for the adoption of the decision to suspend or reduce the funds, the Parliament thus propose to put the two institutions on the same footing.

The European Parliament also provides a shield for the final recipients of beneficiaries of the funds, in case the sanction mechanism is activated. The amendment requires that the Commission guarantees that “any amount due by government entities or Member States in accordance with paragraph 2 is effectively paid to final recipients or beneficiaries”<sup>449</sup> thus ensuring the protection of EU citizens of the rogue Member State.

---

<sup>445</sup> *Ibidem*.

<sup>446</sup> *Idem*, article 3, am. 33.

<sup>447</sup> *Idem*, article 3a, am. 45.

<sup>448</sup> See chapter II.C.

<sup>449</sup> European Parliament, Legislative Resolution on the Proposal for a Regulation 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.

While the European Parliament has adopted its position on the 4th April 2019, the Council couldn't reach a position<sup>450</sup> until recently. Furthermore, the Coronavirus pandemic led the European Commission to revise and reinforce the initial MFF proposal and to add a new Recovery Instrument, Next Generation EU<sup>451</sup>, to counter the socio-economic consequences of the health crisis. This new recovery instrument had also been requested by the European Parliament in a resolution on the 15 May 2020<sup>452</sup>. The rule of law conditionality remains one of the key features of this package<sup>453</sup>. This proposal has been sparking significant debates in the Council and has been one of the obstacles to reach a consensus<sup>454</sup>. To adopt the MFF, unanimity is needed in the Council and the European Parliament shall then approve or reject the agreement<sup>455</sup>. The rule of law conditionality regulation, however, is adopted through the ordinary legislative procedure<sup>456</sup>, meaning that there is no need for unanimity in the Council, and the European Parliament is co-legislator, but the EU leaders decided to bundle up the proposals, and to adopt them as a package<sup>457</sup>, thus raising discussions<sup>458</sup> and delaying the agreement among the leaders. However, on the 21st July 2020, the European Council reached a consensus<sup>459</sup> on the new MFF legislative package, including the proposal on a Rule of law conditionality.

In the 68-pages conclusions of the European Council about the adoption of the MFF, the conditionality of the EU budget to the rule of law is mentioned in two paragraphs only. The European leaders first state their commitment to the protection of the EU's financial interest, in accordance with the values of article 2 TEU. Paragraph 23 is more focused on the Commission's proposal and especially on the procedure for the adoption of the sanctioning mechanism in those terms: "a regime of conditionality to protect the budget and Next Generation EU will be introduced. In this context, the

---

<sup>450</sup> Rafał Mańko, Magdalena Sapała, 'Protecting the EU Budget against Generalised Rule of Law Deficiencies', Briefing, Member's Research Service, July 2020.

<sup>451</sup> European Commission, 'Proposal for a Council Regulation Establishing a European Union Recovery Instrument to Support the Recovery in the Aftermath of the COVID-19 Pandemic', COM(2020) 441 final-2020/0111 (NLE) (2020).

<sup>452</sup> European Parliament, 'Resolution on the New Multiannual Financial Framework, Own Resources and the Recovery Plan', 2020/2631(RSP) (2020).

<sup>453</sup> European Commission, 'The EU Budget Powering the Recovery Plan for Europe', COM/2020/442 final (2020), Brussels, 27.5.2020.

<sup>454</sup> 'Rule of Law a Must before Getting EU Money, Jourova Insists', *Euractiv*, 7 July 2020, <https://www.euractiv.com/section/politics/news/rule-of-law-a-must-before-getting-eu-money-jourova-insists/>.

<sup>455</sup> Consolidated version of the Treaty on the functioning of the European Union, article 312(2).

<sup>456</sup> *Idem*, article 322(1)(a).

<sup>457</sup> Israel Butler, 'Forget Tying Rule of Law to the EU Budget. It's Better to Add Strings to EU Funding Later | View', *Euronews*, 17 July 2020, <https://www.euronews.com/2020/07/17/forget-tying-rule-of-law-to-the-eu-budget-it-s-better-to-add-strings-to-eu-funding-later-v>.

<sup>458</sup> Lili Bayer, 'No EU Budget If Rule of Law Discussed, Orbán Says', *POLITICO*, 10 July 2020, <https://www.politico.eu/article/no-budget-if-rule-of-law-discussed-orban-says/>.

<sup>459</sup> European Council, 'Special Meeting of the European Council (17, 18, 19, 20 and 21 July 2020) – Conclusions', EUCO 10/20 (2020).

Commission will propose measures in case of breaches for adoption by the Council by qualified majority. The European Council will revert rapidly to the matter<sup>460</sup>.

Through this agreement, there is a downgrading of the Commission's initial proposal, as the revert qualified majority vote has been abandoned, and thus the measures in case of general deficiency to the rule of law need to be adopted by the Council by qualified majority, which means that they would be less likely to be adopted. The European Parliament is not mentioned at all. The role of the European Council in the matter as it is mentioned in the document is extremely vague. It can only be assumed that this position was the only way to reach a unanimous agreement.

The European Parliament rapidly adopted a resolution<sup>461</sup> following the European summit. The European Parliament first starts by reminding its role in the process of adoption of the MFF, and the recovery plan stating that it is the “guarantor of a transparent and democratic recovery”<sup>462</sup>. While the Parliament welcomes the adoption of the Recovery plan, on which it does not have a formal role, it also warns that it will not accept the MFF 2021-2027 political agreement of the European Council, and it calls the Council to improve it to give its consent. Regarding the rule of law, the Parliament “strongly regrets” the position of the European Council which weakened the joint efforts of the Commission and the Parliament in safeguarding the EU values in the framework of the MFF and the Recovery plan. The Parliament also restates its demands to be co-legislator in the Commission's proposal to protect the EU budget and emphasizes the need for a reverse qualified majority vote for the mechanism to be effective. On the rule of law, the Parliament concludes by stating that the “rule of law regulation will be adopted by co-decision”<sup>463</sup>, thus reminding the role of the European Parliament on the matter, and more importantly, the lack of competence of the European Council.

It is difficult to predict what will happen after the summer recess, and the reopening of the European Parliament in September 2020, nevertheless, there needs to be an agreement on the MFF by autumn 2020, to start the implementation of the budget in January 2021. There will be more talks during the summer regarding the EU budget, however, there is no need for the rule of law conditionality regulation to be adopted with the MFF<sup>464</sup>, since they are based on two different

---

<sup>460</sup> *Ibidem*.

<sup>461</sup> European Parliament, ‘Resolution on the Conclusions of the Extraordinary European Council Meeting of 17-21 July 2020’, (2020/2732(RSP)) (23.07.2020).

<sup>462</sup> *Ibidem*.

<sup>463</sup> *Ibidem*.

<sup>464</sup> Butler, op. cit.

legislative procedures, thus the adoption of this text may take longer, for it to be a satisfactory instrument as regards the protection of the rule of law and the EU values in general.

## **E. Conclusion**

The European Parliament symbolizes democracy among the EU institution as it is the only one where the members are elected by the EU citizens. It is thus the representative of the EU citizens and it reflects the political diversity of the EU. Even before its first direct election in 1979, the European Parliament started to advocate for and to promote the European values. It honoured its role as a political institution of the EU by fostering debates, denouncing social problems, and calling on the Member States to comply with the European values. The Chamber broadened the scope of application of article 7(1) TEU to become a monitoring institution of the Member States, with a thorough investigative work which, in the case of Hungary led to the launch of the procedure of article 7(1) TEU, but that also led to the creation of an ad-hoc working group to assess the situation on the ground in the Member States, like in Malta or Slovakia. The European Parliament also has a comprehensive understanding of the values of the EU and tackles all of them at the same time. By doing this, it complies with its role of representative of the EU citizens and their interest, especially through the importance it gives to the respect of fundamental rights of the citizens across the European Union. The European Parliament has also been the first institution to call for a permanent mechanism for the monitoring of the EU values, to prevent their breaches. Such a mechanism would be extremely useful in case the rule of law conditionality to the EU funds is adopted, to assess the situation in real-time and thus have a timely response to the situation. The European Parliament has also been pushing for more cooperation among the EU institution. This lack of cooperation among the EU institutions, or maybe even a disregard towards the European Parliament has proven to be an obstacle to the enforcement of the EU values, especially coming from the Council, for the procedure of article 7(1) TEU regarding Hungary and Poland, or for the European Council on the EU budget rule of law conditionality. However, the role of co-legislator of the European Parliament in the latter should be an advantage for the improvement of the protection of the EU values.

## GENERAL CONCLUSION

In recent years, the debate surrounding the protection of the EU values gave birth to several new instruments. Each of the EU institutions has its own mechanism. Furthermore, most of the instruments available at the EU level, studied in the first chapter, are limited to the scope of application of EU law, besides article 7 TEU. The Commission's Rule of Law Framework and the Council's Rule of Law Dialogue officially give prevalence to the rule of law, even though they could be applied to the other values of the EU. Until now, there has been a tendency to approach the EU values individually. This was for example the approach that the Commission had towards Poland where it focuses on the violation of the rule of law. Those values nevertheless are interdependent and in case of breach of the values of article 2 TEU, it is more relevant to have a global approach since the breach of one of the values will eventually weaken the others. This global approach has been taken by the European Parliament both in the case of Hungary and Poland, with a particular emphasis on the fundamental rights, thus embodying its role of representative of the EU citizens, and truly considering their interests.

The European Parliament has been a leader among the EU institutions when it comes to the protection and promotion of the European values. It is more demanding towards the EU Member States regarding the compliance with the EU values than the other institutions. Its political nature enabled the Chamber to take a stance on sensitive issues without being hindered by an obligation of neutrality like the Commission and to closely monitor the situation in the Member States thus bringing the internal situation to light on the European scene, and showing that domestic affairs matter for the EU and its citizens. The reports about Hungary and the work of the ROLMG prove that the European Parliament can truly monitor the situation in the Member States, and act on the threats to the EU values it detects, even if its resolutions are non-legally binding. Hence, it relies on the other institutions for sanctions.

The European Parliament has been one of the few EU institutions in favour of more cooperation among the institutions to enforce the EU values and to formally request this cooperation through an inter-institutional agreement. Such a request also shows a desire to hold the EU institutions accountable, as much as the Member States, and to do better to foster a culture of values promoting the rule of law, fundamental rights, and democracy at the EU level. Sadly, this request for stronger cooperation does not seem to be considered by the other EU institutions and especially the Council, thus creating an obstacle in the enforcement of the EU values. The request for a permanent monitoring mechanism from the European Parliament has been heard and concretized by the Commission, even

though it is not in the form initially requested by the Parliament of an inter-institutional agreement, and thus will not be applied to the EU institutions. This mechanism, which will reside in the hand of the Commission, will be another opportunity for the European Parliament to debate on the outcomes of the Commission Rule of Law Report, hopefully by involving the national parliaments. As this report will be presented in September 2020, the efficiency of the tools will be assessed after this date.

The role of the European Parliament is major in the adoption of the MFF 2021-2027 and the adoption of the EU budget rule of law conditionality. This regulation could radically change the situation, and as the Chamber is co-legislator, it will have the power to be challenging towards the Council, especially after the threats to the EU values witnessed during the emergency situation due to the health crisis of 2020.

## SOURCES AND BIBLIOGRAPHY

### EU Legislation

Charter of Fundamental Rights of the European Union, C 326/391, OJ (2012). [https://eur-lex.europa-eu.ezproxy.ub.unimaas.nl/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN](https://eur-lex.europa.eu.ezproxy.ub.unimaas.nl/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN)

Consolidated version of the Treaty on European Union, C 326/13, OJ (2012). [https://eur-lex.europa-eu.ezproxy.ub.unimaas.nl/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC\\_1&format=PDF](https://eur-lex.europa-eu.ezproxy.ub.unimaas.nl/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF)

Consolidated version of the Treaty on the Functioning of the European Union, C 326/01, OJ (2012). <https://eur-lex.europa-eu.ezproxy.ub.unimaas.nl/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, 2000/43/EC (2000). <http://eur.lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32000L0043>.

Council directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, 2000/78/EC (2000). <https://eur-lex.europa-eu.ezproxy.ub.unimaas.nl/legal-content/EN/TXT/PDF/?uri=CELEX:32000L0078&from=EN>.

Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, 2004/113/EC (2004). <http://eur.lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0113>.

Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), 2006/54/EC (2006). <http://eur.lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006L0054>.

## European Commission

Annual Reports on the Application of the Charter. [https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/application-charter/annual-reports-application-charter\\_en](https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/application-charter/annual-reports-application-charter_en).

A new EU Framework to strengthen the Rule of Law, COM/2014/0158 final. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52014DC0158>.

Amended proposal for a Council regulation laying down the multiannual financial framework for the years 2021 to 2027, COM(2020) 443 final-2018/0166 (APP).  
[https://ec.europa.eu/info/sites/info/files/about\\_the\\_european\\_commission/eu\\_budget/com\\_2020\\_443\\_en\\_act\\_part1\\_v10.pdf](https://ec.europa.eu/info/sites/info/files/about_the_european_commission/eu_budget/com_2020_443_en_act_part1_v10.pdf).

Anti-Corruption Experience Sharing Programme. Migration and Home Affairs - European Commission, 6 December 2016. [https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/experience-sharing-programme\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/experience-sharing-programme_en).

Article 7 of the Treaty on European Union. Respect for and promotion of the values on which the Union is based, COM(2003) 606 final (2003).  
<https://ec.europa.eu/transparency/regdoc/rep/1/2003/EN/1-2003-606-EN-F1-1.Pdf>.

Commission Recommendation regarding the rule of law in Poland, 2016/1374, C/2016/5703 (2016).  
<https://eur-lex.europa.eu.ezproxy.ub.unimaas.nl/legal-content/EN/TXT/?uri=CELEX%3A32016H1374>.

EU Anti-Corruption Report, COM(2014) 38 final (2014). [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr\\_2014\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf).

EU Budget for the Future [https://ec.europa.eu/commission/future-europe/eu-budget-future\\_en](https://ec.europa.eu/commission/future-europe/eu-budget-future_en).

2020 EU Justice scoreboard, COM(2020) 306 final (2020). <https://eur-lex.europa.eu.ezproxy.ub.unimaas.nl/legal-content/EN/TXT/?qid=1594988296707&uri=CELEX:52020DC0306>.

European Cooperation Network on Elections. [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/eu-citizenship/electoral-rights/european-cooperation-network-elections\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/eu-citizenship/electoral-rights/european-cooperation-network-elections_en).

Follow up to the European Parliament Resolution on with Recommendations to the Commission on the Establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights, 17 January 2017.

Further strengthening the Rule of Law within the Union - State of play and possible next steps, COM(2019) 163 final (2019).

[https://ec.europa.eu/info/sites/info/files/rule\\_of\\_law\\_communication\\_en.pdf](https://ec.europa.eu/info/sites/info/files/rule_of_law_communication_en.pdf).

Improving the Effectiveness of National Justice Systems. [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/improving-effectiveness-national-justice-systems\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/improving-effectiveness-national-justice-systems_en).

Progress Report on the Cooperation and Verification Mechanism – Procedural Aspects. Memo. Brussels: European Commission, 27 June 2007.

[https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_07\\_260](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_07_260).

Proposal for a Council decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law, COM(2017) 835 final-2017/0360 (NLE) (2017). [https://eur-lex.europa-eu.ezproxy.ub.unimaas.nl/legal-content/EN/TXT/PDF/?uri=CELEX:52017PC0835&from=EN](https://eur-lex.europa.eu.ezproxy.ub.unimaas.nl/legal-content/EN/TXT/PDF/?uri=CELEX:52017PC0835&from=EN).

Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM/2008/0426 final-CNS 2008/0140 (2008). <https://eur-lex.europa-eu.ezproxy.ub.unimaas.nl/legal-content/en/TXT/?uri=CELEX%3A52008PC0426>.

Proposal for a Council regulation establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 pandemic, COM(2020) 441 final-2020/0111 (NLE) (2020). [https://ec.europa.eu/info/sites/info/files/about\\_the\\_european\\_commission/eu\\_budget/com\\_2020\\_441\\_en\\_act\\_part1\\_v13.pdf](https://ec.europa.eu/info/sites/info/files/about_the_european_commission/eu_budget/com_2020_441_en_act_part1_v13.pdf).

Proposal for a regulation 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, COM(2018) 324 final-2018/0136 (COD) (2018). [https://ec.europa.eu/commission/sites/beta-political/files/protection-union-budget-rule-law-may2018\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/protection-union-budget-rule-law-may2018_en.pdf).

Public Consultation: Commission Seeks Citizens' Views in Preparation of New European Democracy Action Plan', European Commission, 15 July 2020.

[https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_1352](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_1352).

Protecting European Democracy from Interference and Manipulation – European Democracy Action Plan. <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12506-European-Democracy-Action-Plan>.

Report on the 2019 elections to the European Parliament, COM(2020) 252 final (2020).

[https://ec.europa.eu/info/sites/info/files/com\\_2020\\_252\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/com_2020_252_en_0.pdf).

Shaping Europe's digital future - European Commission. 'Media Freedom and Pluralism'. 17 February 2014. <https://ec.europa.eu/digital-single-market/en/policies/media-freedom-and-pluralism>.

State of the Union 2018: European Commission proposes measures for securing free and fair European elections, IP/18/5681 (2018). [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_18\\_5681](https://ec.europa.eu/commission/presscorner/detail/en/IP_18_5681).

Strengthening the rule of law within the Union A blueprint for action, COM/2019/343 final (2019).

<https://eur-lex.europa.eu.ezproxy.ub.unimaas.nl/legal-content/EN/ALL/?uri=COM%3A2019%3A343%3AFIN>.

Tackling COVID-19 disinformation - Getting the facts right, JOIN(2020) 8 final (2020).

[https://ec.europa.eu/info/sites/info/files/communication-tackling-covid-19-disinformation-getting-facts-right\\_en.pdf](https://ec.europa.eu/info/sites/info/files/communication-tackling-covid-19-disinformation-getting-facts-right_en.pdf).

The EU budget powering the recovery plan for Europe, COM/2020/442 final (2020). <https://eur-lex.europa.eu.ezproxy.ub.unimaas.nl/legal-content/EN/TXT/?uri=COM%3A2020%3A442%3AFIN>.

Durão Barroso, José Manuel. State of the Union 2012 Address Plenary session of the European Parliament (2012). [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_12\\_596](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_12_596).

Jourová, Věra. Speech by Commissioner Jourová - 10 years of the EU Fundamental Rights Agency: a call to action in defence of fundamental rights, democracy and the rule of law, SPEECH/17/403 (2017).

[https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_17\\_403](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_17_403).

Jourová, Věra Speech of Vice-President Jourová on the Rule of Law in Malta at the European Parliament plenary debate on the Rule of Law in Malta, after the recent revelations around the murder

of Daphne Caruana Galizia, SPEECH/19/6790.

[https://ec.europa.eu/commission/presscorner/detail/en/speech\\_19\\_6790](https://ec.europa.eu/commission/presscorner/detail/en/speech_19_6790).

Jourová, Věra. Threats to democracy during the COVID-19 crisis, SPEECH/20/861 (2020).

[https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_20\\_861](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_861).

Reding. Viviane Speech: Safeguarding the rule of law and solving the ‘Copenhagen dilemma’:

Towards a new EU-mechanism, General Affairs Council/Luxembourg, 22 April 2013,

SPEECH/13/348 (2013). [https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_13\\_348](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_13_348).

Viviane Reding. Speech: The EU and the Rule of Law – What next?, SPEECH/13/677 (2013).

[https://ec.europa.eu/commission/presscorner/detail/fr/SPEECH\\_13\\_677](https://ec.europa.eu/commission/presscorner/detail/fr/SPEECH_13_677).

Von Der Leyen, Ursula, A Union that strives for more - My agenda for Europe (2019).

[https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf).

Von Der Leyen, Ursula, Statement by President von der Leyen on emergency measures in Member States, STATEMENT/20/567 (2020).

[https://ec.europa.eu/commission/presscorner/detail/en/statement\\_20\\_567](https://ec.europa.eu/commission/presscorner/detail/en/statement_20_567).

### **European Parliament**

Committee on Budgetary Control, and Committee on Civil Liberties, Justice and Home Affairs.

‘Report on the Ad Hoc Delegation to Slovakia, 7-9 March 2018’. Mission report. Brussels: European Parliament, 12 March 2018.

[https://www.europarl.europa.eu/cmsdata/140245/Ad%20hoc%20delegation%20to%20Slovakia\\_report\\_final.pdf](https://www.europarl.europa.eu/cmsdata/140245/Ad%20hoc%20delegation%20to%20Slovakia_report_final.pdf).

Committee on Civil Liberties, Justice and Home Affairs. ‘Democracy, Rule of Law and Fundamental Rights Monitoring Group (DFRMG) - Mandate Adopted by LIBE Coordinators on 5 September 2019’. European Parliament. Accessed 10 August 2020.

<https://www.europarl.europa.eu/cmsdata/207119/WG%20DRFMG%20-%20Mandate%20IXth%20legislature.pdf>.

Committee on Civil Liberties, Justice and Home Affairs. ‘Draft Mission Report, Following the Ad Hoc Delegation to Poland on the Situation of the Rule of Law, 19 - 21 September 2018’. European

Parliament, 19 November 2018.

[https://www.europarl.europa.eu/meetdocs/2014\\_2019/plmrep/COMMITTEES/LIBE/DV/2018/12-03/mission\\_report\\_Poland\\_EN.pdf](https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/LIBE/DV/2018/12-03/mission_report_Poland_EN.pdf).

Committee on Civil Liberties, Justice and Home Affairs. ‘Mission Report Following the Ad - Hoc Delegation to Slovakia and Malta 17-20 September 2018’. Mission report. European Parliament, 16 November 2018.

[https://www.europarl.europa.eu/meetdocs/2014\\_2019/plmrep/COMMITTEES/LIBE/DV/2018/11-19/1169408EN.pdf](https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/LIBE/DV/2018/11-19/1169408EN.pdf).

Committee on Civil Liberties, Justice and Home Affairs. ‘Mission Report Following the Ad-Hoc Delegation to Malta - 2-4 December 2019’. Mission report. European Parliament, 16 December 2019.

[https://www.europarl.europa.eu/meetdocs/2014\\_2019/plmrep/COMMITTEES/LIBE/DV/2019/12-16/1195201\\_EN.pdf](https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/LIBE/DV/2019/12-16/1195201_EN.pdf).

Committee on Civil Liberties, Justice and Home Affairs, Committee of inquiry to investigate alleged contraventions and, maladministration in the application of Union law in relation to money, and laundering, tax avoidance and tax evasion. ‘Mission Report Following the Ad-Hoc Delegation to Malta (30 November - 1 December 2017)’. Mission report. European Parliament, 11 January 2018.

[https://www.europarl.europa.eu/meetdocs/2014\\_2019/plmrep/COMMITTEES/LIBE/CR/2018/01-24/1143312EN.pdf](https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/LIBE/CR/2018/01-24/1143312EN.pdf).

Committee on Civil Liberties, Justice and Home Affairs, Didier Reynders, and Rik Daems.

*Establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights: Extracts from the Statements*, 2020. [https://multimedia.europarl.europa.eu/en/eu-mechanism-on-democracy-rule-of-law-reynders\\_I192540-V\\_v](https://multimedia.europarl.europa.eu/en/eu-mechanism-on-democracy-rule-of-law-reynders_I192540-V_v).

Debates – ‘Constitution, Rule of Law and Fundamental Rights in Spain in the Light of the Events in Catalonia’ - 4 October 2017. [https://www.europarl.europa.eu/doceo/document/CRE-8-2017-10-04-ITM-013\\_EN.html](https://www.europarl.europa.eu/doceo/document/CRE-8-2017-10-04-ITM-013_EN.html).

European Parliament News, ‘Rule of Law: Civil Liberties MEPs to Report on Corruption and Press Freedom’, 5 June 2018. <https://www.europarl.europa.eu/news/en/press-room/20180605IPR05046/rule-of-law-civil-liberties-meps-to-report-on-corruption-and-press-freedom>.

European Parliament News, ‘Hungary: “The EP Should Make Sure There Are No Double Standards”’, 4 October 2012.

<https://www.europarl.europa.eu/news/en/headlines/security/20120928STO52499/hungary-the-ep-should-make-sure-there-are-no-double-standards>.

Legislative resolution on the proposal for a regulation 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, (COM(2018)0324 – C8-0178/2018 – 2018/0136(COD)) (2019).

[https://www.europarl.europa.eu/RegData/seance\\_pleniere/textes\\_adoptes/provisoire/2019/04-04/0349/P8\\_TA-PROV\(2019\)0349\\_EN.pdf](https://www.europarl.europa.eu/RegData/seance_pleniere/textes_adoptes/provisoire/2019/04-04/0349/P8_TA-PROV(2019)0349_EN.pdf).

Legislative Train Schedule - Anti-Discrimination Directive.

<https://www.europarl.europa.eu/legislative-train>.

Motion for a European Parliament resolution on the proposal for a Council decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law, (COM(2017)0835 – 2017/0360R(NLE)) (2020). [https://www.europarl.europa.eu/doceo/document/A-9-2020-0138\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-9-2020-0138_EN.html).

Resolution on public discrimination and hate speech against LGBTI people, including LGBTI free zones, 2019/2933(RSP) (2019). [https://www.europarl.europa.eu/doceo/document/TA-9-2019-0101\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2019-0101_EN.html).

Resolution adopting the Declaration of fundamental rights and freedoms, A2-3189 (1989). [https://www.europarl.europa.eu/charter/docs/pdf/a2\\_0003\\_89\\_en\\_en.pdf](https://www.europarl.europa.eu/charter/docs/pdf/a2_0003_89_en_en.pdf).

Resolution on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded, 2017/2131(INL) (2018). [https://www.europarl.europa.eu/doceo/document/TA-8-2018-0340\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2018-0340_EN.html).

Resolution on an EU mechanism on democracy, the rule of law and fundamental rights, 2015/2254(INL) (2016). [https://www.europarl.europa.eu/doceo/document/TA-8-2016-0409\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2016-0409_EN.html).

Resolution on EU coordinated action to combat the COVID-19 pandemic and its consequences, 2020/2616(RSP) (2020). [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0054\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0054_EN.html).

Resolution on fundamental rights aspects in Roma integration in the EU: fighting anti-Gypsyism, 2017/2038(INI) (2017). [https://www.europarl.europa.eu/doceo/document/TA-8-2017-0413\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2017-0413_EN.html).

Resolution on Fundamental rights of people of African descent, 2018/2899(RSP) (2019). [https://www.europarl.europa.eu/doceo/document/TA-8-2019-0239\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2019-0239_EN.html).

Resolution on media law in Hungary, P7\_TA(2011)0094 (2011). <https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0094+0+DOC+XML+V0//EN>.

Resolution on the anti-racism protests following the death of George Floyd, 2020/2685(RSP) (2020). [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0173\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0173_EN.pdf).

Resolution on the conclusions of the extraordinary European Council meeting of 17-21 July 2020, (2020/2732(RSP)) (2020). [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0206\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0206_EN.pdf).

Resolution on the criminalisation of sexual education in Poland, 2019/2891(RSP) (2019). [https://www.europarl.europa.eu/doceo/document/TA-9-2019-0058\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2019-0058_EN.html).

Resolution on the European Union Charter of Fundamental Rights, B5- 0767/2000. <https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P5-TA-2000-0417+0+DOC+XML+V0//EN>.

Resolution on the human rights and democracy in the world and the European Union's policy on the matter - annual report 2018, 2019/2125(INI) (2020). [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0007\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0007_EN.html).

Resolution on the need for a comprehensive Democracy, Rule of Law and Fundamental Rights mechanism, 2018/2886(RSP) (2018). [https://www.europarl.europa.eu/doceo/document/TA-8-2018-0456\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2018-0456_EN.html).

Resolution on the new multiannual financial framework, own resources and the recovery plan, 2020/2631(RSP) (2020). [https://www.europarl.europa.eu/RegData/seance\\_pleniere/textes\\_adoptes/definitif/2020/05-15/0124/P9\\_TA\(2020\)0124\\_EN.pdf](https://www.europarl.europa.eu/RegData/seance_pleniere/textes_adoptes/definitif/2020/05-15/0124/P9_TA(2020)0124_EN.pdf).

Resolution on the ongoing hearings under article 7(1) of the TEU regarding Poland and Hungary, 2020/2513(RSP) (2020). [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0014\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0014_EN.html).

Resolution on the protection of investigative journalists in Europe: the case of Slovak journalist Ján Kuciak and Martina Kušnírová, 2018/2628(RSP) (2019).

[https://www.europarl.europa.eu/doceo/document/TA-8-2018-0183\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2018-0183_EN.html).

Resolution on the recent developments in Poland and their impact on fundamental rights as laid down in the Charter of Fundamental Rights of the European Union, 2016/2774(RSP) (2016).

[https://www.europarl.europa.eu/doceo/document/TA-8-2016-0344\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2016-0344_EN.html).

Resolution on the recent political developments in Hungary, P7\_TA(2012)0053 (2012).

<https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0053+0+DOC+XML+V0//EN>.

Resolution on the revised Hungarian constitution, P7\_TA(2011)0315 (2011).

<https://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2011-0315&language=EN&ring=B7-2011-0379>.

Resolution on the right to peaceful protest and the proportionate use of force, 2019/2569(RSP) (2019).

[https://www.europarl.europa.eu/doceo/document/TA-8-2019-0127\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2019-0127_EN.html).

Resolution on the rule of law in Malta, 2017/2935(RSP) (2017).

[https://www.europarl.europa.eu/doceo/document/TA-8-2017-0438\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2017-0438_EN.html).

Resolution on the Rule of Law in Malta, after the recent revelations around the murder of Daphne Caruana Galizia, 2019/2954(RSP) (2019). [https://www.europarl.europa.eu/doceo/document/TA-9-2019-0103\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2019-0103_EN.html).

Resolution on the rule of law in Romania, 2018/2844(RSP) (2018).

[https://www.europarl.europa.eu/doceo/document/TA-8-2018-0446\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2018-0446_EN.html).

Resolution on the situation in Hungary, 2015/2700(RSP) (2015).

[https://www.europarl.europa.eu/doceo/document/TA-8-2015-0227\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2015-0227_EN.html).

Resolution on the situation in Hungary, 2017/2656(RSP) (2017).

[https://www.europarl.europa.eu/doceo/document/TA-8-2017-0216\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2017-0216_EN.html).

Resolution on the situation in Hungary: follow-up to the European Parliament Resolution of 10 June 2015, (2015/2935(RSP) (2015). [https://www.europarl.europa.eu/doceo/document/TA-8-2015-0461\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2015-0461_EN.html).

Resolution on the situation in Poland, 2015/3031(RSP) (2016).

[https://www.europarl.europa.eu/doceo/document/TA-8-2016-0123\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2016-0123_EN.html).

Resolution on the situation of fundamental rights in the EU (2013-2014), 2014/2254(INI) (2015).

[https://www.europarl.europa.eu/doceo/document/TA-8-2015-0286\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2015-0286_EN.html).

Resolution on the situation of fundamental rights in the EU in 2016, 2017/2125(INI) (2018).

[https://www.europarl.europa.eu/doceo/document/TA-8-2018-0056\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2018-0056_EN.html).

Resolution on the situation of fundamental rights in the European Union in 2015, 2016/2009(INI) (2016). [https://www.europarl.europa.eu/doceo/document/TA-8-2016-0485\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2016-0485_EN.html).

Resolution on the situation of fundamental rights in the European Union in 2017, 2018/2103(INI) (2018). [https://www.europarl.europa.eu/doceo/document/TA-8-2019-0032\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2019-0032_EN.html).

Resolution on the situation of fundamental rights: standards and practices in Hungary, P7\_TA(2013)0315 (2013). <https://www.europarl.europa.eu/sides/getDoc.do?reference=P7-TA-2013-0315&type=TA&language=EN&redirect>.

Resolution on the situation of rule of law and fight against corruption in the EU, specifically in Malta and Slovakia, 2018/2965(RSP) (2019). [https://www.europarl.europa.eu/doceo/document/TA-8-2019-0328\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2019-0328_EN.html).

Resolution on the situation of the rule of law and democracy in Poland, 2017/2931(RSP) (2017). [https://www.europarl.europa.eu/doceo/document/TA-8-2017-0442\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-8-2017-0442_EN.html).

Tavares, Rui, and Frank Engel. ‘Working Document 1 on the Situation of Fundamental Rights: Standards and Practices in Hungary (Pursuant to the EP Resolution of 16 February 2012) - Independence of Judiciary’. Working document. European Parliament, 5 September 2012. <https://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FNONSGML%2BCOMPARL%2BPE-491.186%2B02%2BDOC%2BPDF%2BV0%2F%2FEN>.

Tavares, Rui, and Juan Fernando Lopez Aguilar. ‘Working Document 2 on the Situation of Fundamental Rights: Standards and Practices in Hungary (Pursuant to the EP Resolution of 16 February 2012) - Fundamental Principles and Fundamental Rights’. Working document. European Parliament, 6 September 2012. [https://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/libe/dt/906/906320/906320en.pdf](https://www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dt/906/906320/906320en.pdf).

### **Council of the European and Union European Council**

Council of the European Union. ‘Press Release, 3362nd Council Meeting General Affairs’. Press release. Brussels: Council of the European Union, 16 December 2014.

<http://data.consilium.europa.eu/doc/document/ST-16936-2014-INIT/en/pdf>.

Council of the European Union, and General Secretariat of the Council. ‘Presidency Conclusions - Evaluation of the Annual Rule of Law Dialogue’. Presidency conclusions. Brussels: Council of the European Union, 19 November 2019. <https://www.consilium.europa.eu/media/41394/st14173-en19.pdf>.

Council of the European Union, and General Secretariat of the Council. ‘Standard Modalities for Hearings Referred to in Article 7(1) TEU’. Conclusions. Brussels: Council of the European Union, 9 July 2019. <https://data.consilium.europa.eu/doc/document/ST-10641-2019-REV-2/en/pdf>.

CVCE. ‘Declaration on European Identity, Copenhagen European Summit, 14 December 1973’, n.d. [https://www.cvce.eu/en/obj/declaration\\_on\\_european\\_identity\\_copenhagen\\_14\\_december\\_1973-en-02798dc9-9c69-4b7d-b2c9-f03a8db7da32.html](https://www.cvce.eu/en/obj/declaration_on_european_identity_copenhagen_14_december_1973-en-02798dc9-9c69-4b7d-b2c9-f03a8db7da32.html).

European Council. ‘Conclusion of the Presidency’. Copenhagen: European Council, 21 June 1993. <https://www.consilium.europa.eu/media/21225/72921.pdf>.

European Council and General Secretariat of the Council,. Special meeting of the European Council (17, 18, 19, 20 and 21 July 2020) – Conclusions, EUCO 10/20 (2020).

<https://www.consilium.europa.eu/media/45109/210720-euco-final-conclusions-en.pdf>.

### **Court of Justice**

Court of Justice of the European Communities. *Elliniki Radiophonia Tiléorassi AE and Panellinia Omospondia Syllogon Prossopikou v Dimotiki Etairia Pliroforissis and Sotirios Kouvelas and Nicolaos Avdellas and others*, C-260/89 (18 June 1991).

Court of Justice of the European Communities, *Hubert Wachauf v Bundesamt für Ernährung und Forstwirtschaft*, C-5/88 (Third Chamber 13 July 1989).

Court of Justice of the European Communities, *Roland Rutili v Ministre de l’intérieur*, C-36–75 (28 October 1975).

Court of Justice of the European Union. *Associação Sindical dos Juizes Portugueses v Tribunal de Contas*, C-64/16 (Grand chamber 27 February 2018).

Court of Justice of the European Union, *Association Belge des Consommateurs Test-Achats ASBL and Others v Conseil des ministres.*, C-236/09 (Grand Chamber 1 March 2011).

Court of Justice of the European Union, *Commission v Republic of Poland*, C-619/18 (Grand Chamber 24 June 2019).

Court of Justice of the European Union, *European Commission v Hungary*, C-286/12 (First Chamber 6 November 2012).

Court of Justice of the European Union, *Gerardo Ruiz Zambrano v Office national de l'emploi*, C-34/09 (Grand Chamber 8 March 2011).

Court of Justice of the European Union, *Les Verts v Parliament*, Case 294/83. (Court of Justice 23 April 1986).

Court of Justice of the European Union, *Opinion 2/13 of the Court*, 2/13, 18 December 2014.

Court of Justice of the European Union, 'Opinion 2/94 of the Court - Accession by the Community to the European Convention for the Protection of Human Rights and Fundamental Freedoms'. *Opinion. Court of Justice of the European Union*, 28 March 1996. [https://eur-lex-europa-eu.ezproxy.ub.unimaas.nl/resource.html?uri=cellar:3645916a-61ba-4ad5-84e1-57767433f326.0002.02/DOC\\_2&format=PDF](https://eur-lex.europa.eu.ezproxy.ub.unimaas.nl/resource.html?uri=cellar:3645916a-61ba-4ad5-84e1-57767433f326.0002.02/DOC_2&format=PDF).

Court of Justice of the European Union, *Werner Mangold v Rüdiger Helm*, C-144/04 (Grand Chamber 22 November 2005).

### **European Union Agency for Fundamental Rights**

'Challenges and Opportunities for the Implementation of the Charter of Fundamental Rights'. *Opinion. European Union Agency for Fundamental Rights*, 28 September 2018.

<https://fra.europa.eu/en/publication/2018/challenges-and-opportunities-implementation-charter-fundamental-rights>.

'Fundamental Rights Report 2020'. *European Union Agency for Fundamental Rights*, 2020.

‘Ten Years On: Unlocking the Charter’s Full Potential’. European Union Agency for Fundamental Rights, 2020.

European Union, Council of Europe, and European Union Agency for Fundamental Rights, eds. *Handbook on European Non-Discrimination Law*. 2018 edition. Handbook / FRA, European Union Agency for Fundamental Rights. Luxembourg: Publications Office of the European Union, 2018.

EFRIS. ‘EU Fundamental Rights Information System’. <https://fra.europa.eu/en/databases/efris/>.

### **Council of Europe**

Grabenwarter, Christoph, Hoffmann-Riem, Wolfgang, Suchocka, Hanna, Tuori, Kaarlo, and Velaers, Jan. ‘Opinion on the New Constitution of Hungary’. Opinion. Strasbourg: European Commission for Democracy Through Law, 2011.

Council of Europe Portal. ‘Platform to Promote the Protection of Journalism and Safety of Journalists’. <https://www.coe.int/en/web/media-freedom/all-alerts/-/soj/alert/29768461>.

Council of Europe. Statute of London (n.d.). <https://rm.coe.int/1680306052>.

‘Report of the Rule of Law, Adopted by the Venice Commission at Its 86th Plenary Session (Venice, 25-26 March 2011)’. Strasbourg: European Commission for Democracy Through Law, 2011.

‘Venice Commission : Council of Europe’, [https://www.venice.coe.int/WebForms/pages/?p=01\\_Presentation](https://www.venice.coe.int/WebForms/pages/?p=01_Presentation).

### **Secondary sources**

Amalfitano, Chiara. ‘The Relationship between the Sources of Fundamental Rights Protection in the EU Legal Order’. In *General Principles of EU Law and the Protection of Fundamental Rights*, 57–109. Edward Elgar Publishing, 2018. <https://doi.org/10.4337/9781786439437>.

Auel, Katrin, and Oliver Höing. ‘Parliaments in the Euro Crisis: Can the Losers of Integration Still Fight Back?’ *JCMS: Journal of Common Market Studies* 52, no. 6 (2014): 1184–93. <https://doi.org/10.1111/jcms.12186>.

Blanke, Hermann-Josef, Mangiameli, Stelio. ‘Article 2 TEU’. In *The Treaty on European Union (TEU): A Commentary*, edited by Hermann-Josef Blanke and Stelio Mangiameli. Berlin Heidelberg: Springer-Verlag, 2013. <https://doi.org/10.1007/978-3-642-31706-4>.

Bogaards, Matthijs. ‘De-Democratization in Hungary: Diffusely Defective Democracy’. *Democratization* 25, no. 8 (17 November 2018): 1481–99. <https://doi.org/10.1080/13510347.2018.1485015>.

Carrera, Sergio, Guild, Elspeth, and Hernanz, Nicholas. ‘The Triangular Relationship between Fundamental Rights, Democracy and Rule of Law in the EU - Towards an EU Copenhagen Mechanism’. Policy Department Citizens’ Rights and Constitutional Affairs. Brussels: European Parliament, 2013.

Chopin, Thierry. ‘«Démocratie illibérale» OU « Autoritarisme majoritaire » ?’, 14. <https://institutdelors.eu/publications/democratie-illiberale-ou-autoritarisme-majoritaire-contribution-a-lanalyse-des-populismes-en-europe/>

Chronowski, Nóra, and Márton, Varju. ‘Two Eras of Hungarian Constitutionalism: From the Rule of Law to Rule by Law’. *Hague Journal on the Rule of Law* 8, no. 2 (October 2016): 271–89. <https://doi.org/10.1007/s40803-016-0037-7>.

Closa, Carlos. ‘Reinforcing EU Monitoring of the Rule of Law: Normative Arguments, Institutional Proposals and the Procedural Limitations’. In *Reinforcing Rule of Law Oversight in the European Union*, edited by Carlos Closa and Dimitry Kochenov, 15–35. Cambridge: Cambridge University Press, 2016. <https://doi.org/10.1017/CBO9781316258774.003>.

Conte, Amelia, European Parliament, and Archive and Documentation Centre. *A Europe of Rights: History of the EU Charter*. Luxembourg: Publications Office of the European Union, 2012.

Delledonne, Giacomo. ‘Homogeneity and Constitutional Diversity in the EU : Protecting Fundamental Rights and the Rule of Law’, 2016. <https://dial.uclouvain.be/pr/boreal/object/boreal:178155>.

De Schutter, Olivier. ‘Infringement Proceedings as a Tool for the Enforcement of Fundamental Rights in the European Union’. Open Society European Policy Institute. [https://www.opensocietyfoundations.org/publications/infringement-proceedings-tool-enforcement-fundamental-rights-european-union#publications\\_download](https://www.opensocietyfoundations.org/publications/infringement-proceedings-tool-enforcement-fundamental-rights-european-union#publications_download).

- Fisicaro, Marco. 'Rule of Law Conditionality in EU Funds: The Value of Money in the Crisis of European Values'. *European Papers* 4, no. 3 (2019). <https://doi.org/10.15166/2499-8249/337>.
- Gateva, Eli. 'Post-Accession Conditionality – Translating Benchmarks into Political Pressure?' *East European Politics* 29, no. 4 (December 2013): 420–42. <https://doi.org/10.1080/21599165.2013.836491>.
- Halmai, Gábor. 'The Possibility and Desirability of Rule of Law Conditionality'. *Hague Journal on the Rule of Law* 11, no. 1 (April 2019): 171–88. <https://doi.org/10.1007/s40803-018-0077-2>.
- Heinemann, Friedrich. 'Going for the Wallet? Rule-of-Law Conditionality in the Next EU Multiannual Financial Framework'. *Intereconomics* 2018, no. 6 (2018): 297–301.
- Imamović, Šejla. 'The Role of the Court of Justice in the Fragmented European Fundamental Rights Landscape'. In *The Fragmented Landscape of Fundamental Rights Protection in Europe*, edited by Lorenza Violini and Antonia Baraggia, 73–93. Edward Elgar Publishing, 2018. <https://doi.org/10.4337/9781786436054.00011>.
- Klamert, Marcus, and Dimitry Kochenov. 'Article 2 TEU'. In *The Treaties and the Charter of Fundamental Rights – A Commentary*, edited by Manuel Kellerbauer, Marcus Klamert and Jonathan Tomkin, 22–30. Oxford: Oxford University Press, 2019. <https://papers.ssrn.com/abstract=3383828>.
- Kochenov, Dimitry. 'Biting Intergovernmentalism: The Case for the Reinvention of Article 259 TFEU to Make It a Viable Rule of Law Enforcement Tool'. *Hague Journal on the Rule of Law* 7, no. 2 (December 2015): 153–74. <https://doi.org/10.1007/s40803-015-0019-1>.
- Kochenov, Dimitry. 'Elephants in the Room: The European Commission's 2019 Communication on the Rule of Law'. *Hague Journal on the Rule of Law* 11, no. 2–3 (November 2019): 423–38. <https://doi.org/10.1007/s40803-019-00126-x>.
- Kochenov, Dimitry, and Pech, Laurent. 'Better Late than Never? On the European Commission's Rule of Law Framework and Its First Activation: Commission's Rule of Law Framework'. *JCMS: Journal of Common Market Studies* 54, no. 5 (September 2016): 1062–74. <https://doi.org/10.1111/jcms.12401>.
- Kochenov, Dimitry, and Pech, Laurent. 'Monitoring and Enforcement of the Rule of Law in the EU: Rhetoric and Reality'. *European Constitutional Law Review* 11, no. 3 (December 2015): 512–40. <https://doi.org/10.1017/S1574019615000358>.

Kregar, Josip. 'Regime Change & Democratisation'. Presented at the Week 10 - Regime Change, Democracy, Democratisation, Threats to Democracy and Representation of Minorities, Global Campus of Human Rights, 20 November 2019.

Landmann, Todd. 'Concepts Matter: Delineating Democracy, Governance and Human Rights'. International Idea, 2009. <https://www.idea.int/sites/default/files/publications/chapters/the-role-of-the-european-union-in-democracy-building/eu-democracy-building-discussion-paper-51.pdf>.

Mader, Oliver. 'Enforcement of EU Values as a Political Endeavour: Constitutional Pluralism and Value Homogeneity in Times of Persistent Challenges to the Rule of Law'. *Hague Journal on the Rule of Law* 11, no. 1 (April 2019): 133–70. <https://doi.org/10.1007/s40803-018-00083-x>.

Mańko, Rafał, and Sapała, Magdalena. 'Protecting the EU Budget against Generalised Rule of Law Deficiencies'. Briefing. Member's Research Service, July 2020.

Marzocchi, Ottavio. 'The Impact of Covid-19 Measures on Democracy, the Rule of Law and Fundamental Rights in the EU'. Briefing. European Parliament, 23 April 2020.

Marzocchi, Ottavio. 'The Protection of Fundamental Rights in the EU'. Factsheet. European Parliament, 2020.

Mayer, Franz C. 'The European Constitution and the Courts'. Max Planck Institute for Comparative Public Law and International Law, 2003.

Meinich, Tonje. 'EU Accession to the European Convention on Human Rights – Challenges in the Negotiations'. *The International Journal of Human Rights* 0, no. 0 (17 April 2019): 1–5. <https://doi.org/10.1080/13642987.2019.1596893>.

Merkel, Werner, and Krause, Werner. 'Crisis of Democracy? Views of Experts and Citizens'. In *Democracy and Crisis: Challenges in Turbulent Times*, edited by Wolfgang Merkel and Sascha Kneip. Springer International Publishing, 2018. <https://doi.org/10.1007/978-3-319-72559-8>.

Muir, Elise. *EU Equality Law: The First Fundamental Rights Policy of the EU*. *EU Equality Law*. Oxford University Press. <http://oxford.universitypressscholarship.com/view/10.1093/oso/9780198814665.001.0001/oso-9780198814665>.

- Müller, Jan-Werner. 'Defending Democracy within the EU'. *Journal of Democracy* 24, no. 2 (2013): 138–49. <https://doi.org/10.1353/jod.2013.0023>.
- Müller, Jan-Werner, 'Protecting the Rule of Law (and Democracy!) In the EU'. In *Reinforcing Rule of Law Oversight in the European Union*, edited by Carlos Closa and Dimitry Kochenov, 206–24. Cambridge: Cambridge University Press, 2016. <https://doi.org/10.1017/CBO9781316258774.012>.
- Müller, Jan-Werner, 'The EU as a Militant Democracy, or: Are There Limits to Constitutional Mutations within EU Member States?' *Revista de Estudios Políticos*, no. 165 (2014): 22.
- Pech, Laurent. 'The EU as a Global Rule of Law Promoter: The Consistency and Effectiveness Challenges'. *Asia Europe Journal* 14, no. 1 (March 2016): 7–24. <https://doi.org/10.1007/s10308-015-0432-z>.
- Pech, Laurent, and Platon, Sébastien. 'Systemic Threats to the Rule of Law in Poland: Between Action and Procrastination'. *Fondation Robert Schuman, European Issues*, no. 451 (13 November 2017). <https://www.robert-schuman.eu/en/european-issues/0451-systemic-threats-to-the-rule-of-law-in-poland-between-action-and-procrastination>.
- Pech, Laurent, Wennerström, Erik, Leigh, Vanessa, Markowska, Agnieszka, De Keyser, Linda, Gómez Rojo, Ana and Spanikova, Hana. 'An EU Mechanism on Democracy, the Rule of Law and Fundamental Rights - Annex I'. European Parliament Research Service. Brussels: European Parliament, March 2016. [https://www.europarl.europa.eu/RegData/etudes/IDAN/2016/579328/EPRS\\_IDA\(2016\)579328\(ANN1\)\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2016/579328/EPRS_IDA(2016)579328(ANN1)_EN.pdf).
- Platon, Sébastien, and Pech, Laurent. 'EU Law Analysis: Rule of Law Backsliding in the EU: The Court of Justice to the Rescue? Some Thoughts on the ECJ Ruling in Associação Sindical Dos Juizes Portugueses'. *EU Law Analysis* (blog), 13 March 2018. <http://eulawanalysis.blogspot.com/2018/03/rule-of-law-backsliding-in-eu-court-of.html>.
- Rittberger, Berthold. 'Integration without Representation? The European Parliament and the Reform of Economic Governance in the EU'. *JCMS: Journal of Common Market Studies* 52, no. 6 (2014): 1174–83. <https://doi.org/10.1111/jcms.12185>.
- Rovný, Jan. 'Approaches to the Democratic Deficit of the European Union'. Edited by Michael Newman, Philippe C. Schmitter, and Joseph H. H. Weiler. *Perspectives*, no. 19 (2002): 109–19.

Scheppele, Kim Lane. ‘Enforcing the Basic Principles of EU Law through Systemic Infringement Actions’. In *Reinforcing Rule of Law Oversight in the European Union*, edited by Carlos Closa and Dimitry Kochenov, 105–32. Cambridge: Cambridge University Press, 2016.

<https://doi.org/10.1017/CBO9781316258774.007>.

Scheppele, Kim Lane, ‘In Praise of the Tavares Report: Europe finally said No to Viktor Orbán’. *Verfassungsblog* (blog), 5 July 2013. <https://verfassungsblog.de/in-praise-of-the-tavares-report-europe-finally-said-no-to-viktor-orban/>.

Theuns, Tom. ‘Promoting Democracy through Economic Conditionality in the ENP: A Normative Critique’. *Journal of European Integration* 39, no. 3 (16 April 2017): 287–302.

<https://doi.org/10.1080/07036337.2016.1263625>.

Toggenburg, Gabriel. ‘Fundamental Rights and the European Union: How Does and How Should the EU Agency for Fundamental Rights Relate to the EU Charter of Fundamental Rights?’ *SSRN Electronic Journal*, 2013. <https://doi.org/10.2139/ssrn.2368194>.

Toggenburg, Gabriel N., and Jonas Grimheden. ‘The Rule of Law and the Role of Fundamental Rights: Seven Practical Pointers’, in D.Kochenov and C.Closas, Cambridge University Press, 2016 (with J.Grimheden), Pp. 147-171’, n.d.

[https://www.academia.edu/29937660/The\\_rule\\_of\\_law\\_and\\_the\\_role\\_of\\_fundamental\\_rights\\_seven\\_practical\\_pointers\\_in\\_D\\_Kochenov\\_and\\_C\\_Closas\\_Cambridge\\_University\\_Press\\_2016\\_with\\_J\\_Grimheden\\_pp\\_147\\_171](https://www.academia.edu/29937660/The_rule_of_law_and_the_role_of_fundamental_rights_seven_practical_pointers_in_D_Kochenov_and_C_Closas_Cambridge_University_Press_2016_with_J_Grimheden_pp_147_171).

‘Truth or Tale? Fact-Checking, Disinformation and Fake News in European and National Election Campaigns - Outcomes Report’. Barcelona: Mercator European Dialogue, 2 May 2019.

Tuori, Kaarlo. ‘From Copenhagen to Venice’. In *Reinforcing Rule of Law Oversight in the European Union*, edited by Carlos Closa and Dimitry Kochenov, 225–46. Cambridge: Cambridge University Press, 2016. <https://doi.org/10.1017/CBO9781316258774.013>.

Van Ballegooij, Wouter, and Evas, Tatjana. ‘An EU Mechanism on Democracy, the Rule of Law and Fundamental Rights - European Added Value Assessment Accompanying the Legislative Initiative Report (Rapporteur: Sophie in’t Veld)’. European Added Value Unit. European Parliament Research Service. Brussels: European Parliament, October 2016.

[https://www.europarl.europa.eu/RegData/etudes/IDAN/2016/579328/EPRS\\_IDA\(2016\)579328\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2016/579328/EPRS_IDA(2016)579328_EN.pdf)

Violini, Lorenza. ‘The Fundamental Rights Agency of the EU: A Step on the Way toward an Integrated EU Policy in the Domain of Fundamental Rights’. In *The Fragmented Landscape of Fundamental Rights Protection in Europe*, eds. Lorenza Violini and Antonia Baraggia, 139–52. Edward Elgar Publishing, 2018. <https://doi.org/10.4337/9781786436054.00015>.

Von Bogdandy, Armin, Kottmann, Matthias, Antpöhler, Carlino, Dickschen, Johanna and Hentrei, Simon. ‘Reverse Solange - Protecting the Essence of Fundamental Rights against EU Member States’. *Common Market Law Review* 49, no. 2. <https://people.unica.it/iphumanrights/files/2013/07/EU-citizens-Von-Bogdandy-Cherchi.pdf>.

Von Bogdandy, Armin, and Spieker, Luke Dimitrios. ‘Countering the Judicial Silencing of Critics: Article 2 TEU Values, Reverse Solange, and the Responsibilities of National Judges’. *European Constitutional Law Review* 15, no. 3 (September 2019): 391–426. <https://doi.org/10.1017/S1574019619000324>.

Walkila, Sonya. *Horizontal Effect of Fundamental Rights in EU Law*. 01 edizione. Groningen: Europa Law Pub Netherlands, 2015.

White, Robin, Ovey, Clare, and Jacobs, Francis Geoffrey. *The European Convention on Human Rights*. Edited by Bernadette Rainey, Elizabeth Wicks, and Clare Ovey. Seventh Edition. Oxford, New York: Oxford University Press, 2017.

Wilms, Günter, European University Institute, and Robert Schuman Centre for Advanced Studies. *Protecting Fundamental Values in the European Union through the Rule of Law Articles 2 and 7 TEU from a Legal, Historical and Comparative Angle.*, 2017.

Xenidis, Raphaele. ‘Shaking the Normative Foundations of EU Equality Law: Evolution and Hierarchy between Market Integration and Human Rights Rationales’. *SSRN Electronic Journal*, 2017. <https://doi.org/10.2139/ssrn.2925110>.

### Newspaper website

Bayer, Lili. 'European Parliament Requests Rule-of-Law Talks with Malta'. *Politico*, 18 December 2019. <https://www.politico.eu/article/european-parliament-requests-rule-of-law-talks-with-malta/>.

Bayer, Lili. 'No EU Budget If Rule of Law Discussed, Orbán Says'. *Politico*, 10 July 2020. <https://www.politico.eu/article/no-budget-if-rule-of-law-discussed-orban-says/>.

Butler, Israel. 'Forget Tying Rule of Law to the EU Budget. It's Better to Add Strings to EU Funding Later | View'. *Euronews*, 17 July 2020. <https://www.euronews.com/2020/07/17/forget-tying-rule-of-law-to-the-eu-budget-it-s-better-to-add-strings-to-eu-funding-later-v>.

Eder, Florian. 'Juncker: German Plan to Link Funds and Rules Would Be "Poison"'. *Politico*, 6 January 2017. <https://www.politico.eu/article/juncker-german-plan-to-link-funds-and-rules-would-be-poison/>.

In't Veld, Sophie. 'Europe's Rule-of-Law Emergency'. *Politico*, 10 December 2019. <https://www.politico.eu/article/europe-rule-of-law-emergency-malta-daphne-caruana-galizia/>.

Palickova, Agata. 'Investigation of Slovak Journalist Murder Uncovers Other Serious Crimes'. *Euractiv*, 20 August 2019, sec. Justice & Home Affairs. <https://www.euractiv.com/section/justice-home-affairs/news/investigation-of-slovak-journalist-murder-uncovers-other-serious-crimes/>.

Šimečka, Michal. 'Inability to Solve the EU's Rule of Law Crisis Will Lead to Disintegration'. *Euronews*, 16 March 2020, sec. View. <https://www.euronews.com/2020/03/16/michal-simecka-inability-to-solve-the-rule-of-law-crisis-will-lead-to-disintegration-view>.

Kovacevic, Tamara. 'EU Budget: Who Pays Most in and Who Gets Most Back?' *BBC News*, 28 May 2019. <https://www.bbc.com/news/uk-politics-48256318>.

'Rule of Law a Must before Getting EU Money, Jourova Insists'. *Euractiv*, 7 July 2020. <https://www.euractiv.com/section/politics/news/rule-of-law-a-must-before-getting-eu-money-jourova-insists/>.

### Internet sources

Köves, Nóra. ‘The Sargentini Report – Its Background and What It Means for Hungary and for the EU | Heinrich Böll Stiftung’. Heinrich-Böll-Stiftung, 19 September 2018.

<https://www.boell.de/en/2018/09/19/sargentini-report-its-background-and-what-it-means-hungary-and-eu>.

Gábor, Filippov. ‘Hungary’. Freedom House. Accessed 10 August 2020.

<https://freedomhouse.org/country/hungary/nations-transit/2020>.

Greens/EFA. ‘Hungary: Q&A on Sargentini Report on the Rule of Law’, 6 September 2018.

<https://www.greens-efa.eu/en/article/document/hungary-q-a-on-sargentini-report-on-the-rule-of-law/>

Wagner, Rebecca. ‘Internal Threats to EU’s External Democracy Support in Times of a Pandemic – Can the New EU Council Conclusions on Democracy still Kick-off?’ *PRIF BLOG* (blog), 16 April

2020. <https://blog.prif.org/2020/04/16/internal-threats-to-eus-external-democracy-support-in-times-of-a-pandemic-can-the-new-eu-council-conclusions-on-democracy-still-kick-off/>.