



**2022/2898(RSP)**

18.11.2022

# **DRAFT MOTION FOR A RESOLUTION**

to wind up the debate on the statement by the Commission

pursuant to Rule 132(2) of the Rules of Procedure

on the 2022 Rule of Law Report – the rule of law situation in the European  
Union  
(2022/2898(RSP))

**Juan Fernando López Aguilar**

on behalf of the Committee on Civil Liberties, Justice and Home Affairs

**B9-0000/2022**

**European Parliament resolution on the 2022 Rule of Law Report – the rule of law situation in the European Union (2022/2898(RSP))**

*The European Parliament,*

- having regard to the Treaty on European Union (TEU), in particular Articles 2, 3(1), 3(3), second subparagraph, 4(3) and Articles 5, 6, 7, 11, 19 and 49 thereof,
- having regard to the Treaty on the Functioning of the European Union (TFEU), and in particular to the articles thereof relating to respect for, and the protection and promotion of, democracy, the rule of law and fundamental rights in the Union, including Articles 70, 258, 259, 260, 263, 265 and 267,
- having regard to the Charter of Fundamental Rights of the European Union,
- having regard to the case-law of the Court of Justice of the European Union,
- having regard to the Commission communication of 13 July 2022 on the 2022 Rule of Law Report – the rule of law situation in the European Union (COM(2022)0500),
- having regard to Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget<sup>1</sup> (the Rule of Law Conditionality Regulation),
- having regard to Regulation (EU) 2021/692 of the European Parliament and of the Council of 28 April 2021 establishing the Citizens, Equality, Rights and Values programme and repealing Regulation (EU) No 1381/2013 of the European Parliament and of the Council and Council Regulation (EU) No 390/2014<sup>2</sup>,
- having regard to the Universal Declaration of Human Rights,
- having regard to the UN instruments on the protection of human rights and fundamental freedoms, and the recommendations and reports of the UN Universal Periodic Review, as well as the case-law of the UN treaty bodies and the special procedures of the Human Rights Council,
- having regard to the recommendations and reports of the Office for Democratic Institutions and Human Rights, the High Commissioner on National Minorities, the Representative on Freedom of the Media and other bodies of the Organization for Security and Co-operation in Europe (OSCE),
- having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter, the case-law of the European Court of Human Rights and the European Committee of Social Rights, and the

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<sup>1</sup> OJ L 433 I, 22.12.2020, p. 1.

<sup>2</sup> OJ L 156, 5.5.2021, p. 1.

conventions, recommendations, resolutions, opinions and reports of the Parliamentary Assembly, the Committee of Ministers, the Human Rights Commissioner, the European Commission Against Racism and Intolerance, the Steering Committee on Anti-Discrimination, Diversity and Inclusion, the Venice Commission and other bodies of the Council of Europe,

- having regard to the Memorandum of Understanding between the Council of Europe and the European Union of 23 May 2007 and the Council conclusions of 8 July 2020 on EU priorities for cooperation with the Council of Europe 2020-2022,
- having regard to the Commission’s reasoned proposal for a Council decision of 20 December 2017 on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law, issued in accordance with Article 7(1) TEU (COM(2017)0835),
- having regard to the reports of the European Union Agency for Fundamental Rights (FRA) of 19 July 2022 entitled ‘Europe’s civil society: still under pressure’, of 8 June 2022 entitled ‘Fundamental Rights Report 2022’ and of 19 August 2022 entitled ‘Protecting civic space in the EU’, and its other reports, data and tools, in particular the European Union Fundamental Rights Information System (EFRIS),
- having regard to its resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights<sup>3</sup>,
- having regard to its resolution of 1 March 2018 on the Commission’s decision to activate Article 7(1) TEU as regards the situation in Poland<sup>4</sup>,
- having regard to its resolution of 19 April 2018 on the need to establish a European Values Instrument to support civil society organisations which promote fundamental values within the European Union at local and national level<sup>5</sup>,
- having regard to its resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) TEU, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded<sup>6</sup>,
- having regard to its resolution of 14 November 2018 on the need for a comprehensive EU mechanism for the protection of democracy, the rule of law and fundamental rights<sup>7</sup>,
- having regard to its resolution of 7 October 2020 on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights<sup>8</sup>,
- having regard to its resolution of 13 November 2020 on the impact of COVID-19

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<sup>3</sup> OJ C 215, 19.6.2018, p. 162.

<sup>4</sup> OJ C 129, 5.4.2019, p. 13.

<sup>5</sup> OJ C 390, 18.11.2019, p. 117.

<sup>6</sup> OJ C 433, 23.12.2019, p. 66.

<sup>7</sup> OJ C 363, 28.10.2020, p. 45.

<sup>8</sup> OJ C 395, 29.9.2021, p. 2.

- measures on democracy, the rule of law and fundamental rights<sup>9</sup>,
- having regard to its resolution of 10 June 2021 on the rule of law situation in the European Union and the application of the Conditionality Regulation (EU, Euratom) 2020/2092<sup>10</sup>,
  - having regard to its resolution of 24 June 2021 on the Commission’s 2020 Rule of Law Report<sup>11</sup>,
  - having regard to its resolution of 8 July 2021 on the creation of guidelines for the application of the general regime of conditionality for the protection of the Union budget<sup>12</sup>,
  - having regard to its resolution of 11 November 2021 on strengthening democracy and media freedom and pluralism in the EU: the undue use of actions under civil and criminal law to silence journalists, NGOs and civil society<sup>13</sup>,
  - having regard to its resolution of 15 December 2021 on the evaluation of preventive measures for avoiding corruption, irregular spending and misuse of EU and national funds in case of emergency funds and crisis-related spending areas<sup>14</sup>,
  - having regard to its resolution of 8 March 2022 on the shrinking space for civil society in Europe<sup>15</sup>,
  - having regard to its resolution of 10 March 2022 on the rule of law and the consequences of the ECJ ruling<sup>16</sup>,
  - having regard to its resolution of 19 May 2022 on the Commission’s 2021 Rule of Law Report<sup>17</sup>,
  - having regard to its resolution of 9 June 2022 on the rule of law and the potential approval of the Polish national recovery plan (RRF)<sup>18</sup>,
  - having regard to its resolution of 15 September 2022 on the proposal for a Council decision determining, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded<sup>19</sup>,
  - having regard to its resolution of 15 September 2022 on the situation of fundamental

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<sup>9</sup> OJ C 415, 13.10.2021, p. 36.

<sup>10</sup> OJ C 67, 8.2.2022, p. 86.

<sup>11</sup> OJ C 81, 18.2.2022, p. 27.

<sup>12</sup> OJ C 99, 1.3.2022, p. 146.

<sup>13</sup> OJ C 205, 20.5.2022, p. 2.

<sup>14</sup> OJ C 251, 30.6.2022, p. 48.

<sup>15</sup> OJ C 347, 9.9.2022, p. 2.

<sup>16</sup> OJ C 347, 9.9.2022, p. 168.

<sup>17</sup> Texts adopted, P9\_TA(2022)0212.

<sup>18</sup> Texts adopted, P9\_TA(2022)0240.

<sup>19</sup> Texts adopted, P9\_TA(2022)0324.

- rights in the European Union in 2020 and 2021<sup>20</sup>,
- having regard to its resolution of 20 October 2022 on the rule of law in Malta, five years after the assassination of Daphne Caruana Galizia<sup>21</sup>,
  - having regard to its resolution of 20 October 2022 on growing hate crimes against LGBTIQ+ people across Europe in light of the recent homophobic murder in Slovakia<sup>22</sup>,
  - having regard to its resolution of 10 November 2022 on racial justice, non-discrimination and anti-racism in the EU<sup>23</sup>,
  - having regard to the Conference on the Future of Europe’s report on the final outcome,
  - having regard to Rule 132(2) of its Rules of Procedure,
  - having regard to the motion for a resolution of the Committee on Civil Liberties, Justice and Home Affairs,
- A. whereas the Union is founded on the common values enshrined in Article 2 TEU of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities – values that are common to the EU Member States and to which candidate countries must adhere in order to join the Union as part of the Copenhagen criteria, which cannot be disregarded or reinterpreted after accession; whereas democracy, the rule of law and fundamental rights are mutually reinforcing values which, when undermined, may pose a systemic threat to the Union and the rights and freedoms of its citizens; whereas respect for the rule of law is binding on the Union as a whole and its Member States at all levels of governance, including subnational entities;
- B. whereas the Conference on the Future of Europe clearly expressed a desire for the EU to systematically uphold the rule of law across all Member States, to protect citizens’ fundamental rights and to retain the EU’s credibility when promoting its values abroad;
- C. whereas the principle of sincere cooperation in Article 4(3) TEU places an obligation on the Union and the Member States to assist each other in carrying out obligations which arise from the Treaties in full mutual respect, and on Member States to take any appropriate measure, general or in particular, to ensure the fulfilment of the obligations arising from the Treaties or resulting from the acts of the institutions of the Union;
- D. whereas the addition of concrete and legally binding country-specific recommendations would help Member States to prevent, detect and address systemic challenges and backsliding on the rule of law;
- E. whereas the Member States introduced emergency measures to respond to the COVID-19 pandemic; whereas, in order to be lawful, these needed to respect the principles of

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<sup>20</sup> Texts adopted, P9\_TA(2022)0325.

<sup>21</sup> Texts adopted, P9\_TA(2022)0371.

<sup>22</sup> Texts adopted, P9\_TA(2022)0372.

<sup>23</sup> Texts adopted, P9\_TA(2022)0389.

necessity and proportionality when restricting fundamental rights or basic freedoms; whereas some governments have used the extraordinary measures as an excuse to weaken democratic checks and balances;

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

### ***Overall assessment of the report***

1. Welcomes the Commission's third annual rule of law report as part of the Commission's rule of law toolbox; considers that while the report represents a step towards a coherent mechanism to preserve Union values, the toolbox remains too flexible and too broad an approach to the rule of law;
2. Notes some improvements compared to previous annual reports, such as the addition of country-specific recommendations; notes also the special attention paid to the public service media and to measures to ensure the transparency of media ownership, including the Media Pluralism Monitor ranking, the assessment of the implementation of the rulings of the European Court of Human Rights by the Member States, the attention paid to political party financing, the focus on equality bodies, national human rights institutions and ombudspersons, the monitoring of high-level appointments in the justice system and the increased attention paid to the legal profession;
3. Deplores the fact that the Commission did not address in full the recommendations made by Parliament in its previous resolutions<sup>24</sup>;
4. Is concerned about the lack of consistency between the horizontal report and the recommendations, in particular that the country-specific concerns expressed in the horizontal report do not fully correspond to the country-specific recommendations; asks for a clear link to be established between the concerns expressed and the recommendations put forward;
5. Highlights that the intentional targeting of minority groups' rights in some Member States has created and established momentum elsewhere, as can be evidenced by backtracking on the rights of women, including a deterioration in the situation in relation to sexual and reproductive health and rights, and of LGBTIQ+ persons, migrants and other minority groups; calls for a summary of the implementation of the EU anti-racism action plan in the report's country chapters and an analysis of how the backlash in the rule of law affects different minority groups;

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<sup>24</sup> Resolutions of 24 June 2021 on the Commission's 2020 Rule of Law Report and of 19 May 2022 on the Commission's 2021 Rule of Law Report.

### ***Country-specific recommendations***

6. Welcomes the addition of country-specific recommendations, as a follow up to the reiterated calls from Parliament to this end; recalls that the annual reports serve as a basis for informed discussions on the rule of law situation in Member States; acknowledges that these country-specific recommendations help to target specific issues with a view to achieving real improvements in Member States; deplores, however, the fact that the recommendations are not binding; calls on the Commission to develop the annual rule of law cycle further by assessing the implementation of the country-specific recommendations in the next annual report, with specific benchmarks and a clear timeline for implementation;
7. Regrets the fact that many of the recommendations are too vague and lack the specificity required to ensure effective implementation; reiterates the need to set out a timeline for the implementation of the recommendations and to detail the possible consequences in the event of non-compliance;
8. Urges the Commission to initiate the relevant procedures without hesitation or delay, especially when governments show no willingness to comply with the country-specific recommendations;
9. Commends the efforts by the Commission to engage better with national stakeholders; recognises civil society as an essential actor for the rule of law, with an important role to play in the follow-up to the annual report and its implementation; calls on the Commission to pursue the consistent involvement of civil society in the follow-up to the report at national level, in cooperation with the FRA;
10. Stresses the need for country-specific recommendations on the national responses to the COVID-19 pandemic and their impact on democracy, the rule of law and fundamental rights within the Union; calls on the Commission to continue monitoring and reporting on these national processes, including best practices;
11. Regrets the absence of country-specific recommendations related to Member States' unlawful use of surveillance spyware technologies, such as Pegasus or Predator, in spite of the concrete revelations on, and increasing evidence of, their use against journalists, politicians, law enforcement officials, diplomats, lawyers, business people, civil society actors and other actors; is extremely concerned about the related risks to civil society, democracy, the rule of law and respect for fundamental rights posed by national governments' uncontrolled use of spyware; regrets the lack of cooperation by some Member States' authorities with Parliament's Committee of Inquiry to investigate the use of Pegasus and equivalent surveillance spyware;

### ***Outstanding calls from Parliament on the annual rule of law report***

12. Reiterates its call on the Commission to expand the scope of its reporting to cover all values enshrined in Article 2 TEU; reiterates the intrinsic link between the rule of law, democracy and fundamental rights; urges the Commission and the Council to immediately enter into negotiations with Parliament on an interinstitutional agreement on an EU mechanism on democracy, the rule of law and fundamental rights, which should cover the full scope of Article 2 TEU values;

13. Strongly regrets the inability of the Council to make meaningful progress in the ongoing Article 7(1) TEU procedures; urges the Council to address all new developments affecting the rule of law, democracy and fundamental rights; reiterates its call on the Council to address recommendations in the framework of this procedure, underlining that any further delaying of such action would amount to a breach of the rule of law principle by the Council itself; insists that Parliament's role and competences be respected;
14. Strongly condemns Member States' authorities that refuse to engage in the Commission's annual Rule of Law Dialogue;
15. Reiterates the recommendations to the Commission to differentiate between systemic and individual breaches, and to accompany the country-specific recommendations with deadlines for implementation, targets and concrete actions to be taken;
16. Recalls its position regarding the involvement of a panel of independent experts to advise the three institutions, in close cooperation with the FRA; repeats its call on the Commission to invite the FRA to provide methodological advice and conduct comparative research to add detail in key areas of the annual report, given the intrinsic links between fundamental rights and the rule of law;
17. Reiterates that the annual rule of law cycle should serve as input for the activation of other instruments to respond to threats or breaches of the rule of law at national level, such as Article 7 TEU, the Rule of Law Conditionality Regulation; infringement procedures or instruments under EU financial legislation; reiterates its call on the Commission to create a direct link between the annual rule of law reports, among other sources, and the Rule of Law Conditionality Mechanism;
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18. Instructs its President to forward this resolution to the Council and the Commission.