**Follow up to the European Parliament non-legislative resolution
on the Commission’s 2020 Rule of Law Report**

1. **Rapporteur:** Domènec RUIZ DEVESA (S&D / ES)
2. **Reference numbers:** 2021/2025 (INI) / A9-0199/2021 / P9\_TA-PROV(2021)0313
3. **Date of adoption of the resolution:** 24 June 2021
4. **Competent Parliamentary Committee:** Committee on Civil Liberties, Justice and Home Affairs (LIBE)
5. **Brief analysis/ assessment of the resolution and requests made in it:**

The resolution welcomes the Commission’s first annual Rule of Law Report and the fact that it includes country chapters, and considers it vital to establish a European rule of law monitoring and enforcement architecture in the Union. However, it reiterates the European Parliament's previous calls for the extension of the scope of the Mechanism to fundamental rights and democracy, and for the establishment of a permanent interinstitutional working group in charge of preparing the report, under the guidance of a panel of independent experts. In particular, the report calls on the Commission to make future reports more analytical and devote greater efforts to deepening the country analyses, to distinguish clearly between systemic breaches of the rule of law and individual, isolated breaches. It further calls on the Commission to include country-specific recommendations on how to address the concerns identified or remedy breaches, including deadlines for implementation, and to deepen the country-specific assessment. The resolution also calls for a more integrated analysis on the interlinkages between the four pillars of the Rule of Law Report, and of how combined deficiencies may amount to systemic (risks of) breaches, as well as for the identification of cross-cutting trends at Union level, when certain measures or practices may be replicated, or when their gravity and scope may affect the Union as a whole.

The resolution also makes suggestions on each of the four pillars of the Rule of Law Report. As regards the justice system, the resolution highlights the importance of including developments related to lawyers and to Member States’ compliance with the Court of Justice of the European Union (CJEU) rulings; it calls on the Commission to closely monitor the respect of the principle of primacy of EU law by national courts and to initiate infringement proceedings against Member States where it is consistently violated. It also encourages the Commission to include an evaluation on judicial backlogs and the average duration of trials in future reports. A regards the anti-corruption framework, the resolution notes the absence of assessments related to public procurements in the 2020 Rule of Law Report and calls on the Commission to place greater emphasis on the misuse of EU funds, in particular in view of the conditionality regulation. The resolution also calls on the Commission to update the Union’s anti-corruption legislation and to support and promote the harmonisation of definitions of corruption-related offences to enable better data collection. As regards media pluralism and freedom, the resolution calls for the inclusion of an assessment as regards the public service and private media sector at national level and its de jure and de facto independence; it calls for the report to focus on attacks against journalists and proposes to expand the scope to look at artistic and academic freedom. It further calls on the Commission to propose anti-strategic lawsuit against public participation (SLAPP) legislation to protect journalists from vexatious lawsuits and to include an assessment the effects of hate crimes and hate speech. As regards checks and balances, the resolution calls on the Commission to pay greater attention to the role of ombudspersons and equality bodies and to deepen its assessment of civic space and to explore clear benchmarks on an enabling civic space.

As regards the methodology, the resolution calls on the Commission to strengthen the dialogue with governments and national parliaments, non-governmental organisations (NGOs), national human rights institutions, ombudspersons, equality bodies, professional associations and other stakeholders. It calls for expanded timeframes for the consultation of civil society and to allow submission in several languages. The resolution also calls on the Commission to assess how issues identified in previous reports have evolved and taken up, stresses that findings need to be promoted at national level.

As regards other instruments, the resolution urges that the annual Report should serve as a basis to activate instruments such as Article 7 of the Treaty on European Union (TEU), the conditionality mechanism, infringement procedures and the Rule of Law Framework and also calls on the Commission to promote a culture of respect of the Union’s fundamental values, including through financial support tools.

1. **Response to the requests in the resolution and overview of the action taken, or intended to be taken, by the Commission:**

The European Commission welcomes the Parliament’s resolution and fully shares its objectives to set a positive agenda for promoting, protecting and reinforcing Union values, in accordance with Article 2 of the Treaty. The Commission has given the resolution careful consideration. There are many elements, which the Commission wholly supports and which reflect the approach the Commission is following for its annual Rule of Law Report, which is at the centre of the European Rule of Law Mechanism. The Commission looks forward to continuing the dialogue with the European Parliament on the basis of the 2021 Rule of Law Report (COM(2021) 700 final), which was adopted on 20 July 2021.

**General points/ methodology**

As regards the scope of the European Rule of Law Mechanism, the Commission underlines that this scope is already broad, covering four areas: national justice systems, anti-corruption frameworks, media pluralism and media freedom and other institutional issues related to checks and balances. The 2021 Rule of Law Report covers the same scope as the first annual Rule of Law Report, consolidating the exercise started by the 2020 report while further deepening the Commission’s assessment, which is in line with the Parliament’s request to deepen the country analyses. It also further develops on the impacts of the COVID-19 pandemic under the report’s different pillars. The report consists of an umbrella Communication, which identifies the main trends and developments over the reporting period under each of the pillars across the EU, as well as 27 country chapters. The country chapters analyse new developments since the adoption of the first report and the follow up to the challenges and developments identified in the 2020 Report.

As it stands, the rule of law mechanism also contributes to the promotion of democracy and respect of fundamental rights and equality, as these values are inextricably interlinked. The report is also part of broader EU efforts to promote and defend its founding values. This work includes the European Democracy Action Plan and the renewed Strategy for the Implementation of the Charter of Fundamental Rights, as well as targeted strategies to progress towards a “Union of Equality”. Another related aspect is monitoring the application of EU law and the protection of fundamental rights under the Charter, including through the use of infringement proceedings. These instruments illustrate together the Commission’s comprehensive approach to promoting the values of democracy, the rule of law and respect for fundamental rights.

With regard to the methodology, the Commission agrees on the importance of the consultation of stakeholders and on using a variety of sources, including via visits in the Member States. This approach has been followed for both editions of the Rule of Law Report prepared so far. The approach on the methodology has been transparent, developed in close collaboration with the Member States and has been made public. For the preparation of the 2021 Rule of Law Report, the Commission has again collected written input from Member States and from stakeholders through a targeted stakeholder consultation. The Commission is ready to reflect on how to further improve this consultation process to ensure the broadest involvement of stakeholders possible. The Commission has also dedicated additional time to the country visits, carrying out over 400 meetings (compared to around 300 meetings for the 2020 Rule of Law Report) with national authorities, independent bodies and stakeholders. Proposals for meetings by both national authorities and stakeholders have been taken into account for this and the list of authorities and stakeholders that were met during the country visit is made public in the annex of each country chapter.

In preparing its assessment, the Commission relied also on important external expertise from a variety of bodies, organisations and independent experts, including the Fundamental Rights Agency and the Council of Europe. However, the annual Rule of Law Report represents the Commission’s own assessment and the Commission takes responsibility for it. Delegation of decision-making powers to an external panel of experts could raise concerns in terms of legitimacy, the balance of inputs and the accountability for the results.

As regards the Parliament’s call for the inclusion of recommendations, the Commission stresses that Rule of Law Report contains a clear assessment, which will allow the Commission to continue and further deepen its monitoring in future editions. The 2021 Report monitors progress made and developments with regard to the points raised in the respective country chapters of the 2020 Rule of Law Report and any other significant developments. In particular, it examines whether concerns or challenges identified in the 2020 Report have been addressed or partially addressed, whether they continue or whether the situation has further deteriorated/ aggravated, in line with the Parliament’s resolution. This assessment serves as a basis for the interinstitutional discussions, e.g. the rule of law dialogue in the General Affairs Council and the dialogue with the European Parliament. The Commission invites the Member States to effectively take up the challenges identified in the report and stands ready to assist them in these efforts.

In line with the Parliament’s resolution, one of the objectives of the European Rule of Law Mechanism is to strengthen the interinstitutional cooperation on rule of law matters. In particular, it aims at triggering an inclusive debate at European and national level. Such a debate has been carried out based on the first annual Rule of Law Report with the Council, the European Parliament and at national level, in particular with national parliaments. The Commission looks forward to continuing this dialogue on the basis of the second annual Rule of Law Report. The Commission also recalls its support for the idea of the European Parliament to involve national parliaments and, in particular, to set up an inter-parliamentary dialogue between the European Parliament and national parliaments. The Commission is ready to contribute to such a dialogue.

With a view of ensuring effectiveness, the Commission favours cooperation under existing institutional arrangements, and could see value in having regular meetings or an interinstitutional exchange of views, which could help in the preparation and discussion of rule of law, democracy or fundamental right issues. Whether in the future such cooperation should be codified in an interinstitutional agreement will have to be assessed at a later stage, on the basis of the experience gained through the continued application of the European Rule of Law Mechanism.

**Topics covered by the report**

The resolution calls for a number of new topics to be included in the report. The Commission would like to stress that many of these topics are already included within the scope of the report. The 2021 report in particular develops further on the impact and challenges brought by the COVID-19 pandemic under each of the four pillars. As regards the justice systems the country chapters already cover relevant developments related to lawyers, and information related to the length of proceedings and backlogs in courts is also provided, as well as on systemic issues related to the implementation of European Court of Human Rights (ECtHR) judgments related in particular to excessive length of proceedings. Relevant developments related to the respect of the principle of primacy of EU law are covered as part of the pillar on institutional checks and balances.

As regards the anti-corruption framework, the 2021 Rule of Law Report deepens the analysis of the institutional, legal and strategic framework to fight corruption. The report covers a wide variety of corruption-related areas and risks, assessing as well the criminal legislation and instruments to fight corruption across the EU and the capacity to investigate and prosecute corruption. In the 2021 Rule of Law Report, the assessment related to public procurements was taken in consideration in the context of the measures to respond to the COVID-19 pandemic. The report assesses the anti-corruption framework from a wide angle, including instruments and procedures that are conducive to deter and correct frauds and misuse of EU funds. In order to step up efforts at EU level, as indicated in the EU Strategy to tackle Organised Crime 2021-2025, the Commission will study the existing EU anticorruption rules to assess whether they are up to date with evolving criminal practices and to ensure that they cover all relevant corruption-related offences.

Similarly, as regards media pluralism and media freedom, the 2021 Rule of Law Report looks into the de jure and de facto independence of the media - both public service and private media - by pointing to instances of political pressure and influence on the media. It also covers different types of attacks against journalists - physical and online, including cases of hate speech directed at journalists and media.

In addition, the 2021 Rule of Law Report further deepens and consolidates the assessment of developments related to the enabling framework for civil society and covers developments related to national human rights institutions, equality bodies and ombudsperson institutions.

**Links to other instruments**

As regards civil society, the Commission recalls that as highlighted in the recently adopted Strategy to strengthen the application of the Charter of Fundamental Rights in the EU, civil society organisations and rights defenders, including national human rights institutions (NHRIs), are vital for a healthy democracy and a society where people can enjoy their fundamental rights. The Commission is committed in ensuring a supportive environment for civil society organisations, strong and independent national human rights institutions, as well as reinforcing civil society organisations and NHRIs’ capacity to defend people’s rights.

The Commission agrees that providing funding to civil society organisations is crucial to their functioning. The new Citizenship, Equality, Rights and Values programme will fund civil society organisations to promote activities under all its specific objectives in continuity with the current practice. It will also promote awareness of rights and values through support to civil society organisations, including NGOs and think tanks, contributing to the effective enjoyment of rights under EU law.

As regards calling on the Commission to propose legislation to protect journalists from vexatious lawsuits and to include an assessment about the effects of hate crimes and hate speech, the Commission is working on the necessary groundwork to decide how to shape an EU initiative to protect journalists and rights’ defenders against abusive legislation (SLAPP) as included in the Commission Work Programme for 2021.

On the procedures under Article 7 of the Treaty on European Union, the Commission calls on the Member States concerned and the Council to invest in accelerating the resolution of the problems raised under these procedures, finding solutions that protect the rule of law and the values common to all the Member States. Until a solution is found to the concerns raised, the Commission remains committed to supporting the Council in the continuation of the Article 7 procedures to resolve the issues at stake. The Commission also reiterates that the European Parliament should be given the possibility to present its case in the Council in the procedures it has initiated.

As regards the general regime of conditionality for the protection of the Union’s budget, the Commission would like to stress that the general regime of conditionality and the Rule of Law Report are two distinct instruments with different objectives and scope. However, when identifying and assessing breaches of the principles of the rule of law that affect the financial interests of the Union, the Commission will take into account the Rule of Law Report as one of the sources. Since 1 January 2021, the Commission has been monitoring possible breaches of the principles of the rule of law in Member States that would be relevant under the said Regulation on a general regime of conditionality.

The Commission is continuously assessing how existing instruments can best be used to promote and uphold the rule of law, democracy and fundamental rights, and is ready to continue the dialogue in this regard. The Commission is in particular ready to organise further discussions with the European Parliament on the basis of the recently adopted 2021 Rule of Report, including in particular on the individual country chapters, as part of a stronger interinstitutional dialogue on the rule of law.