**Follow-up to the European Parliament non-legislative resolution
on the Commission’s 2021 Rule of Law Report**

**1. Rapporteur:** Terry REINTKE (Greens/EFA / DE)

**2. Reference number:** 2021/2180 (INI) / A9-0139/2022 / P9\_TA(2022)0212

**3. Date of adoption of the resolution:** 19 May 2022

**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 responds to the European Commission’s 2021 Rule of Law Report, published in July 2021, and welcomes it, including its country specific chapters. The resolution notes that the Parliament makes regular use of the Rule of Law Report as a source of information in its discussions. The resolution explicitly welcomes the Commission’s announcement to include country-specific recommendations in the report as of 2022, calling on the Commission to include deadlines for their implementation and follow-up on their implementation in future reports. It also commends the Commission’s efforts to engage with national governments, national parliaments and the European Parliament, as well as civil society and other national actors. However, the resolution encourages the Commission further to deepen its analysis and reiterates its previous calls to expand the scope of the report to all Article 2 of the Treaty of the European Union (TEU) values and to differentiate between systemic and individual breaches. The resolution also repeats the Parliament’s call for an inter-institutional agreement on a joint EU mechanism on democracy, the rule of law and fundamental rights, as well as the involvement of a panel of independent experts. The resolution calls on the Commission to identify crosscutting trends in the report and possible systemic vulnerabilities. The resolution further asks the Commission to establish an annual EU Values Week each September, to present the report together with other related reports, to the European Parliament and national Parliaments. As regards the sources of the report, the resolution calls to further strengthen dialogue with governments, national parliaments, non-governmental organisation (NGOs), independent authorities, professional associations and other stakeholders, asking that civil society organisations should be closely involved at all stages of the process. It considers the timeline for the consultation to be too short and asks for a possibility for all-year round input.

The resolution also makes a number of suggestions as regards the four pillars of the report. Concerning **justice systems**, it calls on the Commission to include concrete recommendations in its 2022 report to ensure the independence of the judiciary, to cover the independence of lawyers and bar associations, and to closely monitor rulings of national courts regarding the primacy of EU law, and underlines the importance of the Commission evaluating the situation regarding the composition and functioning of Councils for the Judiciary. Regarding **anti-corruption frameworks**, the resolution welcomes the information included in the 2021 Rule of Law Report and urges the Commission to update and enhance the Union’s anti-corruption policy and instruments. Regarding **media pluralism and media freedom**, the resolution welcomes the Commission’s description in the annual report of political pressure and influence on the media. It regrets that the 2021 Report does not reflect the gravity of the trends regarding state control, strategic lawsuits and smear campaigns and calls on the Commission to review public service media thoroughly in its future reports. It also calls on the Commission to describe clearly systematic campaigns of disinformation and foreign interference. The resolution calls on the Commission to introduce Union legislation against the use of strategic lawsuits against public participation (SLAPPs) and to present an ambitious framework in the upcoming Media Freedom Act. Regarding **checks and balances**, the resolution states that the principle of the separation of powers is essential to the effective functioning of the state. It stresses the importance of fair and free elections, urging the Commission and Member States to take all necessary measures when a risk of manipulation of elections is identified. It also asks for a separate chapter on civic space in the report and for the creation of a civic space index, while recommending developing the pillar into ‘democracy and checks and balances’.

As regards the links to other instruments, the Parliament in its resolution reiterates that the report should be fit to serve as a source for deciding whether to activate other instruments (such as Article 7 TEU, the Conditionality Regulation, or infringement procedures). It asks the Commission explicitly to link those instruments to identified or possible rule of law issues in the Report. The resolution calls for the Report to include an overview of all enforcement actions taken by the Commission for each Member State, including pending infringement procedures, as well as the state of compliance with the provisional measures and rulings of the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR), and expresses concern by the persistent failure of some Members States, including Hungary and Poland, to implement domestic, CJEU and ECtHR judgments.

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

The European Commission welcomes the Parliament’s resolution and fully shares its objectives for promoting, protecting and reinforcing Union values, in accordance with Article 2 TEU. The Commission has given the resolution careful consideration. Many elements reflect the approach the Commission is pursuing with its annual Rule of Law Report. The Commission looks forward to continuing the dialogue with the European Parliament based on the 2022 Rule of Law Report, which was adopted in July 2022. The Commission recognises that the Parliament welcomes the inclusion of recommendations in the 2022 Rule of Law Report, which will further contribute to the effectiveness of the Report, by assisting and supporting Member States in their efforts to take forward reforms and to identify where improvements or follow-up to recent changes or reforms may be needed.

The European Commission welcomes close cooperation of the European Parliament to develop the discussion further, using the Rule of Law Report and its 27 country chapters as a basis for a regular dialogue in the European Parliament on the situation at national level. Existing institutional arrangements already allow such a dialogue to involve the Council, national parliaments, civil society actors and independent observers. The Commission’s representatives would be ready to participate to such dialogues at high level. The Commission would also welcome opening up such dialogue to a wider range of citizens and stakeholders, in line with the outcome of the Conference on the Future of Europe.

As regards the proposed greater formalisation of the work between the institutions through an inter-institutional agreement (para. 49), such formalisation could be difficult to negotiate, with the risk that discussions focus on procedure rather than substance. For that reason, the Commission’s preference at this stage remains to make the most of the interinstitutional cooperation framework as it stands, which has significant potential for further development and use.

**Methodology, assessment and scope of the report**

As regards the general scope of the European Rule of Law Report, the Commission underlines that this scope is covering four broad and systemically important areas: national justice systems, anti-corruption frameworks, media pluralism and media freedom and other institutional issues related to checks and balances. 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 dedicated to the situation on rule of law in each Member State. Furthermore, the Commission has extended the scope in a targeted manner for the 2022 Rule of Law Report, covering for the first time the issue of public service media governance and providing systematic information on the implementation of judgments of the European Court of Human Rights.[[1]](#footnote-2)

As regards expanding the scope of the report to all values under Article 2 TEU (paragraphs 1, 14, 38 and 49), the Commission points out that the report is one element of a broader endeavour at EU level to strengthen the founding EU values, including democracy, equality, and respect for human rights. The report is complemented by a set of other initiatives including the European Democracy Action Plan, the renewed Strategy for the Implementation of the Charter of Fundamental Rights, and targeted strategies to address the needs of the most vulnerable. Another related aspect is monitoring the application of EU law[[2]](#footnote-3) 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, based on a panoply of different instruments, to promoting the values of democracy, the rule of law and respect for fundamental rights. It is therefore currently not feasible nor appropriate for the Report to cover each right guaranteed by the Charter for each Member State in the report.

As regards the assessment and methodology (paragraphs 4 to 13 and 43 to 48), the Commission notes that the country chapters analyse new significant developments since the adoption of the 2021 Report and follow-up on the challenges and developments identified in the previous editions of the report. The Commission agrees that interlinkages between the four pillars are an important aspect of the report, and highlights that the country chapters contain a number of references to analyses in different pillars. In the 2022 Rule of Law Report, the analysis has been deepened further compared to previous two reports. For this purpose, and in order to expand the sources for the report, in 2022, the country visits were extended both in number of meetings and of authorities met. In the preparations for it, the Commission services conducted over 500 meetings with nearly 700 national authorities, independent bodies and non-governmental and professional organisations, including civil society. The Commission will continue to reflect on ways to best involve stakeholders in a transparent manner, including by further improving the modalities of the online consultation (also as regards the available time to respond) and ensuring that the timeline is publicly available sufficiently in advance. In preparing its assessment, the Commission continues to rely on external expertise from a variety of international organisations and EU agencies. In particular, the Commission cooperates very closely with the Council of Europe and the Fundamental Rights Agency. However, the Rule of Law Report ultimately represents the Commission’s own assessment and the Commission takes responsibility for it. Delegation of decision-making powers to an external panel of experts would raise concerns in terms of legitimacy, balance of inputs and accountability for the results.

As regards the European Parliament’s calls regarding the individual pillars of the report, concerning **justice systems** (paragraphs 15 to 19), the Commission notes that the report already covers comprehensively their independence, quality and efficiency. This includes developments related to the situation of lawyers and national bar associations.

As regards the Parliament’s calls concerning **anti-corruption frameworks** (paragraphs 20 and 21), the Commission will continue to review the Union’s anti-corruption policy and instruments, and make appropriate proposals for improvement. In this context, the Commission has contracted an external study to assess the effectiveness of the EU legislative and policy anti-corruption framework, which also looks at existing definitions, standards and benchmarks at Union level.

With regard to the **media pluralism and media freedom** (paragraphs 22 to 27), the Commission notes that the report does address certain aspects of state interference, as well as SLAPPs and smear campaigns where relevant. For the first time, the 2022 Report has also covered public service media. With regard to systematic campaigns of disinformation and foreign interference, the Commission addresses these matters in a structured manner in separate *fora*. The Commission is also finalising its proposal for a Media Freedom Act, which will address certain structural issues characterising the media landscape.

Regarding the pillar on **checks and balances** (paragraphs 28 to 33), concerning the request to dedicate to civic space a separate pillar including country recommendations, the Commission notes that the assessment of developments related to the framework for civil society has been further deepened. It covers i.a. issues related to funding, the legal framework, civil society participation in policy-making and a free and safe operating environment for civil society, including, where relevant, the potential chilling effects of measures affecting civil society. A number of recommendations related to the framework for civil society have been addressed to Member States in the 2022 Report. Under this pillar, the Commission in the 2022 Report also for the first time reflects systematically the record of Member States regarding the implementation of ECtHR judgments. The report also reflects infringement action taken by the Commission related to the rule of law, as well as developments related to the respect of the principle of primacy of EU law. As mentioned above, the annual report on monitoring the application of EU law provides a more comprehensive overview of the Commission’s infringement action[[3]](#footnote-4).

**Links to other instruments**

As regards linking the report with concrete tools to be activated in relation to identified or possible rule of law issues (paragraphs 52 to 57), the Commission clarifies that the Rule of Law Report is only one of the tools in the EU Rule of Law toolbox. While there must be synergies between the tools, they are separate instruments with different conditions under which they can be used and as such require a separate, detailed and time-sensitive assessment. The Commission stresses it would not seem adequate to pre-empt or to rule out a future decision to use one of the tools at the time of the adoption of the next Rule of Law Report, thereby restricting the EU’s ability to react to developing situations.

The Commission fully agrees with the Parliament with regard to the importance of strengthening the **space for civil society actors** (CSOs)(paragraphs 3, 23, 30, 32, 43 and 44), which must be able to operate in an open, secure and safe environment that is free from all acts of intimidation, harassment and reprisals. To recognise the crucial role played by CSOs and rights defenders, the Commission has decided to dedicate the 2022 Report on the application of the Charter of Fundamental Rights to the role of the civic space in protecting and promoting Charter rights. The Commission did not hesitate to act, as guardian of the Treaties, in cases of violation of EU law, including the Charter, restricting the fundamental rights of CSOs and will continue to do so, as necessary. The European Democracy Action Plan and the Commission work programme for 2021 announced that the Commission would take action to protect journalists and civil society against SLAPP. On 27 April 2022, the Commission presented a proposal for a directive and a recommendation in order to improve the protection of journalists and human rights defenders from manifestly unfounded or abusive court proceedings.

On the **procedures under Article** 7 TEU (paragraph 59), 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 assessment of the fulfilment of the conditions set by Article 4 of the **Conditionality Regulation** (paragraphs 52, 56 and 57), the Commission notes that this is carried out continuously within the procedure set out by the said regulation. In its assessment, the Commission must take into account relevant information from available sources, which includes not only the sources explicitly mentioned in the Conditionality Regulation (e.g., the Rule of Law Report, judgements of the Court of Justice, the reports of the European Anti-Fraud Office (OLAF) and of the European Public Prosecutor's Office (EPPO), the recommendations of the Group of States against Corruption (GRECO), etc.), but also all otherwise available information, including complaints or information submitted by the Member State concerned. While the Rule of Law Report is one of the sources for the Commission’s assessment under the Conditionality Regulation, the Rule of Law Report and the Conditionality Regulation are different and separate. The Conditionality Regulation, requires a separate and very thorough assessment of each case, demonstrating amongst other things their impact on the EU budget, in line with a specific procedure (as it requires that the identified breaches of the principles of the rule of law in a Member State affect or seriously risk affecting the sound financial management of the Union budget or the protection of the financial interests of the Union in a sufficiently direct way)

1. For the full list of topics covered in the scope of the 2022 Report, see the request for input, available at: <https://ec.europa.eu/info/sites/default/files/rolm_request_for_input_2022.pdf> [↑](#footnote-ref-2)
2. See the annual Report on the application of EU law, with the most recent edition published on 15 July 2022: “[Application of EU law: Upholding rights, fundamental freedoms and the rule of law](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4145)” [↑](#footnote-ref-3)
3. The 2021 Annual Report is available at: <https://ec.europa.eu/info/publications/2021-annual-report-monitoring-application-eu-law_en> [↑](#footnote-ref-4)