**Follow up to the European Parliament non-legislative resolution on the Commission’s 2023 Rule of Law Report**

1. **Rapporteur:** Sophia in ‘t Veld (Renew / NL)
2. **Reference numbers:** [2023/2113 (INI)](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2016/2891(RSP)) / A9-0025/2024 / P9\_TA(2024)0108
3. **Date of adoption of the resolution:** 28 February 2024
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 Commission’s 2023 Rule of Law Report published in July 2023 through a **detailed discussion of its four pillars**. It **welcomes** the report, including the country chapters and the country-specific recommendations, but **criticises** the fact that the recommendations made in Parliament’s previous resolutions have not been fully addressed. In terms of scope, the Parliament reiterates its call for the report to **cover all values enshrined in Article 2** of the Treaty on the European Union (TEU), and separate chapters on **equality** and non-discrimination, **civic space** and the **Union’s institutions**. It also asks for the report to include missing elements of the Venice Commission 2016 **Rule of Law checklist** such as the prevention of abuse of powers, equality before the law and non-discrimination. Furthermore, the resolution calls on the Commission to closely monitor the Member States’ level of cooperation with the European Public Prosecutor’s Office (**EPPO**), to include an assessment of the application of the EU acquis on **legal aid** in civil and criminal matters as well as the **implementation of European Court of Human Rights (ECtHR) as well as European Court of Justice (CJEU) rulings** at national level by means of a scoreboard. The resolution calls on the Commission to put in place dedicated country-specific monitoring and recommendations related to Member States’ unlawful use of **spyware** in the rule of law report. Finally, it calls on the Commission to give the **economic dimension** greater consideration and specific attention in the rule of law report, notably highlighting the impact on competitiveness and the single market.

In terms of **methodology**, the Parliament calls on the Commission to deepen its participation in **debates at national level**, invest more in **awareness raising** and devote more time to on-site, country visits. While welcoming the **recommendations,** the resolution regrets that they are not **binding** and asks that they are assessed in the upcoming report with specific benchmarks and a clear timeline for implementation. The resolution also asks that there is a clear link between the concerns expressed and the recommendations put forward. Furthermore, the Parliament reiterates its outstanding calls on the **differentiation between systemic and individual breaches**, the need for a **direct link** between the report and the activation of other instruments (such as **Article 7 TEU**, the **Conditionality Regulation**, or **infringement procedures**) and the involvement of a panel of **independent experts**. It calls on the Commission to include strictly monitor and safeguard the democracy, rule of law and fundamental rights conditions in all **budgetary instruments** and processes and to assign the primary responsibility for the application of these conditions to the Commissioners responsible for the rule of law. It also calls on the Commission to strengthen the **enforcement** of EU fundamental rights and to take action regarding failures to implement CJEU judgments under Article 260(2) TFEU and the Conditionality Regulation in cases of non-compliance. Finally, the resolution regrets the lack of meaningful progress in the Council on the **Article 7 TEU** procedures.

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

The 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 it is pursuing with its annual Rule of Law Report. The Commission looks forward to continuing the dialogue with the European Parliament based on the 2024 Rule of Law Report, which is set to be adopted in July 2024. The Commission also welcomes the country-specific elements included in the resolution.

The Commission welcomes the close **cooperation with the European Parliament**. It has participated at Commissioner level to various hearings and meetings organised in the context of the pilot on democracy, the rule of law and fundamental rights, including an exchange within the Democracy, Rule of Law and Fundamental Rights Monitoring Group on the Member States under review in the Council’s Rule of Law dialogue in November 2023. As regards the proposed inter-institutional agreement on the work between the institutions (paragraphs 92 and 93), while such an agreement could help to frame further the discussion, the 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, fully using its potential for further development. However, the Commission is open to setting up an **informal contact group**, where Commission representatives would be available to conduct regular discussions with Members of Parliament and where the Presidency of the Council and relevant Member States could also be invited.

Regarding the general **scope** of the Rule of Law Report, the Commission underlines that it is already covering four broad important areas of systemic importance: national justice systems, anti-corruption frameworks, media pluralism and media freedom and other institutional issues related to checks and balances. Since 2022, new elements such as **public service media**, the response of national checks and balances to the use of **intrusive surveillance software**, and the **implementation of ECtHR judgments** have been added to the original topics covered by the first report, also following calls of the European Parliament. Furthermore, the Commission adopts annual reports **monitoring the application of EU law**[[1]](#footnote-2)(paragraph 79). Access to justice, including **legal aid**, is also an issue covered under the Rule of Law Report and assessed in light of European standards (paragraph 6). In addition, the Commission fully agrees that the **EPPO** plays a key role in safeguarding the rule of law and combating **corruption** in the Union. It has also taken due note of the Parliament’s request to look into the degree of cooperation between the Member States and the EPPO (paragraph 18), which is a topic that is already covered within the scope of the Rule of Law Report. The Commission, like the Parliament, welcomes Poland’s participation in the EPPO, which was confirmed by means of a Commission decision adopted on 29 February 2024. Furthermore, the Commission welcomes the support for its **proposal for a Directive** **on combating corruption** and agrees that corruption and money laundering are linked, also as enablers of organised crime (paragraphs 21 and 22). As mentioned in the Joint Communication on the fight against corruption[[2]](#footnote-3) the Commission continues discussing with the other institutions the possibility of moving towards full participation of the EU in the Group of States against Corruption (GRECO) (paragraph 15).

The Commission fully agrees with the Parliament's condemnation of illegal surveillance, especially through the **use of intrusive surveillance software** (paragraph 18). To respond to this practice in the case of journalists, the **European Media Freedom Act** (paragraph 26) introduces robust protections for media service providers, including journalists, against intrusive surveillance software. This includes a general prohibition on the use of such software in Article 4, with narrowly defined exceptions for serious criminal investigations, under strict conditions, including as a measure of last resort. This significant legislative step demonstrates the Commission’s commitment to safeguarding journalistic freedom but also to upholding the fundamental rights against the misuse of spyware within the EU. The Commission is also working on a non-legislative initiative clarifying the interplay between EU law, in particular data protection and privacy acquis, and **national security** in the context of the use of intrusive surveillance software. Where relevant, this issue is also covered in the Rule of Law reports, notably as regards the functioning of national checks and balances.

As regards **expanding the scope** of the report to all values under **Article 2 TEU** (paragraph 82), the Commission points out that the report represents 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 in the areas of democracy and fundamental rights (including the **European Democracy Action Plan**, the Defence of Democracy Package, the Strategy to strengthen the application of the **Charter of Fundamental Rights** in the EU with its thematic annual reports, and targeted strategies to address the needs and challenges of specific groups of rights holders). As regards other elements of the Venice Commission 2016 **Rule of Law checklist** (paragraph 82), the methodology of the Rule of Law Report explicitly notes that this checklist provides an important source of standards and can be a tool to help identify specific risks and weaknesses. Concerning the Parliament’s call to add a new pillar on the fight against all types of discrimination (paragraph 59), the Commission would like to point out that the Rule of Law Report already covers the situation of Equality bodies and civic space, including for civil society organisations (CSOs) active in the area of discrimination. Furthermore, under the ‘**Union of Equality’**, strategies and action plans the Commission issues regular report and monitors Member States’ actions in a number of relevant areas (**gender equality**, the fight against **racism**, **Roma** equality, **LGBTIQ**, **disability**).

The Commission has not hesitated to act, as guardian of the Treaties, in cases of violation of EU law, including the Charter of Fundamental Rights, and will continue to do so, including through **infringement proceedings** (paragraph 62). Under the Common Provisions Regulation[[3]](#footnote-4) (CPR) CSOs and rights defenders can be entrusted with tasks throughout the preparation, implementation, and evaluation of programmes, including the participation in the committee in charge of monitoring the implementation of funding programmes where a balanced representation of the partners concerned shall be ensured. Under that legislation, Member States must put in place effective mechanisms to ensure that EU funded programmes are conceived and implemented in compliance with the relevant provisions of the Charter. This is part of the horizontal enabling condition on the effective application and implementation of the Charter (the ‘**horizontal enabling condition**’)[[4]](#footnote-5). Together, these instruments illustrate the Commission’s comprehensive approach, based on a several dedicated instruments, to promoting and safeguarding the values of democracy, the rule of law and respect for fundamental rights.

Concerning the request to dedicate to **civic space** a separate pillar including country recommendations (paragraph 47), the Commission notes that the assessment of developments related to the framework for civil society has continuously been deepened throughout successive editions of the report. The report covers i.e. issues related to funding (paragraph 48), the legal framework, participation in policy and decision-making and a free and safe operating environment for civil society organisations and human rights defenders, including, where relevant, the potential chilling effects of measures affecting those actors. Several recommendations related to the framework for civil society have been addressed to Member States in the 2022 and 2023 Report and the Commission will follow-up on their implementation in the 2024 Report.

The Commission fully agrees with the Parliament with regard to the importance of **CSOs**, which must be able to operate in an open, secure and safe environment that is free from all acts of intimidation, harassment and reprisals. Following up to the Report on the application of the Charter of Fundamental Rights on civic space[[5]](#footnote-6), in 2023, the Commission engaged with all the relevant actors by launching a series of thematic seminars on safeguarding civic space culminated in a high-level event co-organised with the Spanish Presidency. As a result, actions were identified at EU and national level and the Commission will reflect on them. For several years now the Commission has developed a dedicated policy work strand aimed at ensuring that independent civil society organisations, human rights defenders, national human rights institutions and equality bodies works in an enabling environment, where they are protected, supported and effectively engaged with. The Commission has also increased the budget available under **Union funds**, in particular as part of the Citizens Equality Rights and Values (CERV) programme, to support civil society organisations and human rights defenders, through innovative approaches including re-granting schemes. To foster citizens and civil society organisations’ participation to the public policy making in the Member States, in December 2023, the Commission has adopted a **Recommendation on civic engagement**. As regards the request to include a chapter on **Union institutions** (paragraph 15), there are currently no plans to change the structure of the report. In particular, such a chapter within the current report would require the Commission to report on itself, which would raise concerns in terms of legitimacy.

On 27 April 2022, as announced in the **European** **Democracy Action Plan**, the Commission presented a proposal for a **directive** and adopted a Commission r**ecommendation** to improve the protection of journalists, human rights defenders, and others from manifestly unfounded or abusive court proceedings (paragraph 33). In November 2023, the EU co-legislators reached a political agreement on the directive and its formal adoption is expected in spring 2024. Together, the directive and the recommendation provide a solid toolbox of safeguards and measures to fight against Strategic Lawsuit Against Public Participation (**SLAPP**s) in the EU. Once the directive has entered into force, Member States will have two years to transpose it into their national law. The directive provides only for minimum harmonization and Member States can provide better protection against SLAPPs under their national law. The Commission’s priority will be to ensure correct and timely transposition of the directive. While it only applies to cross-border SLAPP-cases because of its legal basis, the Commission strongly encourages Member States to extend the protection against SLAPPs to domestic cases in their national transposition measures in line with what already stated in the recommendation. The recommendation encourages the Member States to modify their applicable frameworks and adopt measures regarding training, awareness-raising and support mechanisms in the fight against SLAPP cases. The Member States should transmit a report to the Commission on the implementation of this recommendation containing aggregated data consolidated at Member States’ level. The Commission will publish a yearly summary of the received contributions.

The Commission is satisfied that, in March, the European Parliament has shown overwhelming support for the **European Media Freedom Act** (paragraph 26), formally adopted on 26 March 2024. The Commission continues to closely monitor the implementation by the Member States of the **Audio-Visual Media Services Directive** (paragraph 27), including its Article 30, not least via scrutiny of relevant overlaps in the media freedom pillar of the Commission’s rule of law report.

The Commission is working closely with the **Fundamental Rights Agency** (FRA) in the context of the Rule of Law Report (paragraph 84). Since 2022, the Commission has developed a new approach with dedicated **national rule of law dialogues** directly involving national civil society in several Member States, together with FRA, with the intention to extend these dialogues to the other Member States as well, also in view of the Parliament’s call to further extend the participation in debates at national and local level (paragraph 85).

As regards the **assessment** and **methodology** (paragraphs 1, 80, 81, 82 and 83), the Commission notes that the country chapters analyse new significant developments and follow-up on the challenges and developments identified in the previous editions of the report. The report also provides an analysis of legislations and reforms in the process of being adopted (paragraph 7). The report already identifies in a consistent way which challenges are of a more serious and systemic nature and raise concerns (paragraph 83), and which challenges are more isolated. In a few countries, where there are serious structural concerns, this is also indicated clearly. It is important that the country chapters are read as a whole, in order to give a full picture of the rule of law situation. In 2023, the Commission services conducted over 530 online meetings with nearly 700 national authorities, independent bodies and non-governmental and professional organisations, including civil society. In direct response to requests from the Parliament and civil society, the Commission has also taken further steps to **increase the transparency** and **inclusiveness** of the approach. The Commission has further extended the consultation period and provided additional information about the process, including the schedule of the country visits and network of national contact points on the rule of law, on the Commission’s website. 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) (paragraph 85).

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 and also receives input from the UN Office of the High Commissioner for Human Rights. However, the Rule of Law Report ultimately represents the **Commission’s own assessment** and the Commission takes responsibility for it as the EU institution tasked to be the guardian of the EU Treaties. 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 (paragraph 84).

The Commission recognises that the Parliament welcomes the inclusion of **recommendations** since the 2022 Rule of Law Report and the assessment of their fulfilment in the 2023 Rule of Law Report (paragraph 81), which further contributes 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. Recommendations are addressed and tailored to each Member State and based on the clear and specific assessments contained in each country chapter. The Commission takes note of the suggestion of the Parliament to attach the recommendations to a specific timeline, targets and concrete actions for their implementation (paragraph 83). The Rule of Law Report is a preventive instrument, which by its nature is not legally binding, including as regards its recommendations. However, the Commission will continue to follow up closely on the implementation of these recommendations at both political and at technical levels. The Commission is also engaging with Member States to assist them in their efforts to implement the Report’s recommendations.

As regards **linking the report with concrete enforcement tools** to be activated in relation to identified or possible rule of law issues (paragraph 77), the Commission clarifies that the Rule of Law Report is only one of the tools in the EU Rule of Law toolbox. While there are clear synergies between these tools, they remain 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 annual Rule of Law Report, thereby restricting the EU’s ability to react to situations that may develop over the reporting period.

Regulation (EU, Euratom) 2020/2092 on a general regime for the protection of the Union budget (‘**Conditionality Regulation**’) is a separate tool from the Rule of Law Report (paragraph 96). The Conditionality Regulation cites the Rule of Law Report as one of the sources for the Commission to assess whether the conditions to adopt measures are met. The Conditionality Regulation sets out specific rules and procedures for the Commission to assess each situation and find whether there are breaches of the principles of the rule of law that 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. The Commission does not hesitate to apply the Conditionality Regulation where its conditions are met. In its report to the European Parliament and the Council on the application of the Conditionality Regulation of January 2024, the Commission concluded that the measures adopted in the case of Hungary are effective looking forward. Measures adopted under the Conditionality Regulation can be adapted or lifted, on a proposal by the Commission to the Council, if the Member State concerned addresses, in part or fully, the situation that had led to their adoption. The Commission will comply with the requirements under the Conditionality Regulation when assessing whether it should propose measures to be adapted, lifted, or left in place.

On the **procedures under Article** 7 TEU (paragraph 95), 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. The Commission remains committed to supporting the Council in the conduct of the Article 7 TEU procedures to resolve the issues at stake. The Commission also reiterates its view that the European Parliament should be given the possibility to present its case in the Council in the procedures it has initiated.

1. See the annual Report on the application of EU law, with the most recent edition published on 14 July 2023: “[2022 Annual Report on monitoring the application of EU law - European Commission (europa.eu)](https://commission.europa.eu/publications/2022-annual-report-monitoring-application-eu-law_en)” [↑](#footnote-ref-2)
2. Joint Communication to the European Parliament, the Council and the European Economic and Social Committee on the fight against corruption, JOIN/2023/12 of 3.5.2023, [EUR-Lex - 52023JC0012 - EN - EUR-Lex (europa.eu)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023JC0012) [↑](#footnote-ref-3)
3. Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy, OJ L 231, 30.6.2021, pp. 159–706. [↑](#footnote-ref-4)
4. Article 15 of and Annex III to the CPR. Article 8 of the CPR requires Member States to involve CSOs in the preparation of partnership Agreements and throughout the preparation, implementation and evaluation of programmes, including in monitoring committees. Article 9(1) of the CPR requires Member States and the Commission to ensure Respect for fundamental rights and compliance with the Charter in implementing funds covered by the CPR. [↑](#footnote-ref-5)
5. Report from the Commission, “[A thriving civic space for upholding fundamental rights in the EU 2022](https://commission.europa.eu/system/files/2022-12/1_1_201131_2022_charter_report_en.pdf)”, COM(2022)716 final of 6 December 2022 [↑](#footnote-ref-6)