



Rule of law and Union values

Position of the Greens/EFA Group: Contribution to the European Commission's Reflection process on the rule of law in the European Union

Our 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 (Article 2 TEU). However, the prevailing interpretation of the Treaties is that infringement procedures or any other actions by the EU institutions associated with the values is only possible in the fields covered by EU competences. In addition, the Charter of Fundamental Rights stipulates that it is binding on the Member States only when they are implementing Union law.

If the values are breached in the fields of Member States competences, the only applicable tool is Article 7 TEU, which lays down the procedure for the gradual sanctioning of a Member State up to the suspension of voting rights in the Council. Nevertheless, the thresholds for the activation and use of this provision are very high; it has been used in practice only recently. In the case of Poland, the Commission launched this procedure in December 2017; in the case of Hungary the European Parliament did this in September 2018 on the basis of a report drafted by our colleague Judith Sargentini.

In order to address the situations not yet deserving an EU intervention with binding decisions, the Commission adopted the Rule of Law Framework – a three-stage internal decision-making process that might eventually lead to activating Article 7 TEU (which was also launched only once to address issues affecting the judiciary in Poland). The Council, in turn, launched the annual Rule of Law Dialogue, which takes the form of a discussion on thematic issues, rather than tackling particular situations in specific Member States.

The Greens/EFA Group in the European Parliament notes with interest the open reflection process on strengthening the rule of law within the Union launched by the Commission on 3 April 2019. It also takes into account recent initiatives by some European political parties and Member States aimed at protecting the fundamental values of the Union. Some of those ideas would require amending the Treaties.

In the meantime, the only valuable and comprehensive solution was proposed by the European Parliament in its own-initiative legislative report on the Mechanism on Democracy, Rule of Law and Fundamental Rights (DRF Pact) adopted in October 2016. The report was adopted by 405 votes in favour. There are several reasons why the DRF Pact should serve as a model for future action with regards to the rule of law in the Union.

First, the DRF Pact does not create a hierarchy of values. For us it is important to ensure that not only the rule of law, but also other Union values, including a wider spectrum of fundamental rights, are properly assessed. The lack of such coverage is a serious shortcoming of the current Rule of Law Framework.

Second, the DRF Pact is politically independent. The assessment is made by a panel of independent experts, not the Commission, the European Parliament, or the Member States in the Council (as it would be under the peer review in the Council). The panel of independent experts (proposed as the “Copenhagen Commission” by our colleague Rui Tavares in his report on Hungary in 2013) would consist of one expert appointed by each Member State’s parliament among former constitutional court or supreme court judges, as well as ten experts nominated by academia, civil society and international organisations and appointed by the European Parliament.

Third, the DRF Pact is not an ad hoc mechanism, unlike the Rule of Law Framework. It proposes annual policy cycles covering all Member States. The panel of independent experts, on the basis of all relevant information, would draft the annual report with an analysis of the situation in each Member State and would include country-specific

recommendations. The report would be made public and would then be approved by the Commission.

Fourth, the DRF Pact has a democratic legitimacy since it is suggested that the conclusions of the annual report would be debated both in the Council and in the inter-parliamentary conference organised by the European Parliament.

Fifth, there is a tangible impact from the publication of the annual report. The Commission would be able to decide on the necessity of launching infringement procedures on a more coherent basis. The Commission, the European Parliament and the Member States would be able to launch the Article 7 TEU procedure relying on a solid base of evidence.

Given all of the above, the Greens/EFA in the European Parliament remain convinced that the Commission and the Council should refrain from drafting alternative proposals, and should open negotiations with the European Parliament on the conclusion of an interinstitutional agreement on the DRF Pact.

The issue of possible financial consequences is not covered in the DRF Pact. However, it is not possible to avoid this topic as well, especially during the negotiations over the Multiannual Financial Framework. The Commission should be entitled to strictly monitor the use of Union funding, to ensure that EU spending is fully compliant with Union values. Where applicable, the principle of shared management could be temporarily suspended and Union funding would be directly managed by the European Commission, in close cooperation with regional and local authorities. This would help to prevent governments from breaking with the fundamental values of the Union while allowing the Union to ensure a life of dignity for all.

Some elements of this approach are already included in the European Parliament's position at first reading on the 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 (adopted in April 2019). Some other elements are clearly inspired by the DRF Pact, such as the need to ensure a link between the rule of law and fundamental rights, and the call for an annual assessment of the situation in all Member States by a panel of independent experts. These elements are taken by the European Parliament from the opinion of the Committee on Civil Liberties, Justice and Home Affairs, drafted by our colleague Josep-Maria Terricabras.

The Greens/EFA believe that any rule of law mechanism would be incomplete without positive incentives. In particular, we welcome the partial agreement on the Rights and Values Programme (adopted by the European Parliament on 17 April 2019). Our colleague Bodil Valero managed to introduce the new "Union values strand" aimed at protecting democracy, fundamental rights and the rule of law that will fund corresponding actions at local, regional, national and transnational levels and which includes providing support for civil society organisations working on advancing rights, Union values, democracy and the rule of law.

It is worth highlighting that the mandate, powers and resources of the Fundamental Rights Agency should also be examined with a view to strengthening its ability to act in defence of the values enshrined in Article 2 TEU. For example, the Agency should be able to provide its assistance and expertise on draft EU legislation on its own initiative and not only when it is formally requested, as stated in Terricabras Resolution on the Situation of Fundamental Rights in the EU in 2017, adopted on 16 January 2019. In this vein, the Interinstitutional Agreement on Better Law-Making could be revised to include a more regular consultation of the Fundamental Rights Agency and, when legislative proposals are being prepared, the impact assessments should have a stronger focus on the effect of that legislation on fundamental rights.

Until a fully-functioning DRF Pact has been implemented, the European Commission should enlarge the EU Justice Scoreboard as well as the European Semester to cover all the European values included in Article 2 TUE. In addition, the European Commission should finally implement the Treaty obligation to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms.