

Report of the Constitutional Committee 2018/19: KU37

Review of Communication on further strengthening of the Rule of Law in the EU

Summary

The Committee on the Constitution has examined the Commission's communication on further strengthening the rule of law in the EU.

The Committee appreciates that the Commission is continuing its efforts to promote and defend the rule of law. Respect for human rights and the rule of law are the foundations of democracy.

The Committee shares the Government's concern about developments in the field of the rule of law. The Committee therefore welcomes the fact that the Commission initiated a discussion on how to improve the tools available to the EU institutions in order to protect the fundamental values of the Union, including the respect for the rule of law. The Committee believes that it is of great importance that the tools available are used and that new ones can help to strengthen the application of the rule of law within the Union.

Whereas the EU's fundamental values are not negotiable, as the Government also points out; The Committee believes that the broader discussion on further strengthening the rule of law initiated by the Commission is urgent and will follow the way forward.

Document examined

Commission communication on strengthening the rule of law in the Union: the state of play and the way ahead (COM (2019) 163).

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The Committee's proposal for a Parliament decision

To further strengthen the rule of law in the Union

The Swedish Parliament adds this opinion to the documentation.

Stockholm, 28 May 2019

On behalf of the Constitutional Committee

Karin Enström

The following members have participated in the decision: Karin Enström (M), Hans Ekström (S), Ida Karchainen (S), MATHEUS Enholm (SD), Linda Ylivainio (C), Fredrik Lindahl (SD), Laila Naraghi (S), Tuve Skåberg (KD), Daniel Andersson (S), Bengt Eliasson (L), Mikael Strandsman (SD), Jonas Eriksson (M), Erik Ottoson (M), Erik Ottoson (M), Erik Ezelius (S), Jessica Wetterling (W) and Fredrik Schulte (M).

Presentation of the subject

The matter and its preparation

On 3 April 2019, the Commission issued a communication on the further strengthening of the rule of law in the Union: the state of play and the way ahead (COM (2019) 163). The Swedish-language version was received on 15 April 2019.

On 30 April 2019, after consultation with the group leaders, the President decided that the document should be referred to the Committee on the Constitution for scrutiny in accordance with Chapter 9 Section 20 of the Riksdag Act. The Chamber referred the document to the Committee on 2 May 2019.

The Government submitted an explanatory memorandum (2018/19: fpm46) to Parliament on 8 May 2019.

Applicable legislation

Treaty on European Union (TEU)

Article 3(1) and (13.1) TEU require the EU and its Member States to respect the values of the Union. Among these values, listed in Article 2 TEU, are the rule of law:

The 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. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

It follows from Article 4(2) that the Union shall respect the equality of Member States before the Treaties as well as their national identities, expressed in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.

Two EU Treaty articles, Article 7 and 49, refer directly to Article 2. In accordance with Article 7, the Council may, inter alia, decide to suspend certain of the rights of a Member State, including the voting rights in the Council (see below).

Article 49 states, inter alia, that any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union.

Effective judicial protection

Pursuant to Article 19(1) TEU, Member States shall establish the remedies necessary to ensure effective judicial protection in the fields covered by Union law. The Court of Justice of the European Union has stated that Article 19, which expresses the value of the rule of law under Article 2 of the Treaty, means that the task of securing judicial review in the Union legal order is not only the task of the Court of Justice but also the national courts.¹

Article 7 Procedure

Article 7 TEU consists of two different procedures. One often referred to as the ‘preventive procedure’ (Article 7(1)) and the second is referred to as the ‘penalties’ procedure (Article 7(2)).

In accordance with Article 7(1), following a decision of a four-fifths majority of the Council, it may be concluded that there is a clear risk that the Member State in question disregards one or more of the values referred to in Article 2. The Council may also make recommendations that are not legally binding.

In accordance with Article 7(2), it can be established, following the unanimous European Council decision, that a breach of Article 2 has already occurred and that the infringement is serious and persistent.

It follows from Article 7(3) that the Council, acting by qualified majority, may decide to suspend certain rights of the Member State concerned, including the voting rights in the Council. The sanction to be distributed is not predetermined.

Article 354 of the Treaty on the Functioning of the European Union (TFEU) stipulates that the Member State concerned shall not take part in the vote as regards both procedures provided for in Article 7.

Treaty on the Functioning of the European Union (TFEU)

The infringement proceedings

The Commission may, in accordance with Article 258 to 260 TFEU, initiate infringement proceedings in cases where a Member State has failed to fulfil an obligation under the Treaties. It may also relate to obligations arising from secondary legislation, i.e. directives, regulations or decisions.

Following a dialogue procedure, the Commission may issue a reasoned opinion. Where the Member State does not comply within a specified period, the Commission may refer the matter to the Court of Justice of the European Union.

The Court of Justice of the European Union may, in accordance with Article 260, establish that an infringement has occurred and may require the Member State to take the necessary measures to comply with the judgment of the Court of Justice. If, after that, the Commission considers that the Member State has not taken such measures, the Commission may bring a new action before the Court of Justice. This action may result in a fine being imposed by the court on the Member

¹ C-64/16, row 32.

State.

The Committee's examination

Commission communication

Summary

In the Communication, the Commission sets out the importance of the rule of law to ensure the protection of fundamental rights and the proper functioning of the internal market. Furthermore, the Commission sets out the various tools available to the EU institutions to protect the fundamental values of the Union, including the respect for the rule of law.

The Commission's Communication makes an assessment based on the experience acquired so far and points to key principles which could form the basis for future considerations.

In addition, the Commission identifies possible ways forward and sets out proposals for action and questions for further reflection under three pillars:

- promoting the rule of law
- preventing the rule of law
- the reaction to rule of law problems.

In its Communication, the Commission calls on the European Parliament, the Council and the Member States, as well as stakeholders, including legal networks and civil society, as well as the public at large, to reflect on the problems and issues raised in the Communication.

The Communication does not contain any proposed decisions.

Rule of Law

The Commission states that the rule of law is one of the values on which the European Union is built and a reflection of the constitutional traditions common to the Member States. The rule of law is the basis of the democratic system in all Member States and is necessary to ensure the protection of fundamental rights.

What is the rule of law?

In the Communication, the Commission describes the rule of law as follows.

The rule of law is defined as one of the values on which the European Union is based in Article 2 of the Treaty on European Union. Whereas, in a state governed by the rule of law, any public authority is always exercised within the limits laid down by law, in accordance with the values of democracy and fundamental rights and under the supervision of independent and impartial courts; The rule of law covers, among others, principles such as legality, which require a transparent, accountable, democratic and pluralistic process for laws, legal certainty, prohibition of arbitrary practice of the executive,

effective judicial protection of independent and impartial courts, judicial review² including of respect for fundamental rights, separation of powers and equality before the law.³ These principles have been recognised by the Court of Justice of the European Union and the European Court of Human Rights.⁴

according to the Commission, where the rule of law is not sufficiently protected in all Member States, the Union's solidarity and cohesion and the trust needed for the mutual recognition of national decisions and for the functioning of the internal market as a whole are undermined. Furthermore, there are also shortcomings in the rule of law, according to the Commission, having an impact on the economy in the same way as effective justice systems and a strong fight against corruption is essential for the proper functioning of the business environment and sound public finances.

The EU toolkit on the rule of law today

The Commission sets out in its Communication the various tools available to the EU institutions to protect, inter alia, the rule of law.

Article 7 TEU and Rule of Law Framework

The procedure for invoking a clear risk of a serious breach under Article 7(1) TEU has so far been initiated in two cases: in December 2017 for Poland, by the Commission, and in September 2018 by the European Parliament in the case of Hungary.

The Commission states in the Communication that even if the dialogue with the Member State concerned in the context of Article 7 TEU has a value in itself, progress in the Council in these two cases could have been greater. The Council has had to introduce new procedures to apply this article in practice which still needs to prove to be fully effective.

As regards the rule of law framework, it has been used at the occasion of the launch of a dialogue with Poland in January 2016. According to the Commission, the dialogue did contribute to identifying problems and bringing about an exchange of views, but did not resolve the shortcomings found in the rule of law, and the Commission initiated the procedure under Article 7(1) TEU in December 2017.

Infringement procedures and preliminary rulings

In its communication, the Commission states that it has initiated several infringement proceedings in response to serious questions of the rule of law. It

² Article 19 of the Treaty on European Union obliges Member States to ensure effective judicial protection. The CJEU has held that the very existence of effective judicial protection is at the heart of the rule of law, Case C-72/15 Rosneft.

³ communication from the Commission to the European Parliament and the Council, A new EU Framework to strengthen the Rule of Law, COM (2014) 158 final of 11 March 2014.

⁴ Annex to the Communication from the Commission to the European Parliament and the Council, A new EU Framework to strengthen the Rule of Law, COM (2014) 158 final of 11 March 2014, and recent case law of the Court of Justice of the European Union: case C-64/16, Associazione Sindical dos Juizes Portuguesa v Tribunal de Contas, Case C-216/18 PPU, LM and Case C-619/18, Commission v Poland (decision of 17 December 2018).

goes on to state that infringement proceedings have increasingly gained in importance by recent judgments of the Court of Justice of the European Union.

In the Communication, the Commission presents the following statement of the Court's practice of effective judicial protection, which is governed by Article 19(1) of the EU Treaty.

This provision serves as a basis for a number of requests for prior decisions by national courts and infringement procedures initiated by the Commission before the Court of Justice. As early as 2006, the Court of Justice ruled that the concept of 'judicial independence' is an autonomous concept in Union law and that this means that judges must be protected against any external interference which could jeopardise their independent judgement.⁵ This was followed in 2018 by a number of important judgments. First of all, the Court found that EU law obliges Member States to ensure that their courts comply with the requirements of effective judicial protection, as a concrete expression of the rule of law and that the independence of national courts is essential to ensure such protection.⁶ In other judgments, the Court of Justice has specifically defined the requirements of guarantees of independence and impartiality, bearing in mind their crucial importance both for the proper functioning of the system of judicial cooperation expressed in the preliminary ruling procedure under Article 267 TEU and for secondary instruments based on the principle of mutual trust.⁷ The Court also issued interim measures to suspend national reforms that would affect the independence of the judiciary.⁸ Additional cases brought by national courts and the Commission are pending before the Court of Justice.

The case law of the Court of Justice is also evolving, according to the Commission, as to how systemic problems related to the rule of law may have a particular impact on the Union's finances.⁹

Other mechanisms and frameworks

The Communication sets out a number of other mechanisms and frameworks which, according to the Commission, play an important role as an early warning system and act as a prevention mechanism for the rule of law:

- the European semester
- annual EU Justice Scoreboard
- the cooperation and verification mechanism
- the Commission's Structural Reform Support Service
- the European Structural and Investment Funds and the Funds supporting policies in the fields of justice and security
- the Commission's proposal for a new mechanism for the protection of the Union budget where general deficiencies affecting the principles of the rule of law in the Member States have an impact on, or are liable to affect, this budget;

⁵ case C-506/04 Wilson.

⁶ case C-64/16, Associação Sindical dos Juizes Portugueses. Case C-49/18, Escribano Vindel.

Regarding⁷ the composition of a judicial body and the appointment of its members, their periods of office, the reasons for the abstention of the members and for not appointing or removing them, and the disciplinary regime for judges, Case C-216/18 PPU, Ireland v LM and Case C-8/19 PPU, RH.

⁸ case C-619/18 R Commission v Poland, decision of 17 December 2018.

⁹ this includes preliminary rulings on the need for an efficient investigation into tax fraud or fraud of Union funds (see, for example, Case C-617/10, Åkerberg Fransson, C- 105/14, Taricco, C- 42/17, M.A.S and C-612/15, Kolev).

- The European Anti-Fraud Office (OLAF)
- European Public Prosecutor's Office
- The EU accession process and neighbourhood policy.

Wider debate on the rule of law

The Commission reports on discussions in other institutions and bodies in the Union as well as in other fora.

The European Parliament adopted in October 2016 a resolution on an EU mechanism on democracy, the rule of law and fundamental rights.¹⁰The resolution called on the Commission to introduce an extensive monitoring of all Member States and EU institutions and an annual cycle of reporting and recommendations. The request was reiterated in 2018.¹¹In addition, Europe has adopted resolutions on the rule of law in several Member States.

The General Affairs Council has established an annual rule of law dialogue. A review of this process is foreseen during the Finnish Presidency in autumn 2019.

A number of national parliaments, including Belgium, France and the Netherlands, have contributed to the debate by adopting resolutions and holding debates on this issue.

The Council of Europe has, according to the Commission, played a crucial role in developing the rule of law definitions and standards. The rule of law is mentioned as part of the common heritage in the preamble of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Whereas the rulings of the European Court of Human Rights have made a significant contribution to the definition, promotion and strengthening of the legal principle of justice and have underlined the close link between the rule of law and democratic society; Whereas the Venice Commission of the Council of Europe published a Rule of Law Checklist 2016;¹²The Council of Europe has also applied this approach in specific cases involving Member States, drawing on the expertise of the Venice Commission and the Council of Europe Group of States against Corruption (GRECO) and specific monitoring.

European judicial networks, expert groups, lawyers' associations and civil society organisations have also, according to the Commission, contributed to the development of a common understanding at European and national level and play a key role in promoting common standards and best practices.

Assessment of experience to date

The Commission's Communication makes an assessment based on the experience acquired so far and points to key principles which could form the basis for future considerations.

¹⁰ European Parliament 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 (2015/2254 (INL)).

¹¹ European Parliament resolution of 14 November 2018 on the need for a comprehensive EU mechanism on the protection of democracy, the rule of law and fundamental rights (2018/2886 (RSP)).

¹² the Rule of Law Checklist, European Commission for Democracy through Law (Venice Commission), CDL-AD (2016) 007.

- There is a legitimate interest from both the EU and Member States to ensure that the legal status principle functions satisfactorily.
- The primary responsibility for ensuring the rule of law must lie with each Member State, and the first instance should always be national redress bodies.
- The role of the EU in this field must be objective and equal footing of all Member States, and must be based on the efforts of all the Union institutions in accordance with their respective roles.
- The aim should not be to impose sanctions without finding a solution that protects the rule of law, with cooperation and mutual assistance at its core.

The need to promote rule of law standards

According to the Commission, experience has shown that national jurisprudence and its principles and standards are not always sufficiently known at national level. If standards are not sufficiently known, they can, according to the Commission's assessment, play no significant role as a basis for national policies or can make a sufficient contribution to the debate on national reforms, and can be called into question in the dialogue with the EU institutions.

To recognise warning signals

There are many benefits, according to the Commission, of identifying the alert signals at an early stage. The Commission gives the following examples of such signals:

- when selected majorities act in violation of applicable laws and procedures:
- repeated public attacks by one power authority on another undermine the fundamental principle of separation of powers.
- high level corruption and abuse of office are linked to situations where political power seeks to set aside the rule of law
- structural weaknesses in the judicial system and general weaknesses in the public administration resulting in increased risk of the rule of law
- attempts to weaken or exert pressure on civil society and independent media.

In-depth Member State-specific knowledge

According to the Commission, country-specific knowledge of the Commission and other institutions is necessary to identify warning signals.

The European Semester, complemented by the EU Justice Scoreboard, has proven to be a good framework for developing country specific knowledge on the rule of law and it should be considered to what extent its potential could be further exploited.

Improving the EU's ability to respond to the rule of law

The experience of recent years and the wider debate on the matter has, according to the Commission, clearly demonstrated the need to improve the EU's ability to act in the event of a serious threat to the rule of law. For example, experience with

ongoing procedures under Article 7 TEU has shown that further reflection is needed on how best to implement this procedure effectively.

The diversity of threats to the rule of law also requires a diversity of action at EU level. EU action should therefore take various forms. Even an informal signal at an early stage on potential problems could, according to the Commission, enable national authorities to rethink, or trigger national mechanisms for checks and balances.

In the Commission's view, it is important to engage in dialogue, but to carry it through a structured process, it increases the likelihood that the resulting action will have the focus and focus required. Many of the rule of law problems are time sensitive and the longer the time they take to resolve, the greater the risk of locked positions and damage to both the EU and the Member State concerned. There are benefits of intermediate steps that are proportionate to the seriousness of the problem and which have a lower threshold for use than measures under Article 7 TEU. Where such steps have been taken, revisions or ex-post controls may also be useful: experience shows that the application of ex-ante conditionalities to EU funds has served as an important incentive, but once the green light has been given, there is a risk that the policy measures and structures return to old wheel tracks.

EU action also has more weight, according to the Commission, if all institutions take responsibility in the process according to their different roles. EU intervention in a crisis is politically sensitive and will always have a greater impact if supported by a common approach. The support of the European Parliament and the Council for actions by the Commission and more robust internal procedures within the institutions to address the rule of law in the Member States can be a powerful means of underlining the need for a Member State to react and to increase incentives to find solutions.

Structural reforms to address long-term deficiencies

According to the Commission, EU funds have contributed significantly to building the capacity of public institutions to support the rule of law. In the 2014-2020 programming period, almost half of the Member States used the Structural Funds to support reforms to strengthen the judiciary and public administration, or to fight corruption. This can also show that in addition to expressing concerns, the EU also provides practical solutions. For example, in the context of the Structural Reform Support Programme, the Commission's Structural Reform Support Service (SRSP) can work with national institutions to assist with the rule of law reforms.

The use of EU funds and EU programmes to strengthen the rule of law will also have a greater impact if it is also supported by requests for structural reforms within the European Semester.

More generally, Union policies in areas such as public procurement, better legislation and cooperation in the field of criminal justice and civil law can contribute to ensuring the uniform application of European standards on the rule of law.

Possible ways forward

In its Communication, the Commission identifies possible ways forward and sets out proposals for action and issues for further reflection under three pillars.

Promotion: building knowledge and a common legal culture

According to the Commission, a robust political and legal culture supporting the rule of law in each Member State is the best rule of law. Raising public awareness of the importance of the rule of law in a democracy can also be valuable.

In order for such a political and judicial culture to be deepened and maintained in all Member States, it is important, according to the Commission, to promote knowledge of the rule of law case law and standards, such that evaluations and opinions from bodies such as the Venice Commission and GRECO are discussed at national level. Respect for the rule of law is not only dependent on laws and institutional structures, but also on institutional practices.

According to the Commission, the EU offers a unique platform to develop and promote awareness of the rule of law. as suggested by the European Parliament, this would, in addition to the EU institutions, also be able to involve national parliaments and other key stakeholders at national level. Civil society is particularly important, also at regional and local level. The Commission has already proposed to increase funding and support for the promotion of civil society, media pluralism and networking of relevant stakeholders in the field of the rule of law, and to support Union-wide organisations, bodies and entities pursuing an overall European interest in the field of justice and the rule of law.

The EU could also explore how best to promote the Council of Europe's work on common rule of law standards. The promotion of rule of law standards could also be developed towards peer review, as proposed in particular by some Member States.

Possible issues for further reflection:

- How can the EU better promote existing EU legal requirements and European standards for the rule of law, in particular at national level?
- How can the EU best encourage key networks and civil society, as well as the private sector, to discuss the rule of law, including its economic aspects, at grassroots level and promote the standards underpinning the rule of law?
- Can Member States do more to promote discussions on the rule of law at national level, for example through debates in national parliaments, professional forums and public awareness campaigns?
- How should the EU and its Member States step up cooperation with the Council of Europe and other international organisations that promote the rule of law, including by supporting the work of the Council of Europe and with regard to evaluations and recommendations of the Council of Europe?
- How can the EU build on the work of the Council of Europe, leading to common EU policies? Can peer reviews between Member States contribute to this process?
- How can existing measures taken by the European Parliament and the Council be improved and further developed? Can political groups and national

parliaments be more involved?

Prevention: cooperation and support to strengthen the rule of law at national level

The primary responsibility for ensuring respect for the rule of law at national level lies with the Member States. However, the Union can provide important support to Member States to build a long-term strategy that helps to ensure that national controls and balances are adequate.

A deeper understanding of the developments in the Member States would make it easier, according to the Commission, to focus support and identify the rule of law at an early stage. Such information gathering, which would need to cover all Member States, could provide a general framework for continuous cooperation and dialogue with Member States and keep the European Parliament and the Council informed. The discussion on such an initiative should, according to the Commission, include whether the use of existing tools, including the European Semester and the EU Justice Scoreboard, could be further developed to better address the rule of law issues.

Another complementary approach would be to deepen cooperation and practical support to maximise a constructive Union contribution to solving problems at an early stage and to contribute to the creation of sustainable solutions in ongoing reform processes. This could be done at the request of Member States and include appropriate action plans. The European Parliament and the Council could be involved in the design and promotion of such initiatives. This could also involve paying particular attention to the implementation of EU legislation with a rule of law. Technical assistance to Member States could also be provided under the Structural Reform Support Programme (SRSP).

Possible issues for further reflection:

- How can the EU increase its capacity to build a deeper and comparative knowledge base on the rule of law in the Member States, in order to make the dialogue more productive and to allow for the recognition of potential problems at an early stage? How can existing tools be further developed to assess the rule of law?
- How can the exchange between the Commission and the Member States in the rule of law be most effectively organised?
- How can EU expertise and support be channelled to the Member States most effectively?
- Could preventive measures be given more weight through a more inter-institutional approach?

Reaction: action at Union level in cases of national mechanisms

The rule of law with implications for the application of EU law is increasingly being examined by the European Court of Justice through infringement procedures and ex ante conditionalities, which states that the Commission will build on the recent case-law of the Court of Justice, for instance as regards the independence of national courts and the effective protection of the Union's financial interests.

Furthermore, the Commission will continue to ensure, where necessary, the correct application and enforcement of Union law through infringement procedures relating to the rule of law.

In 2014, the Commission set up a Rule of Law Framework to respond when there are clear indications of systemic threats to the rule of law in a Member State that could result in a clear risk of a serious breach of the rule of law leading to the triggering of Article 7 TEU. The framework has been applied so far in one case and served as a step forward. It contributed, according to the Commission, to dialogue, detailed data gathering, analysis and recommendations and provided a knowledge base that proved useful for further action by the Union. However, some adjustments may be made. For example, early information and support from the Council and the European Parliament could be intensified in the process. Another option could be to support the dialogue and recommendations with specific action plans and technical assistance to address the situation within a given time frame, or to set a clearer line on the length of the dialogue.

such changes should maintain the objective of finding solutions in crisis situations and identify appropriate corrective measures. This requires effective dialogue and transparent communication channels. However, it could also be considered whether it should have more consequences for a Member State to refuse to rectify the situation. This may also be the consequence of an increased emphasis on the real impact on the functioning of the Union of persistent deficiencies in the rule of law in the Member States, which has already been highlighted in the proposal to protect:

The EU's financial interests in case of generalised deficiencies as regards the rule of law.

Possible issues for further reflection:

- How can the relevant case-law of the Court be disseminated effectively, and how can it be fully exploited?
- How can the Commission, the European Parliament and the Council coordinate more effectively and ensure that appropriate action is taken within a reasonable period of time in the event of a Rule of Law crisis in a Member State?
- In what ways could the Rule of Law Framework be further strengthened? Should this include more cooperation with other institutions and international partners (such as the Venice Commission of the Council of Europe and the Organisation for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights)?
- Are there other areas, beyond the EU's financial interests, where the EU should develop specific mechanisms (including conditions related to the rule of law) in order to avoid or counteract specific risks related to the implementation of EU legislation or policies?

Conclusion

The Commission invites the European Parliament, the European Council, the

Council and the Member States, as well as stakeholders, including legal networks and civil society, and the public at large to reflect on the issues and issues raised in this Communication. The issues raised indicate a number of areas where improvements could be envisaged.

Such reflection, according to the Commission, would itself contribute to the standing rule of the rule of law by promoting debate and ensuring a continued focus on the issue. The Commission considers that strengthening the rule of law could make a significant contribution to the future of the Union. It would allow for greater clarity and consistency, help to ensure equal treatment of all Member States and safeguard the common interest of all through the effective application of EU law in all Member States.

The Commission will return to this issue in June 2019 with its own conclusions and proposals. These will build on the ongoing discussion among the institutions and society at large, as well as the case law of the European Court of Justice, and will aim to establish a strategy for strengthening the rule of law in the Union, within the framework of the existing Treaties.

The Government's explanatory memorandum

In an explanatory memorandum, the Government points out that the Government is concerned about developments in the field of rule of law in several Member States.

In the light of this, the Government welcomes the Commission's communication and the debate initiated to strengthen the rule of law within the EU. The Government is in favour of further developing the rule of law. It is, according to the Government, important to make use of the tools available, but it is equally central to evaluate and improve them in order to increase efficiency. It is important that any new tools bring real added value. The Government welcomes the fact that the Commission has put forward a proposal to make EU spending conditional on compliance with the rule of law. In addition, the government highlights another example of a future tool that could provide such added value: a mechanism that includes all Member States in a rule of law scrutiny; The Government also states that, whatever the development of the rule of law, it will continue to be clear that the EU's fundamental values are non-negotiable and that all Member States must live up to their commitments under both the EU, Council of Europe and the UN framework.

Previous discussions

The Committee examined the rule of law in the report entitled "Freedoms and rights" in spring 2016 (bet.2015/16: KU15). In its position, the Committee stressed, inter alia, that human rights and the democratic participation of people are cornerstones that should feed into the work of both the European Union and the world. It was therefore considered positive that a framework was set up in the EU to strengthen the rule of law. The Committee also welcomed the fact that the General Affairs Council should hold an annual dialogue on rule of law issues. However, the rejection was supported by the Committee on the grounds that the dialogue would be evaluated at the end of 2016.

In spring 2017, the Committee delivered opinions on letter 2016/17: 115 The activity of the European Union in 2016 (bet).2016/17: KU5y). In its position, the Committee stated the following. The Committee on the Constitution values the European Commission to continue its work to promote and defend the rule of law. Respect for human rights and the rule of law are the foundations of democracy. The EU is committed to guaranteeing the rights enshrined in the Charter of Fundamental Rights and to safeguard compliance with the Charter in the Member States. Human rights and democratic participation of people are cornerstones that should be safeguarded and enforced throughout the EU and globally. The Committee considered that the Committee on Foreign Affairs considered that the Committee on Foreign Affairs should support a motion on the rule of law.

In its opinions on the 2018 Commission Work Programme (bet), the Committee repeatedly reiterated its opinions on the Commission's Work Programme.2017/18: KU3y) and the Commission Work Programme 2019 (report).2018/19: KU2y respectively) and the letter on the activities of the European Union in 2018 (report).2018/19: KU3y).

The Committee's position

The Committee on the Constitution appreciates that the Commission is continuing

its efforts to promote and defend the rule of law. Respect for human rights and the rule of law are the foundations of democracy.

The Committee shares the Government's concerns about developments in the area of justice. The Committee therefore welcomes the fact that the Commission initiated a discussion on how to improve the tools available to the EU institutions in order to protect the fundamental values of the Union, including the respect for the rule of law. The Committee believes that it is of great importance that the tools available are used and that new ones can help to strengthen the application of the rule of law within the Union.

Whereas the EU's fundamental values are not negotiable, as the Government also points out; The Committee believes that the broader discussion on further strengthening the rule of law initiated by the Commission is urgent and will follow the way forward.

B INCORPORATION

List of documents examined

Commission communication on strengthening the rule of law in the Union: the state of play and the way ahead (COM (2019) 163).