

Further strengthening the Rule of Law within the Union

Input into the Commission reflection process

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The rule of law is a foundational value of the EU, in a triangular relationship with democracy and fundamental rights. The Member States and the EU institutions share these values and are jointly responsible for safeguarding them. The Commission, as guardian of the Treaties, has a special responsibility in this regard. I therefore welcome the Communication by the Commission of 3 April 2019, calling for a reflection on the further strengthening of the rule of law within the Union. With this document, I would like to provide input into this reflection process. However, let me underline that the Parliament has already given its input in the form of the broadly supported EU pact for monitoring the situation of democracy, the rule of law and fundamental rights, the DRF Pact. As I indicated in the LIBE meeting on 11 April 2019, it is disappointing that the Commission has so far refused to engage in setting up this DRF Pact.

Over the past years, we witnessed increasing challenges to the adherence to EU values. The Article 7 TEU procedure has been activated in relation to Poland and Hungary. The Parliament has adopted several resolutions regarding the rule of law, such as in relation to Romania. Moreover, I had the honour to chair the Rule of Law Monitoring Group (ROLMG) within the Parliament. The ROLMG focused on corruption and rule of law challenges in Malta and Slovakia, in follow up to the murders of investigative journalists.

While these various initiatives have proven to be useful, they have also proven to be too responsive and fragmented in nature. What is urgently needed, therefore, is a comprehensive and independent mechanism for monitoring the state of democracy, the rule of law and fundamental rights across the EU. Addressing rule of law deficiencies by linking those to the protection of the Union budget is welcomed and supported by Parliament. However, it cannot substitute a comprehensive and independent monitoring mechanism.

In 2016, I was the Parliament's Rapporteur for the resolution with recommendations on the EU mechanism on democracy, the rule of law and fundamental rights. The Parliament supported setting up the DRF Pact with a broad majority. The DRF Pact starts from the assumption that there is no hierarchy of EU values and that the rule of law is inextricably linked with democracy and fundamental rights. In 2018, the Parliament again voted to support this DRF Pact and called on the Commission to act. It is disappointing to see that the Commission has so far rejected Parliament's initiative. This is even more so the case as the DRF Pact would be able to address a number of the key shortcomings identified in the Commission Communication of 3 April 2019.

Attached to this document, please find for your information once more the DRF Pact as adopted by the Parliament. It contains detailed recommendations. In addition, I will outline here its main distinct features.

First, the DRF Pact provides for an *annual DRF Report covering all Member States* with country-specific recommendations. Whereas the current initiatives and mechanisms are often responsive and fragmented, such an annual across-the-board monitoring will allow for even-handed and preventive monitoring. This would pre-empt criticism that the EU institutions are singling out particular Member States for party political or geographical reasons. It would therefore increase the legitimacy of EU action in this domain.

Second, the DRF Report *would incorporate and synthesise existing reports and instruments*, such as the Justice Scoreboard. It would use a wide variety of existing sources, including from the Council of Europe. The DRF Report would thus not result in a duplication of work. Over the past years, we have seen that while there are many reports and instruments available, their impact on EU decision-making is limited. By synthesising them and drawing up country-specific recommendations, their political impact will be enhanced, thereby providing impetus to EU institutions and Member States to act upon these recommendations.

Third, the DRF Pact foresees the setting up of *a politically independent DRF Expert Panel* that shall carry out the assessment of the state of democracy, rule of law and fundamental rights and formulate the draft country-specific recommendations. The Expert Panel shall be composed of qualified experts from academia, international organisations and judicial bodies. In particular, the national parliaments of the Member States shall designate qualified constitutional or supreme court judges not actively in service and the European Parliament shall appoint further experts nominated by respected European and international organisations. The independent expert nature of the panel would ensure the high quality and legitimacy of the mechanism and the DRF Report itself.

Fourth, the DRF Pact foresees an *interparliamentary debate and a debate in the Council* based on the DRF Report. Whereas the process of monitoring adherence to democracy, rule of law and fundamental rights should be free from party political considerations, as guaranteed by the Expert Panel, the matter of safeguarding EU values is an inherently political one. This mechanism should not constitute a bureaucratic exercise but should be embedded in an EU-wide democratic exchange on our common values

For these reasons, the DRF Pact still provides the most comprehensive proposal for an EU mechanism to monitor democracy, rule of law and fundamental rights. The Parliament has repeatedly reiterated this position and called on the Commission to act upon the recommendations of the DRF Pact. The current Commission reflection process on the further strengthening of the Rule of Law within the Union provides a key opportunity for the Commission to act urgently. In doing so, the Commission will find the Parliament on its side. The EU values cannot defend themselves, it takes our common action to defend them.