



An EU mechanism on democracy, the rule of law and fundamental rights

Interim European Added Value
Assessment accompanying the
Legislative initiative Report
(Rapporteur Sophie in 't Veld)

IN-DEPTH ANALYSIS

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Abstract

European Parliament legislative initiative reports drawn up on the basis of article 225 of the Treaty on the Functioning of the European Union are automatically accompanied by a European Added Value Assessment (EAVA). Such assessments are aimed at evaluating the potential impacts, and identifying the advantages, of proposals made in legislative initiative reports.

This EAVA accompanies a legislative initiative report prepared by Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) (rapporteur: Sophie in't Veld (ALDE, Netherlands) presenting recommendations to the Commission on an EU mechanism on democracy, the rule of law and fundamental rights. The main conclusion of the EAVA is that there is a gap between the proclamation of the rights and values listed in article 2 TEU and actual compliance by EU institutions and Member States, resulting in significant economic, social and political costs. The root causes for this lack of compliance are to be found in certain weaknesses in the existing EU legal and policy framework on democracy, the rule of law and fundamental rights. These weaknesses could be overcome by an inter-institutional pact further clarifying the scope for EU action and the division of labour between and among the EU institutions, agencies and Member States in the areas of monitoring and enforcement. This could be done at relatively low cost, particularly if the right synergies are found with international organisations.

This is an interim assessment, which was finalised before the publication of the draft report. It does however take into account the thematic working documents drafted by the Rapporteur, Sophie in 't Veld and her shadow rapporteurs and the rapporteur for opinion. Our assessment will be updated on the basis of the outcome of the vote in the LIBE Committee.

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Introduction

European Parliament legislative initiative reports drawn up on the basis of article 225 of the Treaty on the Functioning of the European Union are automatically accompanied by a European Added Value Assessment (EAVA).¹ EAVAs are aimed at evaluating the potential impacts, and identifying the advantages, of proposals made in legislative initiative reports.

This EAVA accompanies a legislative initiative report prepared by Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE), Rapporteur Sophie in't Veld (ALDE, Netherlands), on an EU mechanism on democracy, the rule of law and fundamental rights.² The report aims to present recommendations to the Commission on the establishment of such a mechanism 'as a tool for compliance with and enforcement of the Charter and Treaties as signed by all Member States, relying on common and objective indicators', as called for in Parliament's resolution of 10 June 2015 on the situation in Hungary³.

This interim EAVA builds on two in-depth research papers by expert consortia specialised in the rule of law and fundamental rights and impact assessment analysis.⁴ It is structured as follows:

- an identification of the shortcomings and gaps in the existing EU legal and policy framework on democracy, the rule of law and fundamental rights;
- an identification and assessment of legislative and non-legislative policy options to address these shortcomings and gaps; and
- a cost-benefit analysis of the policy options identified.

Given the scope and complexity of the topic a wide spectrum of policy options is possible. However, part two of this interim EAVA analyses the specific policy option called for in Parliament's resolution of 10 June 2015.⁵ This policy option suggests the

¹ Prepared by the European Added Value Unit of the Directorate for Impact Assessment and European Added Value, within the European Parliament's Directorate-General for Parliamentary Research Services.

² 2015/2254(INL)

³ [P8_TA-PROV\(2015\)0227](#), paragraph 12. This builds on several past EP resolutions including the [resolution of 27 February 2014 on the situation of fundamental rights in the European Union](#) (2012), [P7_TA\(2014\)0173](#); [resolution of 3 July 2013 on the situation of fundamental rights: standards and practices in Hungary](#) (pursuant to the resolution of 16 February 2012), [P7_TA\(2013\)0315](#). Parliament has also more recently expressed its views on the matter in its [Resolution of 8 September 2015 on the situation of fundamental rights in the European Union \(2013-2014\)](#), [P8_TA-PROV\(2015\)0286](#); and a [follow-up resolution on the situation in Hungary](#) adopted on 16 December 2015, [P8_TA-PROV\(2015\)0461](#).

⁴ The two research papers specifically commissioned for the purpose of this EAVA are: 'The establishment of an EU mechanism on democracy the rule of law and fundamental rights' by Laurent Pech, Erik Wennerström, Vanessa Leigh, Agnieszka Markowska, Linda De Keyser, Ana Gómez Rojo and Hana Spanikova, and 'Assessing the need and possibilities for the establishment of an EU scoreboard on democracy, the rule of law and fundamental rights' by Petra Bárd, Sergio Carrera, Elspeth Guild and Dimitry Kochenov, with a thematic contribution by Wim Marneffe.

⁵ [P8_TA-PROV\(2015\)0227](#), paragraph 12.

establishment of an EU mechanism (or 'pact' as the Rapporteur suggests to name it) aimed at strengthening the enforcement of democracy, the rule of law and fundamental rights, and has two core elements:

- an annual monitoring of democracy, the rule of law and fundamental rights based on an EU scoreboard; and
- an EU policy cycle for democracy, the rule of law and fundamental rights, involving EU institutions and national parliaments.

The chosen scope of the analysis is based on the suggestions made in thematic working documents by the rapporteur, the shadow rapporteurs and the rapporteur for opinion.

Part three of this interim EAVA then considers the social, economic and political costs and benefits of this policy option compared to the current situation.

1. Shortcomings and gaps in the existing EU legal and policy framework on democracy, the rule of law and fundamental rights

In accordance with Article 2 of the Treaty on European Union (TEU), the Union and its Member States subscribe to democracy, the rule of law and fundamental rights.⁶ However, there is a gap between the proclamation of these rights and values and actual compliance with them by the EU and its Member States.⁷ The root causes for this lack of compliance are to be found in weaknesses in the existing EU legal and policy framework on democracy, the rule of law and fundamental rights. Those weaknesses relate firstly, to ongoing discussions on the scope of EU competence to enforce the rights and values listed in article 2 TEU, including a discussion on their exact meaning; secondly, to the (consequent) division of monitoring responsibilities between the EU and its Member States as well as between EU bodies, and thirdly, the lack of effectiveness of existing enforcement mechanisms.

The analysis of the three main weaknesses of the current EU framework on rule of law and fundamental rights requires first an assessment of the compliance problems in the context of international law. The current problems related to the rule of law and fundamental rights in the EU Member States are not limited to the monitoring and supervision by the EU of Member States which depart from being a democracy based on the rule of law and fundamental rights.⁸ Member States' compliance with United Nations and Council of Europe instruments,⁹ and the implementation of European Court of Human Rights judgments, leads to formidable challenges in EU Member States.¹⁰ This problematic situation has a direct effect on EU measures and cooperation as they are based on the presumption of compliance with these international obligations. An example is found in the area of detention where several Member States have been found to have systemic problems as regards prison conditions, notably overcrowding amounting to inhuman or degrading treatment,¹¹ putting at risk the principles of mutual trust and mutual recognition of judicial decisions in criminal matters. Parliament has called for measures to improve standards of detention,

⁶ Article 2 TEU: '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.'

⁷ For more details, see the EPRS briefing 'Member States and the rule of law, dealing with a breach of EU values'

⁸ Other terms used for this process and further explained in the research papers by Pech et al (2016) and Bárd et al (2016) are 'rule of law backsliding', 'constitutional capture' and the building of an 'illiberal democracy'. On this, see also the working document by Frank Engel (EPP shadow rapporteur, Luxembourg) on a European Pattern of Governance.

⁹ For details see Bárd et al (2016), section 1.3, Annex 1 and Annex 3.

¹⁰ Further discussed in the working document by Laura Ferrara (EFDD shadow rapporteur, Italy) on litigation by citizens as a tool for private enforcement.

¹¹ In breach of Article 3 ECHR and 4 EU Charter; For figures see the Council of Europe Annual Penal Statistics, SPACE I, Prison populations, Survey 2014, PC-CP((2015)(7)

including legislative proposals on the conditions of pre-trial detention.¹² So far the Commission has not responded to this call. The issue has become even more pertinent now that it has become clear that poor detention conditions are also undermining the fight against terrorism.¹³

The issues related to compliance concern not only the Member States but equally EU institutions. The EU can only claim full democratic legitimacy to enforce and promote the rights and values listed in article 2 TEU in internal and external policies¹⁴ if it observes those standards itself. The EU, however, still lacks a comprehensive legislative policy cycle in which the effects of envisaged EU legislation on fundamental rights are forecast and evaluated.¹⁵ The accession of the EU to the European Convention on Human Rights (ECHR), as required by Art. 6.2 of the TEU, is currently on hold. It is argued that accession to the ECHR would enhance compliance of the EU institutions with fundamental rights because it would place their actions under the external scrutiny of the European Court of Human Rights. However, the proposed draft agreement on the accession was found to be incompatible with EU law by the Court of Justice which raised concerns related to respect for the autonomy of EU law and the principle of mutual recognition on which intra EU cooperation is based.¹⁶

The current EU legal and policy framework, which supplements the international law framework, has three main weaknesses: (1) the scope of EU competences; (2) division of responsibilities between EU and MS and (3) enforcement.

(1) The scope of EU competences

According to Articles 2, 3 (1) and 7 TEU the EU has a mandate to intervene to protect its 'constitutional core', i.e. the values it shares with the Member States.¹⁷ This obligation also extends to matters where Member States act outside the scope of the

¹² See [EP resolution of 27 February 2014 with recommendations to the Commission on the review of the European Arrest Warrant \(2013/2109\(INL\)\)](#); [Revising the European arrest warrant, DG EPRS European Added Value Assessment accompanying the European Parliament's Legislative Own-Initiative Report](#) (Rapporteur: Baroness Ludford, ALDE, United Kingdom)

¹³ [EP resolution of 25 November 2015 on the prevention of radicalisation and recruitment of European citizens by terrorist organisations P8_TA-PROV\(2015\)0410](#), paragraph 10: 'encourages Member States to take immediate action against prison overcrowding, which is an acute problem in many Member States which significantly increases the risk of radicalisation and reduces the opportunities for rehabilitation'

¹⁴ Article 3(1) and 3(5) TEU; Council of the European Union, [EU Strategic Framework and Action Plan on Human Rights and Democracy](#), 25 February 2012; Pech et al (2016) section 2.2.

¹⁵ Further discussed in the working document by Timothy Kirkhope (ECR shadow rapporteur, United Kingdom) on Democracy, Rule of law and Fundamental rights in impact assessment or screening procedures; see also Pech et al (2016), section 2.1.3 under 'fundamental rights proofing of EU legislative proposals'.

¹⁶ Court of Justice of the European Union, [Opinion 2/13 of 18 December 2014](#), not yet published. Opinion pursuant to Article 218(11) TFEU - draft international agreement - Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms - Compatibility of the draft agreement with the EU and FEU Treaties.

¹⁷ Bárd et al (2016), section 3.2

implementation of EU law.¹⁸ Member States rely on each other's compliance with EU law, rights and values in multiple areas (economic policies, asylum, migration, policing, justice etc.). Therefore, depreciation of EU values in one Member State will have EU-wide effects in many ways, notably undermining the basis for mutual recognition of decisions taken in that Member State.¹⁹ In light of the obligation to uphold and promote the values of the Union, as well as the duty of loyalty stemming from the Treaties, each Member State is required to actively engage in the attempts of the Union to restore adherence to the values in any part of the Union's territory.²⁰ Thus, according to the Treaties, both EU and MS have competences and obligations in the area of fundamental rights and rule of law. However, it is important to understand that there is no single ideal formula to achieve compliance with fundamental rights, democracy and the rule of law²¹ and Member States have found different ways to respect these rights and values.

(2) Allocation of responsibilities between EU and MS for compliance with fundamental rights and rule of law

The EU and its institutions have various monitoring and evaluation processes in place related to democracy, the rule of law and fundamental rights. The range is broad, ranging from accession negotiations guided by the 'Copenhagen criteria' based on article 2 and 49 (1) TEU, the Cooperation and Verification Mechanism applicable to Bulgaria and Romania²², the 'European Semester' aimed at coordinating the economic policies of the Member States²³, the EU Justice Scoreboard²⁴, and the EU Anti-Corruption Report²⁵, to peer evaluation of the implementation of Union policies related to the establishment of the Area of Freedom, Security and Justice based on article 70 TFEU. However, these processes do not seem to be coordinated. Each of the main EU institutions has sought to establish its own mechanism to safeguard Article 2 TEU values at Member State level. Furthermore, there is no institutional effort enabling an overall assessment of compliance with the rights and values of article 2 TEU.²⁶ The European Union Agency for Fundamental Rights (FRA) provides the EU institutions, bodies, offices and agencies and its Member States with assistance and expertise relating to fundamental rights. Its mandate is, however, limited to Member State actions when implementing EU law and currently does not allow for systematic

¹⁸ This is because article 2 TEU does not contain a similar limitation in the scope of its application to the one found in article 51 of the Charter of Fundamental Rights of the European Union (O.J. C 326, 26.10.2012).

¹⁹ Bárd et al (2016), section 4.2

²⁰ Bárd et al (2016), section 4.2

²¹ Bárd et al (2016), section 2.1.

²² European Commission, Mechanism for cooperation and verification for Bulgaria and Romania

²³ European Commission, Making it happen, the European Semester

²⁴ European Commission, EU Justice Scoreboard

²⁵ European Commission, Anti-Corruption Report; EPRS Organised Crime and Corruption: Cost of Non-Europe Report, PE 558.779, 2016.

²⁶ Further discussed in the working document by Monika Flašíková Beňová (S&D shadow rapporteur, Slovakia) on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights - Scoreboard on Democracy, Rule of Law and Fundamental rights.

monitoring of democracy, the rule of law and fundamental rights in the Member States.²⁷

(3) Enforcement

The problems do not limit themselves to allocation of responsibility for and coordination of monitoring and evaluation exercises. They also relate to a lack of supervision and enforcement, particularly when there are serious problems with democracy, the rule of law and fundamental rights in a certain Member State. Article 7 TEU contains a procedure which is meant to address this situation. It allows relevant EU institutions to act in situations where there is 'a clear risk of a serious breach' of EU values by a Member State (article 7 (1)) or where there is a 'serious and persistent breach' of EU values laid down in article 2 TEU (article 7(2)). Ultimately, the Member State concerned can be sanctioned through the suspension of membership rights.²⁸ However, since its introduction in the Treaties it has never been used, due to reasons ranging from its institutional design, which bars individuals from bringing actions,²⁹ excludes substantive judicial review by the Court of Justice, and contains high thresholds for decision-making,³⁰ to the general lack of political willingness among Member States to use it.³¹ The fact that article 7 has never been used has also led to doubts regarding the ability of the EU to deal with deliberate politico-legal strategies which aim to undermine or result in serious threats or breaches of EU values.³² The lack of effective cooperation among EU institutions and between those institutions and Member States may be seen to violate the principle of sincere cooperation in accordance with articles 4 and 13 TEU.³³

Thus, the current enforcement framework is limited and proves to be ineffective in solving the existing challenges related to the rule of law in the EU. A coherent approach to the enforcement of the rights and values in article 2 TEU is required, taking into account the need to respect national identity, subsidiarity and proportionality.³⁴

²⁷ Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, O.J. L 53 of 22.2.2007.

²⁸ For further details see Pech et al (2016), section 2.1.

²⁹ ECJ Case T-337/03 of 2 April 2004, *Bertelli Gálvez v Commission*, ECR 2004 II-01041; This is notwithstanding the right to petition to the European Parliament in accordance with article 227 TFEU; see the EPRS briefing on 'The right to petition the European Parliament'; and the possibility to launch a European citizens initiative in accordance with Regulation 211/2011 (O.J. L 65, 11.3.2011, p. 1).

³⁰ The 'preventive mechanism' of article 7(1) requires a majority of four-fifths of the Council's members; the 'sanctioning mechanism' of article 7(2) requires unanimity in the European Council.

³¹ Further discussed in the working document by Barbara Spinelli (GUE/NGL shadow rapporteur, Italy) on using Article 2 and the Charter as a basis for infringement procedures.

³² Pech et al (2016), executive summary.

³³ Pech et al (2016), section 4.1.1.

³⁴ Article 4(2) TEU: 'The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent 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.'; article 5(1) TEU: 'The

The European Commission and the Council of the European Union have devised certain mechanisms to strengthen the rule of law in the EU. Before addressing in more detail in section 2 the possible policy options for the European Parliament, the following is an overview of the existing actions and their shortcomings.

1.1. Commission framework to strengthen the rule of law

In 2014 the Commission issued a Communication on 'A new EU framework to strengthen the Rule of Law'.³⁵ The Communication comprises an 'early warning tool' leading to a 'structured dialogue' with the Member State concerned aimed at addressing emerging threats to the rule of law before they escalate. The structured dialogue itself consists of three possible stages:

1. A 'rule of law opinion' sent by the Commission to the Member State concerned.
2. Potentially followed by a 'rule of law recommendation' with specific indications on how to resolve the situation within a prescribed deadline.
3. A phase in which the implementation of the recommendation is monitored, potentially followed by the activation of Article 7 TEU.

However, different questions remain open concerning this framework, both as regards its theoretical conception and its practical execution. Those questions reflect the more general lack of normative clarity, outstanding differences of opinion concerning the institutional division of labour, and the lack of effective enforcement. This begins with questions as regards the framework's relevance. Some doubts have been raised regarding the real need for such a 'preventive-preventive' process instead of making use of the procedure of Article 7(1). Even so, the process is also seen as having shifted the focus 'from an Article 7 TEU emergency-led context towards a discussion on shared European values and legal principles'.³⁶ The scholarly debate has critically assessed the Commission framework. The key problematic questions related to the Commission framework are: whether the process is comprehensive enough given its limitation to the rule of law and whether the Commission sufficiently clarified the criteria for triggering the structured dialogue, particularly the determination of a 'systemic threat to the rule of law'. There are also questions regarding the transparency and accountability of the structured dialogue, as well as its ultimate effectiveness in bringing the Member State concerned 'back on track'.³⁷ In the end, if the structured dialogue fails, the Article 7 route will still need to be taken.

limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.'

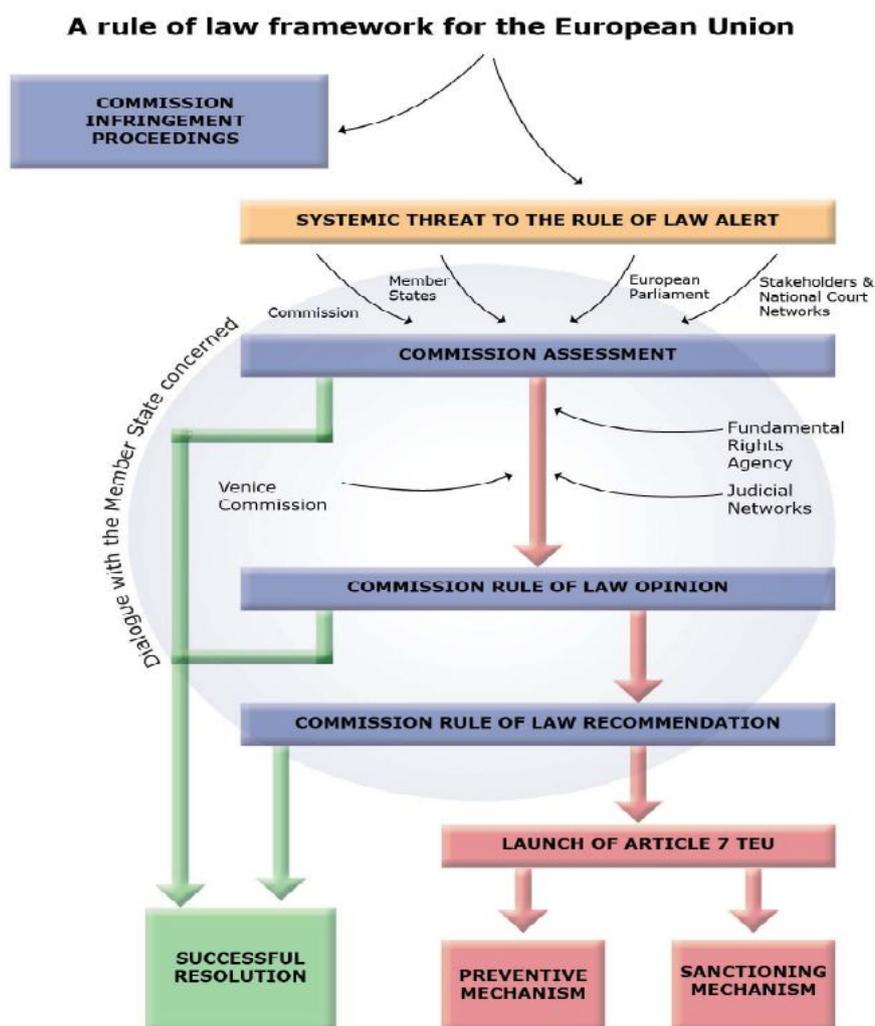
³⁵ For more details, see the EPRS Briefing '[Understanding the EU Rule of Law mechanisms](#)'

³⁶ Bárd et al (2016), executive summary.

³⁷ Bárd et al (2016), executive summary.

However, at this moment not all of these questions can be answered as the framework has only recently been activated for the first time with regard to two Polish laws affecting the powers and composition of the constitutional tribunal and the management of state TV and radio broadcasters.³⁸ The framework is depicted in Figure 1 below:

Figure 1: A rule of law framework for the European Union



Source: Annex 2, Commission Communication, *A new EU Framework to strengthen the Rule of Law* COM(2014) 158 final, 11.3.2014, at 4.

1.2. Council Rule of Law dialogue

In Conclusions adopted on 16 December 2014, the Council of the EU and the Member States meeting within the Council, committed themselves to establishing an annual

³⁸ Rule of law in Poland: Commission starts dialogue; Poland: MEPs debate rule of law issues with Prime Minister Szydło; the Venice Commission adopted its opinion on the amendments to the act of the constitutional tribunal on 11 March 2016.

dialogue among all Member States within the (General Affairs) Council to promote and safeguard the rule of law in the framework of the Treaties. The first dialogue took place under the Luxembourgish Presidency on the theme of Internet security. The dialogue left it largely to Member States to identify their own shortcomings and advance solutions through a confidential process of self-reflection.³⁹ The process should be evaluated by the end of 2016.⁴⁰ The European Parliament has welcomed the fact that the Council is holding debates on the rule of law. However, it considers that such debates are not the most effective way to resolve any non-compliance with the fundamental values of the European Union. It has also expressed regret with the fact that Parliament is neither formally informed of, nor involved in, the organisation of these debates.⁴¹

Neither the Commission nor the Council initiatives have convinced the Parliament of their ability to fully overcome the gaps and barriers in the existing EU legal and policy framework on democracy, the rule of law and fundamental rights. The potential impacts and advantages of its proposals will be discussed in the following sections.

2. Legislative and non-legislative policy options

The shortcomings and gaps identified in the existing EU legal and policy framework on democracy, the rule of law and fundamental rights can only be overcome through vertical and horizontal cooperation between the EU and its Member States, as well as EU institutions and agencies among each other. The analysis and suggested policy options below build on this core understanding of the institutional design and cooperation.

This interim assessment focuses on the establishment of an EU mechanism (or 'pact' as the Rapporteur suggests to name it) aimed at strengthening the enforcement of democracy, the rule of law and fundamental rights as called for in Parliament's resolution of 10 June 2015,⁴² and its following two core elements:

- An annual monitoring of democracy, the rule of law and fundamental rights based on an EU scoreboard
- An EU policy cycle for democracy, the rule of law and fundamental rights, involving EU institutions and national parliaments.

³⁹ Butler, I., for Liberties EU, 'The Rule of Law Dialogue: 5 Ideas for Future EU Presidencies', 23 December 2015.

⁴⁰ Conclusions of the Council of the EU and the Member States meeting within the Council on ensuring respect for the rule of law, Council doc 17014/14

⁴¹ P8_TA-PROV(2015)0286, paragraph 11.

⁴² P8_TA-PROV(2015)0227, paragraph 12.

2.1. Annual monitoring of democracy, the rule of law and fundamental rights based on an EU scoreboard

Parliament has called for a system to be put in place with an annual monitoring report on democracy, the rule of law and fundamental rights in the Member States based on an EU scoreboard.⁴³ However, this proposal still leaves a number of detailed questions for further consideration.

The first set of questions concern the scope for EU action and which legislative and/ or non- legislative measures would be required and available to set up an EU scoreboard and annual monitoring report on democracy, the rule of law and fundamental rights. As discussed in section 1, the EU has competences and obligations as provided for in the Treaties to take actions to protect its constitutional core. As regards the legal basis for the adoption of an EU annual monitoring system, several options have been suggested, including an interinstitutional agreement based on article 295 TFEU or Article 352 TFEU, which, for example, also constituted the legal basis for the regulation establishing the Fundamental Rights Agency.⁴⁴ Alternatively, or in parallel, Article 70 TFEU could also be used as this article would give a sound entry point at least in one area which is specific to EU law, namely mutual recognition of judicial decisions within the Area of Freedom, Security and Justice.⁴⁵ Article 352 requires consent of the European Parliament and unanimity in Council. The scope of the adopted measures can be broad, with the exclusion of common foreign and security policy measures. Article 70 requires a qualified majority in Council. Its restriction to the Area of Freedom, Security and Justice, however, means that not all aspects of democracy, the rule of law and fundamental rights could be covered.

A second set of questions relate to the appropriate methodology for such an EU scoreboard and annual monitoring report on democracy, the rule of law and fundamental rights within the European Union. One particular question would be whether a list of objective indicators reflecting the Copenhagen criteria and the values and rights laid down in Article 2 EU can be established to support the drafting of the annual monitoring report. Could data of sufficient quality and comparability be provided to support the monitoring of all Member States? Also, which role should be given to the Fundamental Rights Agency, the European Parliament, Council and other bodies in developing the EU scoreboard and annual monitoring report? Finally, which safeguards are necessary to ensure that the annual report's findings are objective, of sound scientific quality, transparent and accountable?

Adopting a limited interpretation of the concept of a 'Scoreboard', based solely on Member State performance measured by a set of indicators, risks oversimplifying the situation and could lead to a failure to capture future trends. Instead, one could also

⁴³ P8_TA-PROV(2015)0227, paragraph 12.

⁴⁴ Council of the European Union, Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, O.J. L 53 of 22.2.2007.

⁴⁵ Bárd et al (2016), section 4.12

envisage the 'Scoreboard' as a combination of dialogue, monitoring, benchmarking and evaluation exercises with various actors and methods.⁴⁶ The emphasis should be placed on a contextual, qualitative assessment of data and a country-specific list of key issues, in order to grasp interrelations between data and the causalities behind them.⁴⁷ This could require additional information gathering and visits to Member States.

As discussed in section 1, while a variety of monitoring mechanisms exist, at the moment there is no single reference point where one could find all the relevant data necessary to support the monitoring of democracy, the rule of law and fundamental rights in the Member States. An option could be for the Fundamental Rights Agency to fulfil this role by developing a European Fundamental Rights Information System (EFRIS) based on existing sources of information and evaluations of instruments already in place in this field.⁴⁸ Whether such a task could be fulfilled within the current mandate of the FRA and, even if it were expanded, whether all elements of democracy, the rule of law and fundamental rights could be captured, would need to be further explored.⁴⁹ Bárd et al have furthermore argued that bringing together data and analysing synergies, or even making comparisons, is an exercise that is close to impossible and more akin to 'alchemy'. Standards, sources, data, data-handling methods and the interpretations of each of the various sets of tools are so different in nature and fundamentals, that they require a very tedious methodological exercise in order to make international mechanisms comparable and conclusions and findings meaningful.⁵⁰ The FRA has been requested by the coordinators of the LIBE committee to deliver its own opinion on the matter.

The next question would be who would actually be responsible for drawing up the annual report based on the scoreboard process. An option could be for an independent Democracy, Rule of Law and Fundamental Rights expert panel to be put in charge of the review of the qualitative assessment of the situation in the Member States. This idea could be compatible with the development of an EFRIS. Its independence and scientific competences would have to be ensured through the appointment procedure, which should involve Council, Commission and Parliament. Alternatively, the FRA's Scientific Committee could fulfil this role. However, beyond the competence issues discussed above, some doubts have been raised regarding its degree of independence. Bárd et al would therefore prefer this role to be given to a body which is detached from the Member States, EU institutions and bodies.

⁴⁶ Bárd et al (2016), section 4.

⁴⁷ Bárd et al (2016), section 4.5

⁴⁸ *An EU internal strategic framework for fundamental rights: joining forces to achieve better results*, FRA, 2015, p. 17: 'The EU could also provide funds for the creation of a European fundamental rights information system that would form a hub, bringing together, in an accessible manner, existing information from the United Nations, the Council of Europe, the Organization for Security and Co-operation in Europe and the EU. Such a system would enhance transparency and objectivity and increase awareness about European and international standards, especially those of the Council of Europe in the EU context. It would also allow practitioners to make an informed assessment of a given country's fundamental rights situation in a specific area.'

⁴⁹ Bárd et al (2016), section 4.12

⁵⁰ Bárd et al (2016), section 4.4

To ensure that EU intervention is proportionate, and does not go further than needed for the protection of democracy, the rule of law and fundamental rights, the risk of duplication should be avoided in terms of international bodies, data collection and reporting obligations for Member States. Possibilities to borrow from existing monitoring and evaluation instruments in other international or regional fora should be explored. The process cannot, however, be 'contracted out' entirely to third parties, since non-EU actors fail to take due account of the relevance of these instruments or their links with existing European law and policies, as well as general principles of EU law, such as that of mutual recognition of decisions as underlined by the Court of Justice in its opinion on the draft agreement on EU accession to the ECHR.⁵¹

Bárd et al identify three scenarios regarding respect for European values by Member States:

- In the first scenario, the boundaries of democracy, the rule of law and fundamental rights are correctly set by national constitutional law and domestic bills of rights, whereas the enforcement of the values is first and foremost the task of the domestic courts, but other checks and balances are also operating well and fulfil their function. In this scenario an external mechanism is not vital but can have an added value.
- In a second scenario a Member State still adhering to democracy, the rule of law and fundamental rights might be in violation of individual rights, due to individual mistakes or structural and recurrent problems. In such cases, as a general rule, if domestic mechanisms are incapable of solving the problem, the national law will be overwritten by international law and deficiencies in application of the law will be remedied to some extent by international apex courts. In other cases chronically lacking capacity to solve systemic problems such as corruption, international norms and fora cannot remedy the problems but can point to them and contribute to domestic efforts to tackle them.
- The third scenario is qualitatively different from the previous two. This is the state with a systemic breach of separation of powers, constitutional adjudication, failure of the ordinary judiciary and the ombudsman system, civil society or the media. Efforts should be made to avoid a state reaching that stage.⁵²

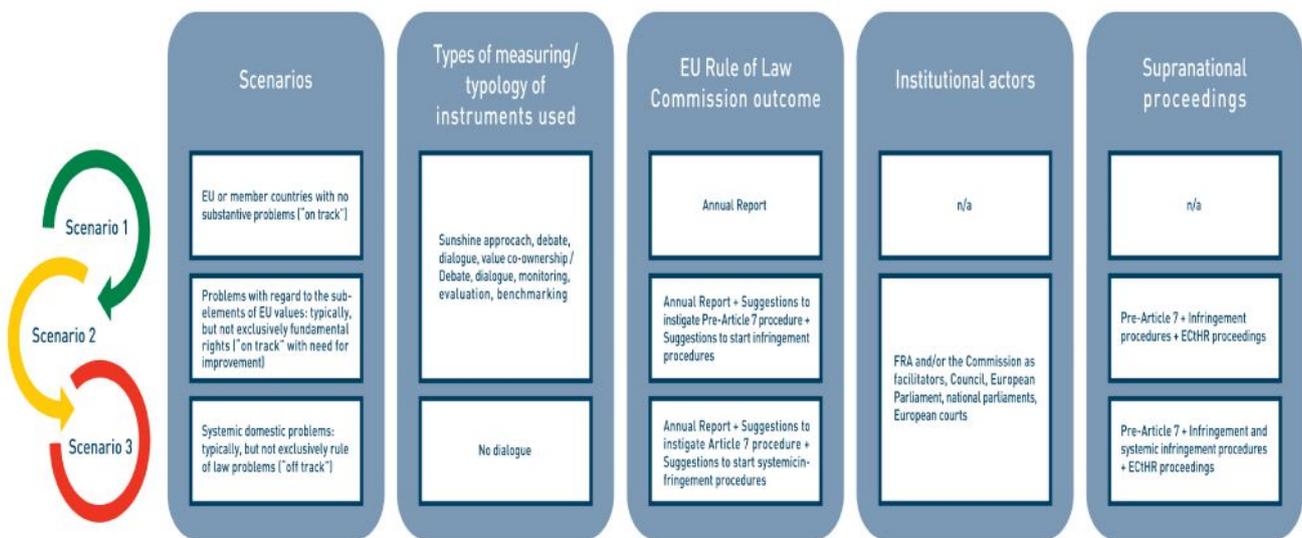
⁵¹ Bárd et al (2016), section 4.4; Court of Justice of the European Union, Opinion 2/13 of 18 December 2014, not yet published. Opinion pursuant to Article 218(11) TFEU - Draft international agreement - Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms - Compatibility of the draft agreement with the EU and FEU Treaties, para. 194: 'In so far as the ECHR would, in requiring the EU and the Member States to be considered Contracting Parties not only in their relations with Contracting Parties which are not Member States of the EU but also in their relations with each other, including where such relations are governed by EU law, require a Member State to check that another Member State has observed fundamental rights, even though EU law imposes an obligation of mutual trust between those Member States, accession is liable to upset the underlying balance of the EU and undermine the autonomy of EU law'.

⁵² Bárd et al (2016), section 4.6

In both the first and second scenarios ('on track'), a 'sunshine policy', may be followed which engages the Member State concerned in a dialogue and relies on soft measures such as capacity building. The third scenario ('off track') is fundamentally different from the first two. At this stage dialogue is no longer effective. A challenge lies in identifying the point when a Member State enters or is on the path towards the third phase, and to remedy the situation. It is under this scenario that options such as the launch by the Commission of 'systemic infringement proceedings', activating the EU Rule of Law mechanism or Article 7 TEU would come in. These options will be discussed in more detail in section 2.2 below.

The proposal by Bárd et al uses slightly different terminology from that of the relevant working document.⁵³ It uses the term 'EU Rule of Law Commission' instead of 'permanent committee of independent experts'. Furthermore it differentiates between three scenarios where the Member State is either 'on track' or 'off track'. However this proposal seems broadly compatible with the ideas put forward in the working document. The three scenarios are depicted in Figure 2 below:

Figure 2: The three rule of law scenarios and responding mechanisms



Source: Bárd et al (2016)

2.2. An EU policy cycle on democracy, the rule of law and fundamental rights

In her working document, the Rapporteur proposes a democracy, rule of law and fundamental rights pact between, citizens, governments and EU institutions. Alongside the development of an annual monitoring system based on democracy, rule

⁵³ See in particular the Working document by Monika Flašíková Beňová (S&D shadow rapporteur, Slovakia) on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights - Scoreboard on Democracy, Rule of Law and Fundamental rights.

of law and fundamental rights, the Pact would cover an annual debate in national parliaments on DRF, on the basis of a country specific report resulting in a 'mandate' ahead of a Council rule of law dialogue and conclusions on DRF, including recommendations for a Commission follow-up. The European Parliament could also host an annual inter-parliamentary debate,⁵⁴ on the basis of the country specific recommendations, and adopt an annual report on DRF, including recommendations for Commission follow-up.

Pech et al have covered most of these proposals in their research paper.⁵⁵ It makes a division between horizontal options applying to all Member States and vertical options aimed at improving EU monitoring of individual Member States on a case-by-case basis.

A policy cycle on democracy, the rule of law and fundamental rights would be the main horizontal measure proposed by Pech et al. It would come along with ideas for improvement of Council's annual rule of law dialogue and the annual inter-parliamentary debate hosted by the European Parliament. The debate in national parliaments was not explicitly assessed by this research paper. The vertical measures proposed by Pech et al would include improvements to the Commission's rule of law framework, the Commission launching 'systemic infringement' procedures and the empowerment of national actors.

Horizontal measures

The Council rule of law dialogue could be improved by inter alia focusing on fewer specific themes, taking the recommendations of the Council of Europe and the UN as a starting point for discussions, devoting more time to the discussions, ensuring a true exchange and comments by other Member States, including the acceptance of recommendations and follow up reporting. This could be linked with technical assistance and capacity building measures targeted at individual Member States.⁵⁶ The European Parliament could also host inter-parliamentary debates, which could also involve reports from national parliaments. As with the Council, the starting point for this dialogue would be findings and recommendations made by existing monitoring mechanisms. Both the Council and inter-parliamentary dialogue could potentially result in a recommendation for a Commission follow-up.

As mentioned in section 1, the EU can only claim legitimacy to enforce the observance of the rights and values listed in Article 2 internally if it observes those standards itself. A comprehensive legislative policy cycle is required in which the effects of envisaged EU legislation on fundamental rights are forecast and evaluated. In this context, more

⁵⁴On this, see the working document by György Schöpflin (EPP, AFCO rapporteur for opinion, Hungary) on an Annual Pan-EU debate in the framework of the legislative own-initiative report on the establishment of an EU mechanism for Democracy, the Rule of Law and Fundamental Rights.

⁵⁵ Pech et al (2016), section 4.

⁵⁶ Pech et al (2016), section 4.1.1.

effective use could be made of the instruments already available to the EU institutions. The 'Better Regulation Guidelines' oblige the Commission to look at fundamental rights in its impact assessments,⁵⁷ and there is a toolbox with a list of questions to be answered when dealing with impacts on fundamental rights and human rights (number 24).⁵⁸ The Council of the European Union has also adopted 'Guidelines on methodological steps to be taken to check fundamental rights compatibility at the Council's Preparatory Bodies'.⁵⁹ These guidelines offer similar guidance to the Commission's document but addressed to the Council's preparatory bodies, e.g. the Council Legal Service, national experts and the Working Party on Fundamental Rights, Citizens Rights and Free Movement of Persons (FREMP).

In the Parliament, according to the Impact Assessment Handbook adopted by the Conference of Committee Chairs,⁶⁰ parliamentary committees may invite the Commission to present its impact assessment. They may also ask the Commission to revise its original impact assessment or for the Ex-Ante Impact Assessment Unit of the European Parliamentary Research Service to provide such complementary or substitute impact assessments. Fundamental rights could be covered by these provisions, especially now, as fundamental rights are explicitly mentioned in the text of the new interinstitutional agreement on better law-making.⁶¹ The IIA specifies that, although 'each of the three Institutions is responsible for determining how to organise its impact assessment work', the institutions will 'on a regular basis, cooperate by exchanging information on best practice and methodologies relating to impact assessments, enabling each Institution to further improve its own methodology and procedures and the coherence of the overall impact assessment work'.⁶² There is

⁵⁷ COM (2015) 215, p. 15 'The impact assessments should, in particular, examine the impact of the different options on fundamental rights, when such an assessment is relevant'

⁵⁸ Better regulation "Toolbox", p. 176 onwards

⁵⁹ Council of the European Union, 'Guidelines on methodological steps to be taken to check fundamental rights compatibility at the Council's preparatory bodies', Doc No. 10140/11, 18 May 2011; Council of the EU, Doc. 5377/15.

⁶⁰ European Parliament, Conference of Committee Chairs, Impact Assessment Handbook; paragraph 13-15: '13. [...] Parliamentary committees may invite the Commission to present its impact assessment in a full committee meeting (as foreseen in Paragraph 42 of the Framework Agreement between the European Parliament and the Commission)* or, where appropriate, in a separate meeting agreed by coordinators, in order to explain its analysis and methodology, and respond to any criticisms or apparent shortcomings so far identified; 14. If the methodology and the reasoning fail to meet these criteria [including respect of fundamental rights] or reveal shortcomings, the committee responsible, acting on a proposal from its rapporteur or from the chairman, and with the consent of the coordinators, may ask the Commission to revise its original impact assessment with a view to analysing certain aspects or policy options in greater detail or complementing or updating the analysis of certain aspects; 15. The committee(s) responsible may, under the same procedure, ask the Impact Assessment Unit to undertake or commission the Parliament's own complementary or substitute impact assessment of the aspects dealt with inadequately or not at all in the Commission's original impact assessment.'

⁶¹ European Parliament decision of 9 March 2016 on the conclusion of an Interinstitutional Agreement on Better Law-Making between the European Parliament, the Council of the European Union and the European Commission (2016/2005(ACI)), P8_TA-PROV(2016)0081, paragraph 12; EPRS at a glance, 'Interinstitutional Agreement on Better Law-Making'

⁶² European Parliament decision of 9 March 2016 on the conclusion of an Interinstitutional Agreement on Better Law-Making between the European Parliament, the Council of the European Union and the European Commission (2016/2005(ACI)), P8_TA-PROV(2016)0081, paragraph 17

also a possibility for committees to consult Parliament's legal service or to request an opinion from the Fundamental Rights Agency.⁶³ A specific committee, a political group or, at least, 40 MEPs may refer a proposal – or parts of it – to the LIBE Committee where issues of conformity with the Charter arise.⁶⁴ The Commission could also be asked to present a new draft agreement for EU accession to the ECHR, taking into account and addressing the opinion of the Court of Justice, offering better protection to individuals and avoiding conflicts between the Strasbourg and Luxembourg Courts which would upset the current status quo, in accordance with which the ECtHR deems fundamental rights protection in the EU 'equivalent' to that under the ECHR.⁶⁵

Vertical measures

Better compliance of individual Member States could be achieved by asking the Commission to launch 'systematic infringement' procedures under Art. 2 TEU and Art. 258 TFEU on the basis of the country specific recommendations in the annual monitoring report and the Council and Parliament recommendations. This option primarily entails a new approach under the existing infringement procedure on the basis of which the Commission would present a 'bundle' of infringement cases to the Court of Justice in order to present a clear picture of systemic non-compliance with Article 2 TEU. This option could include subtracting any EU funds that the concerned Member State may have been entitled to receive.⁶⁶ This could be combined with provisions allowing Council and Parliament to oppose those sanctions through a reverse qualified majority (RVQM) borrowing from the area of economic governance.⁶⁷ It would depend on the willingness of the Commission to launch such infringement proceedings and the Court of Justice to treat them together. The open-ended nature of Article 2 could furthermore lead to criticism of political bias on the side of the Commission. An alternative option mentioned by Pech et al could be for the Commission to argue that the Member State concerned is jeopardising the attainment of the Union's objectives in violation of the principle of solidarity ex Article 4 (3) TEU. The option of subtracting EU funds of the concerned Member State most likely would require legislative change.⁶⁸

⁶³ Rules of Procedure of the European Parliament, Rule 139

⁶⁴ Rules of Procedure of the European Parliament, Rule 38

⁶⁵ ECtHR of 30.06.2005, Application No. 45036/68, *Bosphorus Hava Yollari Turizm v Ireland*.

⁶⁶ Scheppele, K.L., 'Enforcing the Basic Principles of EU Law through Systemic Infringement Actions', in Closa, C. and Kochenov, D. (eds.), *Reinforcing the Rule of Law Oversight in the European Union* (Cambridge University Press, 2016); Scheppele, K.L., 'What Can the European Commission Do When Member States Violate Basic Principles of the EU European Union? The Case for Systemic Infringement Actions', contribution no. 45 at the Assises de la Justice 2013.

⁶⁷ Reverse qualified majority voting is introduced in the Six-Pack for most sanctions. It implies that a recommendation or a proposal of the Commission is considered adopted in the Council unless a qualified majority of Member States votes against it, therefore increasing the likelihood of sanctions for euro-area Member States compared to normal qualified majority voting; Pech et al (2016), section 2.1.4.

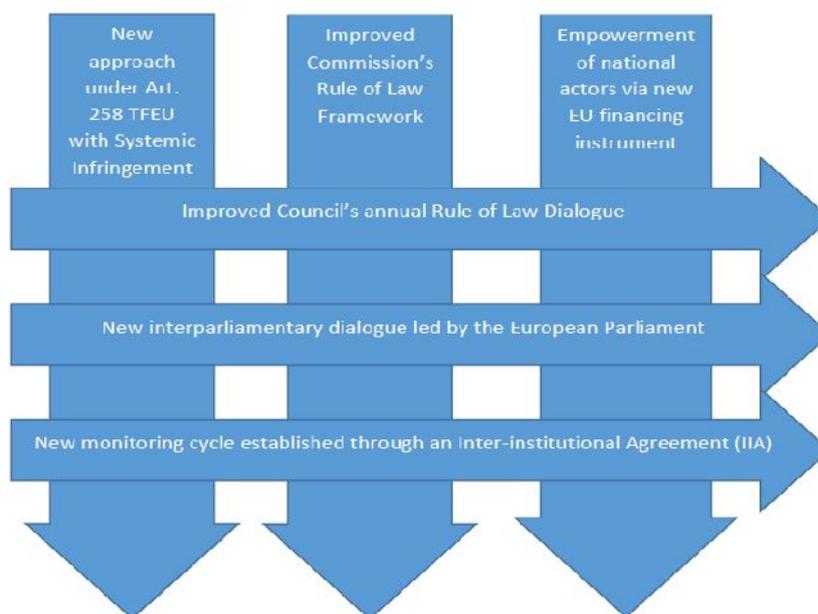
⁶⁸ Pech et al (2016), section 4.2.1.

The Commission could also be asked to amend its rule of law framework, establishing a trigger mechanism on the basis of the country specific recommendations in the annual monitoring report and Council and Parliament recommendations.

Furthermore it could be asked to clarify the concept of 'systemic threat to the rule of law'. It could also be asked to clarify the relationship between the rule of law framework and the triggering of Article 7 TEU, making such triggering automatic if the structured dialogue with the Member State concerned proves unsuccessful. In addition, it could be asked to provide further transparency during the dialogue with the Member State concerned, including the publication of any 'rule of law opinion' issued.⁶⁹ Finally, EU-funded capacity-building programmes could be further developed targeted at national courts, civil society organisations and other institutions to better protect democracy, the rule of law and fundamental rights in Member States.

An overview of vertical and horizontal measures is provided in the figure below:

Figure 3: Overview of selected options



Source: Pech et al (2016)

⁶⁹ Kochenov, D. and Pech, L., 2015, *Monitoring and Enforcement of the Rule of Law in the EU: Rhetoric and Reality*, European Constitutional Law Review, vol. 11, issue 3, 511-540.

3. A cost-benefit analysis of the options identified.

This section considers the social, economic and political costs and benefits of the policy options favoured by Parliament. As pointed out in more detail in the research papers commissioned externally,⁷⁰ societies in which democracy, the rule of law and fundamental rights are respected tend to attract more investment and to benefit from higher welfare standards. Conversely, in societies where this is not the case, a negative impact on the economy is noticeable. Rational law presents a necessary condition for economic transactions, and its application creates a sense of foreseeability and predictability on the part of economic agents. The latter is a necessary condition in order for rational economic actions to occur. Control of corruption, institutional checks on government, protection of property rights and mitigation of violence are all in close correlation with economic performance. In a recent Cost of Non-Europe Report on Organised Crime and Corruption, the cost of corruption to the European economy in terms of GDP was estimated between 218 and 282 billion euro annually.⁷¹

There is also a negative impact on mutual trust between Member States, which is based on a presumption of fundamental rights standards being enforced by an independent judiciary. This presumption may not always be appropriate given the fact that rights intrinsically related to the rule of law and democracy, such as the right to a fair trial, timely proceedings and to a legal remedy, are among those most violated by the Member States.⁷² Beyond harming nationals of a Member State, all Union citizens in that State will also be detrimentally affected. Accepting one Member State's departure from being a democracy based on the rule of law may encourage other Member States' governments to follow, and subject other countries' citizens to abuse. In other words, rule of law violations – if they result in no consequences – may become contagious. Moreover, all EU citizens beyond the borders of the Member State(s) concerned will to some extent suffer due to the given State's participation in the EU's decision-making mechanism.⁷³

Annual monitoring of democracy, the rule of law and fundamental rights

With regard to the costs of annual monitoring of democracy, the rule of law and fundamental rights based on an EU scoreboard, a distinction should be made distinguish between the costs borne by the Monitor and those borne by the monitored States. Furthermore, a distinction should also be made between preparation and implementation in all the three scenarios of (non-)compliance. The analysis is based on the concept of a permanent annual insourced scoreboard cycle administered by an

⁷⁰ Pech et al (2016), executive summary, chapter 4; (2016), Bárd et al, executive summary, Annex 4 (thematic contribution by Marneffe).

⁷¹ EPRS [Organised Crime and Corruption: Cost of Non-Europe Report](#), PE 558.779, 2016.

⁷² ECHR, [violations by Article and respondent state](#), 2015

⁷³ Pech et al (2016), executive summary, chapter 4; (2016), Bárd et al, executive summary, Annex 4 (thematic contribution by Marneffe).

independent expert group. As long as the precise format of the scoreboard has not yet been determined, the cost categories cannot be monetised precisely. Bárd et al estimate that the operational costs of the Monitor in the implementation phase of a stand-alone scoreboard (no economies of scale) can be estimated at 4 million euro per year, based on the experience of the Council of Europe's Venice Commission.⁷⁴ If the EU decides to cooperate with the Council of Europe, some important economies of scale can be realised. However, the unknown cost factor today lies precisely in the degree of specificity of the EU scoreboard on the rule of law (which Council of Europe data can and cannot be used, which additional data have to be collected) and the enforcement mechanism (how much manpower is needed to follow up serious breaches as described in scenario 3).

Table 1: Scoreboard costs

		Monitor	Monitored States
Preparatory phase (one-shot costs)	Expert group set-up costs	*	
	Information and planning costs	*	*
	Infrastructural costs	*	*
	Rent-seeking costs		*
Implementation phase (recurrent costs on annual basis)	Operational costs	*	*
	(Administrative costs)	*	*
	(Monitoring costs)	*	
	Compliance costs (information)		*
	Enforcement costs (information)	*	
	Compliance costs (scenarios 1, 2)		*
	Enforcement costs (scenario 3)	*	*

Source: Bárd et al (2016), Annex IV

An EU policy cycle on democracy, the rule of law and fundamental rights

Improving the Council's rule of law dialogue would require more detailed and in depth discussion involving more time and human resources devoted to meetings in Brussels and commenting on the developments in other Member States. A positive impact could be that Member States would feel more comfortable in discussing matters in a peer to peer situation. However, this may not be the case with Member States for which a systemic threat occurs.

A new inter-parliamentary dialogue fostered by the European Parliament would require delegations to travel to Brussels. National parliaments would also need to

⁷⁴ http://www.venice.coe.int/WebForms/pages/?p=01_Presentation&lang=EN

make human resources available to gather information and data to prepare their country reports. Additional costs could arise due to expert consultations and follow-up reports. The new inter-parliamentary dialogue would allow the representatives of the 'peoples of Europe' to exchange views and best practices on upholding the common values that bind them together under Article 2 TEU.⁷⁵

A comprehensive legislative policy cycle in which the effects of envisaged EU legislation on fundamental rights are forecast and evaluated would be likely to result in more (in-depth) ex ante and ex post impact assessments, consultations and related costs. There would, however, be a better chance of avoiding EU measures and actions violating fundamental rights, undermining the credibility of the EU to act internally and externally, as well as the potential costs of compensating victims and repairing legislation.

Launching 'systematic infringement' procedures could potentially diminish the administrative costs for the Court of Justice because of the economies of scale (i.e. handling several cases together instead of handling them separately might bring some savings on administrative costs for the Court). However, the process of handling legal cases at the Court of Justice and imposing and executing penalties may last several years, which can 'water down' the effects of this measure.⁷⁶ An improved Commission rule of law framework, with more transparency, clearly defined concepts and benchmarks to trigger it, and the transparency of the interim decisions that are taken ('rule of law opinion'), including in the communications with the concerned Member State, would increase the visibility of this mechanism and the trust of Member States and citizens regarding its functioning.⁷⁷ EU funded capacity building programmes would not openly stigmatise any Member State for 'improper behaviour'. However, deciding who should receive funding, and on the basis of which process, might present some challenges.⁷⁸ An estimation by Pech et al of the costs and benefits of the various policy options covered by an EU policy cycle on democracy, the rule of law and fundamental rights is to be found in the table below:

⁷⁵ Pech et al (2016), section 4.2.1.

⁷⁶ Pech et al (2016), section 4.2.1.

⁷⁷ Pech et al (2016), section 4.2.1.

⁷⁸ Pech et al (2016), section 4.2.1.

Table 2: Summary of assessment of options

Option	Economic impact	Social impact	Political impact
Horizontal options			
Improving the Council's Rule of Law Dialogue	EUR 2.9 million annually	Involvement of peer governments may be seen as a positive factor Possibility of exchange of best practices	Political climate in Member States where a systemic threat occurs may not be conducive to a productive dialogue
New inter-parliamentary dialogue fostered by the European Parliament	EUR 3 million annually	Lack of involvement of governments may be a drawback	Relying on parliamentary actions may be difficult in times of parliamentary change
New interinstitutional agreement	EUR 620,000 annually	A comprehensive measure but main actions (impact assessment, monitoring, stakeholder consultation) happening in the 'background' of the process	Involvement of the three principal EU institutions can be an advantage but need to give one institution responsibility for steering the whole process
Vertical options			
Bundle of infringement actions	No costs specifically related to this measure, some economies of scale could arise	Risk of watering down the impact due to long-lasting court proceedings Stigmatisation of the EU may arise	Risk of 'purchasing' non-compliance
Improving the Commission's Rule of Law Framework	Not quantified	Limited possibility for the society to follow the process due to the confidential nature of the process	Reluctance of some national governments to let the Commission look into rule of law matters beyond the area governed by EU law
Empowering national actors	EUR 330,000 annually per Member State covered with a capacity building programme	Positive impact on national stakeholders involved in strengthening the rule of law	Not openly stigmatising; need to decide who receives funding and how

4. Conclusion

There is a gap between the proclamation of the right and values listed in article 2 TEU and actual compliance by EU institutions and Member States, resulting in significant economic, social and political costs. In this context it is noted that corruption alone costs the European economy between 218 and 282 billion euro annually.⁷⁹

The root causes for this lack of compliance are to be found in certain weaknesses in the existing EU legal and policy framework on democracy, the rule of law and fundamental rights. Those weaknesses relate (1) to ongoing discussions on the scope of EU competence to enforce the rights and values listed in article 2 TEU, including a discussion on their exact meaning, (2) the (consequent) division of monitoring responsibilities between the EU and its Member States, as well as between EU bodies, and (3) the lack of effectiveness of existing enforcement mechanisms.

These weaknesses could be overcome by an inter-institutional pact further clarifying the scope for EU action and the division of labour between and among the EU institutions, agencies and Member States in the areas of monitoring and enforcement. This could be done at relatively low cost, particularly if the right synergies are found with international organisations.

A number of questions will still need to be addressed in detail before any final assessment can be made. As regards annual monitoring of democracy, the rule of law and fundamental rights based on an EU scoreboard, those questions relate to the final division of labour, issues of methodology, including the question as to what extent it is possible to benchmark Member States in this area, assurances of independence, scientific quality and accountability. As regards the policy cycle, further discussion is needed regarding the interaction between the various institutional players and their ultimate willingness to invest in some of the measures proposed and to streamline their activities.

RECOMMENDATION

The weaknesses in the existing EU legislative and policy framework on DRF could be overcome by agreeing on an inter-institutional pact further clarifying the scope for EU action and the division of labour between and among the EU institutions, agencies and Member States in the areas of monitoring and enforcement of democracy, the rule of law and fundamental rights

⁷⁹ EPRS Organised Crime and Corruption: Cost of Non-Europe Report, PE 558.779, 2016.

There is a gap between the proclamation of the rights and values listed in article 2 TEU and actual compliance by EU institutions and Member States, resulting in significant economic, social and political costs. The root causes for this lack of compliance are to be found in certain weaknesses in the existing EU legal and policy framework on democracy, the rule of law and fundamental rights. These weaknesses could be overcome by an interinstitutional pact further clarifying the scope for EU action and the division of labour between and among the EU institutions, agencies and Member States in the areas of monitoring and enforcement. This could be done at relatively low cost, particularly if the right synergies are found with international organisations.

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