

EXPLANATORY NOTE ON THE ECI REGARDING THE RESPECT OF THE RULE OF LAW

Article 2 of the Treaty of Lisbon states the founding values of the European Union, values that Member States must respect and promote. Among these values significant is the rule of law. The rule of law is not a merely declaratory disposition; it beholds a concrete and operational nature, since respecting the Union's values and promoting them together constitute one of the conditions to join the Union (article 49 TEU), and their violation can trigger the warning and sanctioning mechanism set by article 7 of the TEU. According to the case law of the Court of justice, the rule of law is the precondition and the justification for mutual trust among Member States, especially since they apply the dispositions linked to the introduction in the European Union law of an area of freedom, security, and justice. This common constitutional heritage is protected through the application of the mechanism foreseen by article 7 of the TEU, which establishes a warning mechanism might there be the risk of a serious breach of the values of the Union (article 7, paragraph 1), and a sanctioning mechanism that could even entail the suspension of certain rights (including the right to vote of the Member State responsible for the violation), in case there is a serious and persistent breach of the values at hand (article 7 paragraph 2). The warning mechanism has been triggered for the first time last December, against Poland, since the Polish Parliament has recently adopted several dispositions, at both legal and constitutional level, whose combined effect could, according to the Commission (as well as to the European Parliament), affect the principle of independent judiciary power in Poland. Now, the independence of the judiciary power is a "conditio sine qua non" of mutual trust among the Member States, up to the point that, if article 7 is triggered, the decision of the Council on the European Arrest Warrant foresees the possibility for a Member State to refuse the recognition of national measures in criminal areas. In this regard, a judge of the High Court of Ireland has refused the extradition of a Polish citizen on the ground of recent changings in Polish legislation, which have affected the respect of the rule of law and could hinder the fair judgement of the person whose extradition has been requested. Furthermore, Protocol n. 24, annexed to the Treaty of Lisbon states that triggering article 7 of the Treaty nullifies the presumption that the State object of the procedure could still be considered as a "safe" country as far as the recognition of rights of asylum; consequently, citizens of that State could be recognized the right of asylum if they can prove there are the necessary legal basis to do so. Despite the recent triggering of article 7 against Poland, this warning and sanctioning mechanism remains an exceptional procedure in several aspects. The Commission believes that article 7 should be triggered solely in case of serious and systematic breaches of the Union values. Moreover, the values to be protected could be considered as part of the national constitutional identity which is also safeguarded by article 4 of the Treaty, and that could, in certain scenarios, justify the misreading, at national level, of European demands. Furthermore, the majority's quotas required at European Parliament and Council level to make a decision are very high (including the unanimity necessary at European Council level in order to sanction the Member State object of the procedure). Finally, a Member State could argue - as did Poland in the case at hand - that the procedure triggered by the European Commission could have political motives more than juridical one. For these reasons, it would be necessary for the Community Institutions and Member States to have available an objective, impartial evaluating mechanism - of broad application - allowing them to gather the advice of independent juridical authorities, to have a more organized structure, and to define their position on the application of the warning and sanctioning mechanism. This wouldn't entail the replacement of the procedure

set forth by article 7 of the Treaty, but place it in an impartial juridical framework, that would facilitate the European Council's decision. In this regard, the Commission could use the disposition set forth by article 70 of the TFEU, that enables the European Council to define the terms applied by Member States, in cooperation with the Commission, to objectively and impartially evaluate the implementation by National authorities of the Union policies regarding the area of freedom, security and justice. Such a decision would have the advantage of engaging National Parliaments and the European Parliament in the evaluation of national measures, and in the possible application of article 7 of the Treaty. European legislation should thus foresee the possibility to ask the preliminary advice of the European Union Agency for Fundamental Rights regarding national measures, in order to ensure the objective decision of European Institutions. It would also be suitable to reinforce the Agency's competences, since these, at the moment, do not cover the sensitive sectors within police and security cooperation.

European Citizens Initiative aiming to verify the respect of the Rule of Law within the EU

1. TITLE

Respect of the Rule of Law within the EU.

2. OBJECT

Creation of a mechanism for objective and impartial assessment that would allow EU Institutions and Member States to verify the implementation of the European Union's values by all Member States.

3. MAIN OBJECTIVES

- Providing the European Union with a legislation which allows to objectively verify national dispositions concerning the Rule of Law and their implementation in order to strengthen mutual trust among Member States, (encourage a more transparent understanding of the relevant issues in the European public sphere) and facilitate the application of Article 7 of the TEU regarding possible breaches of the Union's values in criminal matters.

Facilitate the application of European laws regarding judicial cooperation in criminal matter (e.g. the European arrest warrant).

4. LEGAL BASIS

Article 70 of the TFEU.