



TEXTS ADOPTED

Provisional edition

P8_TA-PROV(2016)0409

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

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))

The European Parliament,

- having regard to Article 225 of the Treaty on the Functioning of the European Union,
- having regard to the preamble to the Treaty on European Union (TEU), in particular the second, fourth, fifth and seventh recitals thereof,
- having regard, in particular, to Article 2, Article 3(1), the second subparagraph of Article 3(3) and Articles 6,7 and 11 TEU,
- having regard to the articles of the TFEU relating to the respect for, and the promotion and protection of, democracy, the rule of law and fundamental rights in the Union, including Articles 70, 258, 259, 260, 263 and 265 thereof,
- having regard to Article 4(3) and Article 5 TEU, Article 295 TFEU, and Protocols No 1 on the role of national parliaments in the European Union and No 2 on the application of the principles of subsidiarity and proportionality, annexed to the TEU and to the TFEU,
- having regard to the Charter of Fundamental Rights of the European Union (the Charter),
- having regard to the Council of Europe's European Social Charter, in particular Article E thereof,
- having regard to the Copenhagen criteria, and the body of Union rules that a candidate country must fulfil if it wishes to join the Union (the *acquis*), in particular Chapters 23 and 24 thereof,
- having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the case law of the European Court of Human Rights, the conventions, recommendations, resolutions and reports of the Parliamentary Assembly, the Committee of Ministers, the Human Rights Commissioner and the Venice Commission of the Council of Europe,

- having regard to the Council of Europe’s Recommendation No R (2000)21 of 25 October 2000 and the United Nations Basic Principles on the Role of Lawyers of 1990 which call upon states to guarantee a free and independent legal profession,
- having regard to the Memorandum of Understanding between the Council of Europe and the European Union of 23 May 2007,
- having regard to the Council of Europe’s Framework Convention for the Protection of National Minorities,
- having regard to the Council of Europe’s European Charter for Regional or Minority Languages,
- having regard to the Rule of Law Checklist adopted by the Venice Commission at its 106th Plenary Session on 18 March 2016,
- having regard to the Universal Declaration of Human Rights,
- having regard to the UN treaties on the protection of human rights and fundamental freedoms and the case-law of the UN treaty bodies,
- having regard to the UN Convention on the elimination of all forms of discrimination against women,
- having regard to the UN Approach to Rule of Law Assistance of April 2008,
- having regard to the UN Sustainable Development Goals, in particular Goal 16,
- having regard to the COSAC Twenty-fifth Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny of 18 May 2016,
- having regard to the publications of the European Union Agency for Fundamental Rights (FRA), including the proposed European Fundamental Rights Information System (EFRIS) in its paper of 31 December 2013 entitled 'Fundamental rights in the future of the European Union's Justice and Home Affairs',
- having regard to the FRA Opinion of 8 April 2016 on the development of an integrated tool of objective fundamental rights indicators able to measure compliance with the shared values listed in Article 2 TEU based on existing sources of information,
- having regard to the letter of 6 March 2013 from the Ministers of Foreign Affairs of Germany, Denmark, Finland and the Netherlands to the Commission President,
- having regard to the Italian Presidency note of 15 November 2014 on 'Ensuring respect for the rule of law in the European Union',
- having regard to the conclusions of the Council and the Member States meeting within the Council of 16 December 2014 on ensuring respect for the rule of law,
- having regard to the Council’s first and second rule of law dialogue during the Luxembourg and Dutch Presidency of 17 November 2015 and 24 May 2016,

- having regard to the Council’s ‘Guidelines on methodological steps to be taken to check fundamental rights compatibility at the Council preparatory bodies’ of 19 December 2014,
 - having regard to the Commission communication of 19 October 2010 entitled ‘Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union’,
 - having regard to the Commission staff working paper of 6 May 2011 entitled ‘Operational Guidance on taking account of Fundamental Rights in Commission Impact Assessments’,
 - having regard to the Commission’s existing monitoring mechanism and periodic assessment tools, including the Cooperation and Verification Mechanism, the Justice Scoreboard, Anti-Corruption reports and the Media Monitor,
 - having regard to Commission’s Annual Colloquium on Fundamental Rights,
 - having regard to the Commission Communication of 19 March 2014 entitled ‘A new EU Framework to strengthen the Rule of Law’,
 - having regard to the Interinstitutional Agreement on Better Law-Making of 13 April 2016,
 - having regard to the Council of Europe’s ‘Code of Good Practice for Civil Participation in the Decision-Making Process’ of 1 October 2009,
 - having regard to the 2016 EU Justice Scoreboard and the Commission Report of 15 July 2016 entitled ‘Monitoring the application of European Union law 2015 Annual Report’,
 - having regard to the assessment of Parliament’s European Added Value Unit of April 2016 entitled ‘An EU mechanism on democracy, the rule of law and fundamental rights’,
 - having regard to Rules 46 and 52 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Constitutional Affairs (A8-0283/2016),
- A. whereas 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, enshrined in its core principles and objectives in the first articles of the TEU, and in the criteria for Union membership;
- B. whereas the Union institutions and bodies and the Member States should uphold and set an example by genuinely fulfilling their obligations and move towards a shared culture of the rule of law as universal value in the 28 Member States and in the Union institutions to be applied by all concerned even-handedly, while the full respect and promotion of those principles is the essential prerequisite for the legitimacy of the European project as a whole and the basic condition for building citizens' trust in the Union;

- C. whereas, according to Opinion 2/13 of the European Court of Justice of the European Union (Court of Justice) of 18 December 2014¹ and the relevant case-law of the Court of Justice, fundamental rights recognised by the Charter are at the heart of the legal structure of the Union and respect for those rights is a condition of the lawfulness of Union acts, so that measures incompatible with those rights are not acceptable in the Union;
- D. whereas, in accordance with Article 2, Article 3(1) and Article 7 TEU, the Union has the possibility to act in order to protect its ‘constitutional core’ and the common values on which it was founded;
- E. whereas the rule of law is the backbone of European liberal democracy and is one of the founding principles of the Union stemming from the common constitutional traditions of all Member States;
- F. whereas all Member States, the institutions, bodies, offices and agencies of the Union and candidate countries are obliged to respect, protect and promote those principles and values, and they have the duty of sincere cooperation;
- G. whereas in accordance, inter alia, with Protocol No 24 on asylum for nationals of Member States of the European Union annexed to the TEU and to the TFEU, recital 10 of Council Framework Decision 2002/584/JHA² and the case-law of the European Court of Human Rights (such as *M.S.S. v. Belgium and Greece*, judgment of 21 January 2011) and the Court of Justice (such as *N.S. and M.E.*, judgment of 21 December 2011³ and *Aranyosi and Căldăraru*, judgment of 5 April 2016⁴), Member States, including the national courts, have an obligation to refrain from implementing Union law *vis-à-vis* other Member States in the event that there is a clear risk of a serious breach or a serious and persistent breach of the rule of law and fundamental rights in those other Member States;
- H. whereas respect for the rule of law within the Union is a prerequisite for the protection of fundamental rights, as well as for upholding all rights and obligations deriving from the Treaties and from international law, and is a precondition for mutual recognition and trust as well as a key factor for policy areas such as the internal market, growth and employment, combatting discrimination, social inclusion, police and justice cooperation, the Schengen area, and asylum and migration policies, and as a consequence, the erosion of the rule of law, democratic governance and fundamental rights are a serious threat to the stability of the Union, the monetary union and the common area of freedom security and justice and prosperity of the Union;
- I. whereas the way in which the rule of law is implemented in the Member States plays a key role in ensuring mutual trust among Member States and in their legal systems and it is therefore of vital importance to establish an area of freedom, security and justice without internal borders;

¹ ECLI:EU:C:2014:2454.

² Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L190, 18.7.2002, p. 1).

³ ECLI:EU:C:2011:865.

⁴ ECLI:EU:C:2016:198.

- J. whereas the Union is based on a common set of core values and principles and whereas the definition of those core values and principles, which allow democracy to flourish and fundamental rights to be protected, is a living and permanent process, and while those values and principles may evolve over time, they must be protected and should be the basis for political decisions, independent of different political majorities and resist temporary changes, hence an independent, impartial judiciary with the responsibility to interpret them plays a vital role;
- K. whereas Union citizens and residents are not always sufficiently aware of all their rights as Europeans; whereas they should be in a position to be able to shape the Union's core values and principles together and above all take ownership of them;
- L. whereas, in accordance with Article 4(2) TEU, the Union is to respect the equality of Member States before the Treaties and whereas respect for cultural diversity and national traditions, within and among Member States, should not impede the uniform and high level of protection of democracy, the rule of law and fundamental rights throughout the Union; whereas the principle of equality and non-discrimination is a universal principle and it represents the common thread of all Union's policies and activities;
- M. whereas safeguarding the rule of law and effective independent justice systems play a key role in creating a positive political environment able to regain public trust in institutions, and hence also for an investment-friendly environment and for providing greater regulatory predictability and sustainable growth;
- N. whereas the improvement of the effectiveness of justice systems in Member States is a key aspect of the rule of law and is essential for ensuring equal treatment, sanctioning government abuses and preventing arbitrariness, and is considered by the Commission to be a key component for structural reforms in the European Semester, the annual cycle for the coordination of economic policies at Union level; whereas an independent legal profession is one of the cornerstones of a free and democratic society;
- O. whereas the UN Guidance Note of the Secretary-General entitled "UN Approach to the Rule of Law Assistance" recommends that the rule of law should include a public and civil society that contributes to strengthening the rule of law and holding public officials and institutions accountable;
- P. whereas the European Parliamentary Research Service study entitled "The Cost of Non-Europe in the area of Organised crime and Corruption" estimates that integrating existing Union monitoring mechanisms, such as the Cooperation and Verification Mechanism, the Justice Scoreboard and the Anti-Corruption reports, into a broader rule of law monitoring framework would result in annual cost savings of EUR 70 billion;
- Q. whereas the Union's democratic and legal governance does not have as solid a legislative basis as its economic governance, as the Union does not display the same intransigence and firmness in demanding respect for its core values as it does when making sure its economic and fiscal rules are implemented properly;
- R. whereas the failure of a candidate country to meet the required standards, values and democratic principles results in a delay of accession to the Union, until it fully meets

those standards, while the failure of a Member State or an institution of the Union to meet those same standards has little consequence in practice;

- S. whereas the obligations incumbent on candidate countries under the Copenhagen criteria continue to apply to the Member States after joining the Union by virtue of Article 2 TEU and the principle of sincere cooperation established in Article 4 TEU, and whereas not only the newer but also the older Member States should therefore be assessed on a regular basis in order to verify that their laws and practices continue to comply with those criteria and the common values on which the Union is founded;
- T. whereas approximately 8 % of Union citizens belong to a national minority and approximately 10 % speak a regional or minority language; whereas there is no Union legal framework to guarantee their rights as a minority; whereas the establishment of an effective mechanism to monitor their rights in the Union is of outmost importance; whereas there is a difference between the protection of minorities and anti-discrimination policies; whereas equal treatment is a basic right, not a privilege, of all citizens;
- U. whereas coherence and consistency of internal and external democracy, rule of law and fundamental rights policy is key to the credibility of the Union;
- V. whereas there are few instruments to ensure that legislative and executive policy decisions by the institutions of the Union comply with the Union's core principles and values;
- W. whereas the Court of Justice has recently issued various rulings invalidating certain Union law, Commission decisions or legislative practices, for being in breach of the Charter or contrary to Treaty principles on transparency and access to documents, but in several cases the Union institutions have failed to comply fully with the letter and the spirit of the rulings;
- X. whereas the accession of the Union to the ECHR is a Treaty obligation pursuant to Article 6(2) TEU;
- Y. whereas the promotion and protection of pluralistic democracy, the respect for human rights and fundamental freedoms, the rule of law, political and legal cooperation, social cohesion and cultural interchange lies at the heart of cooperation between the Council of Europe and the Union;
- Z. whereas the need for more effective and binding mechanisms to ensure the full application of Treaty principles and values has been recognised by the Council and the Commission and have been put into practice by the creation of the Council's Rule of Law Dialogue and the Commission's EU Framework to strengthen the Rule of Law;
- AA. whereas the Union has at its disposal a multitude of instruments and processes for ensuring full and proper application of Treaty principles and values but there is no swift, effective response coming from the Union institutions; whereas the existing instruments should be enforced, evaluated and complemented in the framework of a rule of law mechanism to be adequate and effective, and not perceived as politically motivated or arbitrary and unfairly targeting certain countries;

- AB. whereas the number of Court of Justice judgments citing the Charter has risen from 43 in 2011 to 210 in 2014;
- AC. whereas coherence between the institutions and Member States in compliance with democracy, the rule of law and fundamental rights will provide obvious benefits, such as less costly court cases, better clarity for Union citizens and their rights, and more certainty for Member States in terms of implementation;
- AD. whereas some Member State governments deny that upholding Union principles and values is a Treaty obligation, or that the Union has the authority to ensure compliance;
- AE. whereas in situations where a Member State no longer guarantees respect for democracy, the rule of law and fundamental rights, or in cases of a breach of the rule of law, the Union and its Member States have a duty to protect the integrity and application of the Treaties and to protect the rights of everyone within its jurisdiction;
- AF. whereas civil society plays an important role in building and strengthening democracy, monitoring, and restraining the power of the state and promoting good governance, transparency, effectiveness, openness, responsiveness and accountability;
- AG. whereas the subsidiarity principle cannot be invoked to reject any Union intervention to ensure Member State compliance with Treaty principles and values;
- AH. whereas action by the Union to ensure that the Member States and institutions abide by the values on which it is founded, and from which Europeans' rights are derived, is an essential condition for them to be part of the European project;
- AI. whereas the ongoing European integration process and recent developments in some Member States have shown that the failure to observe the rule of law and fundamental values is not being properly prevented and that it is necessary to revise and integrate existing mechanisms and develop an effective mechanism to close remaining gaps and to ensure Treaty principles and values are respected, protected and promoted throughout the Union;
- AJ. whereas a new EU Pact for democracy, the rule of law and fundamental rights (EU Pact for DRF) should be established and ~~whether~~ whereas the EU Pact for DRF should be evidence based; objective and not subject to outside influence, in particular political influence, non-discriminatory and assessing on an equal footing; respecting the principle of subsidiarity, necessity and proportionality; addressing both Member States and institutions of the Union; and based on a graduated approach, including both a preventative and corrective arm;
- AK. whereas the EU Pact for DRF should aim to offer a single, coherent framework, building on and incorporating existing instruments and mechanisms, and closing any remaining gaps;
- AL. whereas the establishment of an EU Pact for democracy, the rule of law and fundamental rights should be without prejudice to the direct application of Article 7(1) and (2) TEU;
1. Recommends, until a possible Treaty change, the establishment of a comprehensive Union mechanism for democracy, the rule of law and fundamental rights which would

include all relevant stakeholders and therefore requests that the Commission submit, by September 2017, on the basis of Article 295 TFEU, a proposal for the conclusion of a Union Pact for democracy, the rule of law and fundamental rights (EU Pact for DRF) in the form of an interinstitutional agreement laying down arrangements facilitating the cooperation between the Union institutions and the Member States in the framework of Article 7 TEU, integrating, aligning and complementing existing mechanisms, following the detailed recommendations set out in the Annex and including the option of joining the EU Pact for DRF for all Union institutions and bodies that wish to do so;

2. Invites the Commission to engage in a meaningful dialogue with civil society, ensuring that its contribution and role is taken into account in its proposal for an interinstitutional agreement;
3. Recommends, in particular, that the EU Pact for DRF include preventative and corrective elements, and address all Member States equally as well as the three main Union institutions, while respecting the principles of subsidiarity, necessity and proportionality;
4. Considers that while the main purpose of the EU Pact for DRF would be to prevent and correct breaches of Union values, it should also contain possible sanctions that can act as effective deterrence;
5. Believes that the conclusions and opinions of the FRA as well as the case-law of the Court of Justice constitute a good basis for the interpretation of Article 2 TEU and the scope of the rights enshrined in the Charter;
6. Recalls that the Commission, as guardian of the Treaties, has the duty to monitor and assess the correct implementation of the Union law and the respect of the principles and objectives enshrined in the Treaties by the Member States and by all the Union institutions and bodies; recommends, therefore, to take into consideration this task of the Commission in assessing its compliance with democracy, the rule of law and fundamental rights, within the Policy Cycle for democracy, the rule of law and fundamental rights (DRF Policy Cycle);
7. Calls on the Commission to bundle, from 2018 onwards, its relevant annual thematic reports as well as the outcome of existing monitoring mechanisms and periodic assessment tools, to be presented all on the same day feeding into the DRF Policy Cycle;
8. Considers it to be important to promote a continuous dialogue and to work towards a stronger consensus between the Union and its Member States with the aim of promoting and protecting democracy, the rule of law and fundamental rights to safeguard the shared values as enshrined in the Treaties and the Charter in a fully transparent, objective manner; is convinced that there cannot be any compromise regarding the fundamental rights and values enshrined in the Treaties and the Charter;
9. Emphasises the key role that Parliament and the national parliaments should play in measuring the progress of, and monitoring compliance with, the shared values of the Union, as enshrined in Article 2 TEU; notes Parliament's key role in maintaining the necessary continuous debate within the common Union consensus on democracy, rule of law and fundamental rights taking into account the changes in our society; considers

that the implementation of those values and principles must also be based on effective monitoring of respect for the fundamental rights guaranteed in the Charter;

10. Recommends that any inter-parliamentary debate on democracy, the rule of law and fundamental rights include civil society and considers that civic participation and strength of civil society be taken into consideration as an indicator for democracy;
11. Calls on the Commission to present, by June 2017, a new draft agreement for the accession of the Union to the ECHR, in order to comply with the obligation enshrined in Article 6 TEU, addressing Opinion 2/13 of the Court of Justice; furthermore, calls on the Council of Europe to open the signature of the European Social Charter to third parties, so that the Commission can initiate negotiations for accession thereto by the Union;
12. Invites the European Ombudsman, taking into account the views of society, to highlight and consolidate within a dedicated chapter, as part of its annual report, cases, recommendations and decisions related to citizens' fundamental rights, as well as the principles of democracy and the rule of law; invites the Commission to analyse those specific recommendations;
13. Calls on the Commission to take measures to ensure, in line with Article 47 of the Charter, general access to legal assistance to individuals and organisations litigating cases relating to violations of democracy, the rule of law and fundamental rights by national governments or the Union institutions, where necessary complementing national schemes and the Directive by the European Parliament and by the Council on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings;
14. Welcomes reform of the Court of Justice by way of which the number of judges at the Court is gradually being increased in order to handle the workload and reduce the duration of procedures;
15. Recommends that an expert panel on democracy, the rule of law and fundamental rights (DRF Expert Panel), provided for in the interinstitutional agreement, also undertake an assessment of access to justice at Union level, including aspects such as independence and impartiality of courts and judges, an independent legal profession, legal standing rules, duration and cost of litigation, adequacy and effectiveness of the legal aid system, as well as the existence of the necessary funds for it, implementation of court rulings, scope of judicial control and redress available to citizens, and options for cross-border collective redress; considers in this connection that there should be focus on Article 298(1) TFEU and the right of Union citizens to have an open, efficient and independent European administration;
16. Calls on the Commission to partner with civil society to develop and implement an awareness raising campaign, to enable Union citizens and residents to take full ownership of their rights deriving from the Treaties and from the Charter (e.g. freedom of expression, freedom of assembly and the right to vote), providing information about citizens' rights to judicial redress and litigation routes in cases relating to violations of democracy, the rule of law and fundamental rights by national governments or Union institutions;

17. Calls for the setting up of an endowment for democracy grant-giving organisation that supports local actors promoting democracy, rule of law and fundamental rights within the Union;
18. Points out that if the Union lays down requirements in its international agreements to protect and promote human rights, then it must likewise ensure that the institutions and all Member States comply with the rule of law and respect fundamental rights;
19. Recommends furthermore that the EU Pact for DRF include the regular monitoring of the compatibility of the international agreements ratified by the Member States and the Union with Union primary and secondary law;
20. Considers, furthermore, that if in the future Treaty revision would be considered, the following changes may be provided for:
 - Providing for Article 2 TEU and the Charter to become a legal basis for legislative measures to be adopted under the ordinary legislative procedure;
 - Enabling national courts under Article 2 TEU and the Charter to bring before the Court of Justice proceedings relating to the legality of Member States' actions;
 - Reviewing Article 7 TEU in order to provide for relevant and applicable sanctions against any Member State, identifying the rights of Member States at fault (in addition to Council voting rights) that may be suspended, for example financial sanctions or the suspension of Union funding;
 - Making it possible for Union legislation, after its adoption and before its implementation, to be referred to the Court of Justice by one-third of the Members of Parliament;
 - Enabling natural and legal persons who are directly and individually affected by an action to bring actions before the Court of Justice for alleged violations of the Charter either by the Union institutions or by a Member State, by amending Articles 258 and 259 TFEU;
 - Abolishing Article 51 of the Charter, and converting the Charter into a Union Bill of Rights;
 - Reviewing the unanimity requirement in areas relating to respect for and protection and promotion of fundamental rights, such as equality and non-discrimination;
21. Confirms that the recommendations respect fundamental rights and the principle of subsidiarity;
22. Considers that any financial implications of the requested proposals for the budget of the Union should be covered by the existing budgetary allocations; stresses that both for the Union and its Member States, as well as for citizens, the adoption and implementation of those proposals could lead to substantial cost and time savings, could foster mutual confidence in and recognition of Member States and the Union's decisions and actions, and could thus be beneficial both in economic and social terms;

23. Instructs its President to forward this resolution and the accompanying detailed recommendations to the Commission and the Council, and to the parliaments and governments of the Member States, as well as to the Committee of the Regions for distribution to subnational parliaments and councils.

Detailed recommendations for a draft Inter-institutional Agreement on arrangements concerning monitoring and follow up procedures on the situation of Democracy, the Rule of Law and Fundamental Rights in the Member States and EU institutions

DRAFT INTERINSTITUTIONAL AGREEMENT

EUROPEAN UNION PACT ON DEMOCRACY, THE RULE OF LAW AND
FUNDAMENTAL RIGHTS

The European Parliament, the Council of the European Union and the European Commission:

Having regard to the preamble to the Treaty on European Union (TEU), in particular the second, fourth, fifth and seventh recitals thereof,

Having regard, in particular, to Article 2, Article 3(1), the second subparagraph of Article 3(3) and Articles 6, 7 and 11 TEU,

Having regard to the articles of the Treaty on the Functioning of the European Union (TFEU) relating to the respect for, and the promotion and protection of, democracy, the rule of law and fundamental rights in the Union, including Articles 70, 258, 259, 260, 263 and 265 thereof,

Having regard to Article 4(3) and Article 5 TEU, Article 295 TFEU and Protocols No 1 on the role of national parliaments in the European Union and No 2 on the application of the principles of subsidiarity and proportionality, annexed to the TEU and to the TFEU,

Having regard to the Charter of Fundamental Rights of the European Union (the Charter),

Having regard to the Council of Europe's European Social Charter, in particular Article E thereof, on non-discrimination,

Having regard to the Copenhagen criteria, and the body of Union rules that a candidate country must fulfil if it wishes to join the Union (the *acquis*), in particular Chapters 23 and 24 thereof,

Having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the case-law of the European Court of Human Rights, the conventions, recommendations, resolutions and reports of the Parliamentary Assembly, the Committee of Ministers, the Human Rights Commissioner and the Venice Commission of the Council of Europe,

Having regard to the Rule of Law Checklist adopted by the Venice Commission at its 106th Plenary Session of 18 March 2016,

Having regard to the Memorandum of Understanding between the Council of Europe and the European Union of 23 May 2007,

Having regard to the Council of Europe's Framework Convention for the Protection of National Minorities,

Having regard to the Council of Europe's European Charter for Regional or Minority Languages,

Having regard to the Universal Declaration of Human Rights,

Having regard to the UN treaties on the protection of human rights and fundamental freedoms and the case-law of the UN treaty bodies,

Having regard to the publications of the European Union Agency for Fundamental Rights (FRA), including the proposed European Fundamental Rights Information System (EFRIS) in its paper of 31 December 2013 entitled 'Fundamental rights in the future of the European Union's Justice and Home Affairs',

Having regard to the UN Approach to Rule of Law Assistance of April 2008,

Having regard to the UN Sustainable Development Goals, in particular Goal 16,

Having regard to the COSAC Twenty-fifth Bi-annual Report: Developments in European Union Procedures and Practices Relevant to Parliamentary Scrutiny of 18th May 2016,

Having regard to the letter of 6 March 2013 from the Ministers of Foreign Affairs of Germany, Denmark, Finland and the Netherlands to the Commission President,

Having regard to the FRA Opinion of 8 April 2016 on the development of an integrated tool of objective fundamental rights indicators able to measure compliance with the shared values listed in Article 2 TEU based on existing sources of information,

Having regard to the Italian Presidency note on 'Ensuring respect for the rule of law in the European Union' of 15 November 2014,

Having regard to the conclusions of the Council and the Member States meeting within the Council of 16 December 2014 on ensuring respect for the rule of law,

Having regard to the Council's 'Guidelines on methodological steps to be taken to check fundamental rights compatibility at the Council preparatory bodies' of 19 December 2014,

Having regard to the Council's first and second rule of law dialogue during the Luxembourg and Dutch Presidency of 17 November 2015 and 24 May 2016,

Having regard to the Commission's existing monitoring mechanism and periodic assessment tools, including the Cooperation and Verification Mechanism, the Justice Scoreboard, Anti-Corruption reports and the Media Monitor,

Having regard to the Commission communication of 19 October 2010 entitled 'Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union',

Having regard to the Commission's Staff Working Paper of 6 May 2011 entitled 'Operational Guidance on taking account of Fundamental rights in Commission Impact Assessments',

Having regard to the Commission Communication of 19 March 2014 entitled 'A new EU Framework to strengthen the Rule of Law',

Having regard to the Commission's Annual Colloquium on Fundamental Rights,

Having regard to the Inter-institutional Agreement on Better Law-Making of 13 April 2016,

Having regard to the resolution of the European Parliament of 27 February 2014 on the situation of fundamental rights in the European Union (2012)¹,

Having regard to the resolution of the European Parliament of 8 September 2015 on the situation of fundamental rights in the European Union (2013-2014)²,

- (1) Whereas there is a need for a democracy, rule of law and fundamental rights mechanism that is objective, impartial, evidence-based and applied equally and fairly to all Member States as well as to the institutions of the Union and that includes both a preventative and a corrective dimension.
- (2) Whereas the primary objective of such a mechanism should be to prevent violations and non-compliance with democracy, rule of law and fundamental rights, while at the same time providing the tools needed to render both the preventative and corrective arms of Article 7 TEU, as well as the other instruments provided for in the Treaties, operational in practice.
- (3) Whereas the unnecessary creation of new structures or duplication should be avoided and integration and incorporation of existing instruments is to be preferred.
- (4) Whereas elaborating definitions, standards and benchmarks regarding democracy, rule of law and fundamental rights is not a one-off decision but, rather, a permanent and interactive process based on broad public debate and consultation, regular review and the sharing of best practices.
- (5) Whereas only a mechanism that has the broad support of Union citizens and allows them to take ownership of the process can be effective.
- (6) Whereas Member States are primarily responsible for upholding common standards but, when they fail to do so, the Union has a duty to intervene to protect its constitutional core and ensure that the values laid down in Article 2 TEU and in the Charter are guaranteed for all Union citizens and residents, throughout the territory of the Union.
- (7) Whereas it is important that all levels of government work closely together on the basis of their competences and responsibilities in order to identify possible systemic threats to the rule of law at an early stage, and to improve the protection of the rule of law.
- (8) Whereas there are several instruments for addressing the risk of a serious breach of Union values but clear and objective benchmarks need to be developed for those instruments to be sufficiently strong and dissuasive to prevent infringements of the rule of law and fundamental rights; whereas the Union has no legally binding mechanism in place to monitor regularly compliance of the Member States and Union institutions with the Union values and fundamental rights.
- (9) Whereas, in accordance with Art 295 TFEU, this inter-institutional agreement lays

¹ Texts adopted, P7_TA(2014)0173.

² Texts adopted, P8_TA(2015)0286.

down arrangements only for the facilitation of cooperation between the European Parliament, the Council and the Commission and, in accordance with Article 13(2) TEU, those institutions are to act within the limits of the powers conferred on them by the Treaties, and in conformity with the procedures, conditions and objectives set out in them; whereas this inter-institutional agreement is without prejudice to the prerogatives of the Court of Justice in the authentic interpretation of Union law,

HAVE AGREED AS FOLLOWS

Article 1

The core values and founding principles of the Union, namely democracy, the rule of law and fundamental rights, shall be upheld throughout the Union in a Union Pact on Democracy, the Rule of Law and Fundamental Rights (EU Pact for DRF), which provides for the definition, elaboration, monitoring and enforcement of those values and principles, and which addresses both the Member States and the Union institutions.

Article 2

The EU Pact for DRF shall consist of:

- an annual report on democracy, the rule of law and fundamental rights (European DRF Report) with country-specific recommendations incorporating the reporting done by the FRA, the Council of Europe, and other relevant authorities in the field,
- an annual inter-parliamentary debate on the basis of the European DRF Report,
- arrangements for remedying possible risks and breaches, as provided for by the Treaties, including the activation of the preventative or corrective arms of Article 7 TEU,
- a policy cycle for democracy, the rule of law and fundamental rights (DRF Policy Cycle) within the Union institutions.

Article 3

The EU Pact for DRF shall be expanded to incorporate the Commission's Rule of Law Framework and the Council's Rule of Law Dialogue into a single Union instrument.

Article 4

The European DRF Report on the state of democracy, the rule of law and fundamental rights in the Member States shall be drawn up by the Commission, in consultation with the panel of independent experts (DRF Expert Panel) referred to in Article 8. The Commission shall transmit the European DRF Report to the European Parliament, to the Council and to the national parliaments. The European DRF Report shall be made available to the public.

The European DRF Report shall contain a general part and country-specific recommendations.

If the Commission fails to adopt, on time, the European DRF Report, including country-specific recommendations the relevant European Parliament committee may formally call

upon the Commission to provide an explanation for the delay and to adopt it forthwith so as to avoid further delay.

Article 5

The European DRF Report shall incorporate and complement existing instruments, including the Justice Scoreboard, the Media Pluralism Monitor, the anti-corruption report and peer evaluation procedures based on Article 70 TFEU and replace the Cooperation and Verification Mechanism for Bulgaria and Romania.

Article 6

The European DRF Report shall be drawn up using a variety of sources and the existing tools for assessment, reporting and monitoring of Member States' activities, including:

- contributions from the Member States authorities regarding respect for democracy, the rule of law and fundamental rights,
- the FRA, in particular the EFRIS instrument;
- other specialised agencies of the Union, in particular the European Data Protection Supervisor (EDPS), the European Institute for Gender Equality (EIGE), the European Foundation for the Improvement of Living and Working Conditions (Eurofound), and Eurostat,
- experts, academics, civil society organisations, professional and sectoral associations of, for example, judges, lawyers, and journalists;
- existing indices and benchmarks developed by international organisations and NGOs;
- the Council of Europe, in particular the Venice Commission, the Group of States against Corruption (GRECO) and the Congress of Local and Regional Authorities of the Council of Europe, and the European Commission for the Efficiency of Justice (CEPEJ);
- international organisations such as the United Nations, the Organization for Security and Co-operation in Europe (OSCE) and the Organization for Economic Co-operation and Development (OECD);
- the case-law of the Court of Justice and of the European Court of Human Rights and of other international courts, tribunals and treaty bodies;
- all resolutions or other relevant contributions by the European Parliament, including its annual report on the human rights situation in the Union;
- contributions by the Union institutions.

All the contributions by the sources referred to in this Article as well as the draft European DRF Report prepared by the DRF Expert Panel, including the country-specific recommendations, shall be made available to the public on the website of the Commission.

Article 7

The European DRF Report shall be presented in a harmonised format and accompanied by country-specific recommendations and elaborated with a specific focus on the following aspects:

- the separation of powers,
- the impartial nature of the State,
- the reversibility of political decisions after elections,
- the existence of institutional checks and balances which ensure that the impartiality of the State is not called into question,
- the permanence of the State and institutions, based on the immutability of the constitution,
- the freedom and pluralism of the media,
- freedom of expression and freedom of assembly,
- promotion of civic space and effective mechanisms for civil dialogue,
- the right to active and passive democratic participation in elections and participatory democracy,
- integrity and absence of corruption,
- transparency and accountability,
- legality,
- legal certainty,
- the prevention of abuse or misuse of powers,
- equality before the law and non-discrimination,
- access to justice: independence and impartiality, fair trial, constitutional justice, where applicable, an independent legal profession,
- particular challenges to the rule of law: corruption, conflict of interest, collection of personal data and surveillance,
- Titles I to VI of the Charter,
- the ECHR and the protocols thereto.

Article 8

The assessment of the state of democracy, rule of law and fundamental rights in the Member States, as well as the development of country-specific draft recommendations, shall be carried out by a representative panel of independent experts (DFR Expert Panel) on the basis of a quantitative and qualitative review of the data and information available.

8.1. The DRF Expert Panel shall be composed of the following members:

- one independent expert designated by the national parliament of each Member State, who is a qualified constitutional court or supreme court judge not currently in active service;
- ten further experts appointed by the European Parliament, with a two-thirds majority, chosen from a list of experts nominated by:
 - (i) the federation of All European Academies (ALLEA);
 - (ii) the European Network of National Human Rights Institutions (ENNHRI);
 - (iii) the Council of Europe, including the Venice Commission, GRECO and the Council of Europe Human Rights Commissioner;
 - (iv) the CEPEJ and the Council of Law and Bars and Societies of Europe (CCBE);
 - (v) the UN, the OSCE and the OECD.

8.2. The DRF Expert Panel shall elect its Chair from among its members.

8.3. In order to facilitate the development of the draft European DRF Report and draft country recommendations, the Commission shall provide the DRF Expert Panel with a secretariat, enabling it to function efficiently, in particular by gathering data and information sources to be reviewed and assessed, and by providing administrative support during the drafting process.

Article 9

The DRF Expert Panel shall assess each of the Member States with regard to the aspects listed in Article 7 and shall identify possible risks and breaches. That assessment shall be carried out on an anonymous and independent basis by each of the panellists in order to safeguard the independence of the DRF Expert Panel and the objectivity of the European DRF Report. The members of the DRF Expert Panel may, however, consult each other with a view to discussing methods and agreed standards.

The assessment methods shall be reviewed annually by the DRF Expert Panel, and where necessary, further elaborated, refined, supplemented and amended, where necessary, by common accord between the European Parliament, the Council and the Commission, after consulting the national parliaments, experts and civil society.

Article 10

The adoption of the DRF European Report by the Commission shall initiate the interparliamentary debate and debate in the Council, which shall aim to address the results of the European DRF Report and the country-specific recommendations by way of the following steps:

- The European Parliament shall organise an interparliamentary debate on the basis of the DRF European Report and shall adopt a resolution. That debate should be organised in such a way as to set benchmarks and goals to be attained and to provide the means to

evaluate changes from one year to another within the existing Union consensus on democracy, the rule of law and fundamental rights. The relevant procedures should be accelerated in order to create such means, which will not only allow the immediate and effective monitoring of annual changes, but also ensure compliance with commitments by all relevant parties.

- The annual interparliamentary debate shall be part of a multi-annual structured dialogue between the European Parliament, the Council, the Commission and national parliaments and it shall also involve civil society, the FRA and the Council of Europe.
- The Council shall hold an annual debate, building upon its Rule of Law Dialogue, on the basis of the European DRF Report and shall adopt Council conclusions, inviting national parliaments to provide a response to the European DRF Report, proposals or reforms.
- On the basis of the European DRF Report the Commission may decide to launch a "systemic infringement" action under Article 2 TEU and Article 258 TFEU, bundling several infringement cases together.
- On the basis of the European DRF Report, after consulting the European Parliament and the Council, the Commission may decide to submit a proposal for an evaluation of the implementation by Member States of Union policies in the area of freedom, security and justice under Article 70 TFEU.

10.1. On the basis of the European DRF Report, if a Member State complies with all the aspects listed in Article 7, no further action shall be necessary.

10.2. On the basis of the European DRF Report, if a Member State falls short on one or more of the aspects listed in Article 7, the Commission shall start a dialogue with that Member State without delay, taking into account the country-specific recommendations.

10.2.1. If the country-specific recommendation on a Member State includes the assessment by the expert panel that there is a clear risk of a serious breach of the values referred to in Article 2 TEU and that there are sufficient grounds for invoking Article 7(1) TEU, the European Parliament, the Council and the Commission, shall each discuss the matter without delay and take a reasoned decision, which shall be made public.

10.3. On the basis of the European DRF Report, if the country-specific recommendations on a Member State include the assessment by the expert panel that there is a serious and persistent breach - i.e. increasing or remaining unchanged over a period of at least two years, of the values referred to in Article 2 TEU and that there are sufficient grounds for invoking Article 7(2), the European Parliament, the Council and the Commission shall each discuss the matter without delay and each institution shall take a reasoned decision which shall be made public.

Article 11

Fundamental rights shall be included as part of the impact assessment for all legislative proposals by the Commission in accordance with Paragraph 25 of the Interinstitutional Agreement on Better Law-Making.

The DRF Expert Panel referred to in Article 8 shall assess compliance with democracy, rule of law and fundamental rights by the European Parliament, the Council and the Commission.

Article 12

An interinstitutional impact assessment working group (Working Group) shall be set up with a view to improving interinstitutional cooperation on impact assessments, and creating a fundamental rights and rule of law compliance culture. The Working Group shall consult national experts at an early stage in order to be able better to predict the implementation challenges in Member States, as well as to help overcome different interpretations and understandings by the different Union institutions as regards the impact of fundamental rights and rule of law on Union legal acts. The Working Group shall build on the Council's Guidelines on methodological steps to be taken in order to check fundamental rights compatibility by the Council preparatory bodies, the Commission's Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union, the Commission's Operational Guidance on taking account of Fundamental rights in Commission Impact Assessments, Tool No 24 from the Better Regulation Toolbox and Rule 38 of the Rules of Procedure of the European Parliament to ensure compliance with and promotion of democracy, rule of law and fundamental rights.

Article 13

The following annual reports of the European Parliament, the Council and the Commission relating to enforcement and compliance with the rule of law and fundamental rights by the institutions of the Union shall be presented alongside the annual DRF Policy Cycle of the European DRF Report:

- Annual report on the application of the Charter;
- Annual report on the application of Union law;
- Annual report on the application of Regulation (EC) No 1049/2001 of the European Parliament and of the Council¹

Article 14

This agreement shall enter into force...

Done at...

For the European Parliament

The President

For the Council of the European Union

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

The President

For the European Commission

The President