



ADOPTED TEXT N°194
Provisional Act

NATIONAL ASSEMBLY

CONSTITUTION OF 4 OCTOBER 1958

FIFTEENTH LEGISLATURE

2018-2019 ORDINARY SESSION

27 November 2018

EUROPEAN RESOLUTION

on **Respect for the Rule of Law within the European Union.**

Is considered as final, pursuant to Article 151-7 of the Rules of Procedure, the resolution which reads as follows:

See numbers: **1300** and **1341**.

Single article

The National Assembly,

Having regard to Article 88-4 of the Constitution,

Having regard to Articles 2, 7, 19 and 49 of the Treaty on European Union (TEU),

Having regard to Articles 258, 259 and 260 of the Treaty on the Functioning of the European Union (TFEU),

Having regard to the communication from the Commission to the European Parliament and the Council of 11 March 2014, “A New EU Framework to strengthen the Rule of Law” (COM[2014] 158 final),

Having regard to Commission Recommendation (EU) 2016/1374 of 27 July 2016 on the rule of law in Poland,

Having regard to Commission Recommendation (EU) 2017/146 of 21 December 2016 regarding the rule of law in Poland complementary to recommendation (EU) 2016/1374,

Having regard to Commission Recommendation (EU) 2017/1520 of 26 July 2017 regarding the rule of law in Poland complementary to recommendations (EU) 2016/1374 and (EU) 2017/146,

Having regard to Commission Recommendation (EU) 2018/103 of 20 December 2017 regarding the rule of law in Poland complementary to recommendations (EU) 2016/1374, (EU) 2017/146 and (EU) 2017/1520,

Having regard to the European Parliament Resolution of 15 November 2017 on the situation of the rule of law and democracy in Poland (2017/2931 [RSP]),

Having regard to a Proposal for a Council Decision of 20 December 2017 on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law (COM[2017] 835 final),

Having regard to the European Parliament Resolution of 1 March 2018 on the Commission’s decision to activate Article 7(1) of the Treaty on European Union as regards the situation in Poland (2018/2541[RSP]),

Having regard to a proposal for a regulation of the European Parliament and the Council of 2 May 2018 on the protection of the Union's budget in the event of generalised rule of law deficiencies in the Member States (COM[2018] 324 final),

Having regard to the European Parliament Resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2017/2131[INL]),

Having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 as well as the European Commission for Democracy Through Law Opinions n° 833/2015 on the amendments to Act of 25 June 2015 on the Constitutional Tribunal of Poland, adopted on 11 March 2016, n° 798/2015 on Hungary's media legislation, adopted on 22 June 2015, and n° 891/2017 on Act XXV of 4 April 2017 on the amendments to Act CCIV of 2011 on National Tertiary Education, adopted on 9 October 2017,

On the rule of law within the European Union

Considering that the European Union is a community of rights founded on shared values laid down in Article 2 of the TEU and in the Charter of Fundamental Rights of the European Union;

Considering that the rule of law is cited among the values set out in Article 2 of the TEU and represents one of the founding principles of the European Union, specifically derived from constitutional traditions common to the Member States;

Considering that the States which are candidates for accession to the European Union must meet the criteria arising from the conclusions of the European Council of 21 and 22 June 1993, including democracy, the rule of law and human rights;

Considering that the current wording of Article 2 of the TEU on the rule of law gave rise to convergent interpretations by the European Commission and the Court of Justice of the European Union (CJEU);

Considering that, however, considerable efforts have been undertaken by the European Commission to provide a definition in the communication setting out a New EU Framework to strengthen the Rule of Law;

Considering that, in particular, the rule of law includes principles stemming from established CJEU case law;

1. Reaffirms its commitment to all the common values of the European Union, enshrined in Article 2 of the TEU;

2. Believes that, a future revision of the treaties could clarify the notion of the rule of law in Article 2 of the TEU, building in particular on the Charter of Fundamental Rights;

3. Believes, nevertheless, that the European Commission must rely on the criteria established by the CJEU in order to ensure respect for the rule of law within the Member States, and to thereby ensure that the treaties are applied, as provided for in Article 17 of the TEU;

On the situation of Member States as regards respect for the rule of law

Considering the significant and systematic challenges, in certain Member States, to an effective and independent monitoring of constitutionality, to the independence of the judiciary, to media pluralism, to the fight against corruption, contrary to Article 47 of the Charter of Fundamental Rights of the European Union and to Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms;

Considering that respect for the hierarchy of norms can be safeguarded only through effective judicial protection of the Constitution, by means of a body at arm's length from the political realm;

Considering that judicial independence must be ensured, in particular by means of the security of tenures of judges and by promotion and sanction mechanisms independent of the executive and legislative powers, as well as by exercising disciplinary authority specific to the judicial system, with neither interference nor influence from Government or Parliament;

Considering that, in particular, the sudden lowering of the retirement age of judges and the retroactive change in their status are likely to disrupt the quality of their work as well as their independence and represents discrimination on the basis of age;

Considering that forced retirements, expedited appointments and the replacement of a generation of high-ranking magistrates by judges chosen by a body under the control of the ruling party and selected on the basis of the compatibility of their opinions with the regime in power are likely to render the rule of law meaningless, and jeopardise the fundamental principle of non-discrimination on the basis of two criteria – age and political convictions;

Considering that pluralism of the media and sources of information, expression and opinion are the pillars of democracy and a fundamental cornerstone of democratic life;

Considering that the fight against corruption is essential to secure the rule of law and a democratic society;

Considering that the systemic violations of the rule of law can undermine mutual trust between Member States and, as such, the uniform application of the fundamental principles of the European Union within all of the Member States;

4. Supports the actions of the European institutions and of the Member States in their efforts to fight the threats to and systematic violations of the rule of law;

5. Supports, in this regard, the initiatives undertaken by the European Commission in support of the rule of law, as well as the substantiated proposal of the European Commission to the Council, under Article 7(1) of the TEU;

6. Condemns the deterioration of the rule of law in Poland;

7. Believes that the legislative changes in Poland and, in particular, the challenging of the Supreme Court composition of 2 July 2018, do not allow to put an end to the procedure set out in Article 7(1) of the TEU;

8. Believes that, in the absence of significant progress in Poland on securing the independence of the judiciary, the Council must be ready to determine the existence of a serious and persistent breach of the values set out in Article 2 of the TEU;

9. Believes that the situation of the rule of law in Hungary, in particular as regards respect for human rights defenders, academic freedom, media pluralism, and an independent judiciary, justifies the adoption by the European Parliament of a resolution on 12 September 2018 inviting the Council to determine, in compliance with Article 7(1) of the TEU, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded;

10. Condemns the weakening of the rule of law in Romania;

11. Considers that, as matters stand, the Cooperation and Verification Mechanism still applies to Romania, in order to assist the Romanian public authorities in fighting corruption and supporting progress towards achieving a transparent, independent and impartial judicial system;

On the European Union instruments to ensure Member States' respect for the rule of law

Considering the necessity for the European Council to decide

unanimously to determine the existence of a serious and persistent violation by a Member State of the values enshrined in Article 2, under Article 7(2) of the TEU;

Considering that, in the current situation, such unanimity cannot be envisaged;

12. Supports the European Commission's proposal to implement, within the next multiannual financial framework, an instrument to protect the European Union's budget in the advent of a systemic default of the rule of law; wishes, however, to draw attention on the need to calibrate this instrument such that only those responsible for the breaches of the rule of law face, if applicable, financial sanctions;

13. Encourages the European Commission to rely on the European Anti-Fraud Office (OLAF) and on reports from the European Court of Auditors to obtain the most precise information possible as regards respect for the rule of law, in particular in the context of public procurement;

14. Believes it is necessary to implement new mechanisms designed to ensure effective respect for the rule of law by all of the European Union Member States;

15. Supports the proposal to create a global EU Mechanism on democracy, the rule of law and fundamental rights, which would apply to all the Member States as well as to the three main institutions of the Union, and to set up a European semester on the rule of law;

16. Calls for the creation of a network of national independent administrative authorities and of legal experts in the rule of law, exchanging information and good practices, with the power to alert the European Commission from the moment repeated breaches of the rule of law have been determined;

17. Recommends the setting up of a Stakeholder Committee bringing together recognised legal experts, and representatives from the media, NGOs and public authorities, to address issues pertaining to the rule of law;

18. Proposes that a common approach be adopted by willing national Parliaments to collectively submit those requests to the European Commission, the Council and the European Council;

19. Calls for the Member States to support any initiative that promotes full compliance with the rule of law within the European Union.

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Paris, 27 November 2018.

President,
Signed: RICHARD FERRAND



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