

CM2005 EU-relevant “rule of law” protection instruments, procedures, policies and tools: an overview of available instruments

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1. Introduction

Over the past few years, the EU has faced an increasingly serious rule of law crisis in two of its twenty-seven Member States particularly, Poland and Hungary. The European Commission and European Parliament, respectively, initiated the procedure laid down in Article 7(1) TEU against these Member States, thus putting in motion a process to establish that policies in these Member States form a clear risk of a serious breach of the Union’s most fundamental values. However, whereas the situation inside both these Member States continues to worsen, discussions in the Article 7 context seem largely stagnant. As a consequence, at a moment when more forceful action is needed there is an increasing sense of paralysis in confronting rule of law challenges effectively. This is paradoxical, because there are numerous instruments available to address the situation¹ – many of which have never been used.

This note catalogues existing instruments, procedures, policies and tools available inside and outside the EU-setting to protect the rule of law inside EU Member States and at the EU-level itself. It distinguishes tools and procedures that are currently used, on the one hand, and those that exist but have not so far been put into practice toward the goal of addressing rule of law issues, on the other. The goal is to provide policy makers and politicians committed to protecting and promoting the rule of law in the EU with a comprehensive overview of realistic and actionable possibilities.

Although acting to protect the rule of law of the EU is often portrayed as a political problem running into a political blockade, this does not take away from the fact and the relevance that protecting the rule of law in the EU is also a strict legal obligation and necessity as a matter of binding law. In this sense, the political/legal dichotomy is deeply misleading. It should not distract from the reality that doing nothing now is not neutral. Without full compliance with the Union’s basic values, and policies and politics tailored to ensure that, all other substantive policies of the Union are at risk today. It is therefore essential to actively promote the use of more effective policies to make Member States comply with the EU basic values laid down in the Treaties, the Charter of Fundamental Rights, and the international treaties to which the EU and its Member States have signed up.

2. Four promising avenues

Although it is important to be aware of the very numerous possibilities to address rule of law problems that are not yet used, these are not of equal importance from a legal, political or strategic viewpoint. The Meijers Committee has already argued for using Article 259 TFEU, by which any EU Member State

¹ See for a further relevant overview: Laurent Pech, Dimitry Kochenov, Strengthening the rule of law within the European Union: diagnoses, recommendations, and what to avoid, RECONNECT Policy Brief (June 2019), at: <https://reconnect-europe.eu/wp-content/uploads/2019/07/RECONNECT-policy-brief-Pech-Kochenov-2019June-publish.pdf>

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on its own or together with other Member States can decide to sue a Member State for rule of law related violations of Union law that are, by definition, a legal concern common to all.²

In addition, based on the below overview, the Committee would point to three further avenues as particularly promising. **First**, the European Parliament, the Council, the Commission and EU citizens should consistently use their powers under Regulation 1141/2014³ to ensure that only those European political parties and European political foundations whose programmes and actions comply with Article 2 TEU values are funded. **Second**, the same three EU institutions should use their powers to insist that strict 'rule of law conditionality' will be part of the next Multiannual Financial Framework. **Third**, and finally, national parliaments should cooperate and coordinate to increase pressure on their national governments as well as their peers in the European Parliament to act to protect the rule of law, including through COSAC.

3. Avenues currently used (or announced)

Article 7(1) TEU: On a reasoned proposal of **1/3 of Member States, by the European Parliament or the European Commission** four fifth of Member States in the Council (after consent European Parliament) may determine a **clear risk of serious breach** by a Member States with the values laid down in Article 2 TEU (i.e. human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities).⁴

[Note: this clause is not limited to Member State actions within the scope of Union law; A special voting procedure (Article 354 TFEU) applies, i.e. the Member State against which the procedure is initiated does not take part in the vote on itself and is not counted in the 1/3 or 4/5 Member States threshold; the European Parliament needs to provide its consent by a 2/3 majority of votes cast, representing the majority of its (post-Brexit) 705 component Members (i.e. at least 353 Members (a majority) need to be present and at least 2/3 of those present need to support the proposed finding of the Council)⁵].

European Commission: - Use Article 7(1) TEU

[Note: The Commission has done so vis-à-vis Poland]

- Rule of law framework⁶

[Note: this framework has the nature of a pre-Article 7 procedure]

² Meijers Committee, Opinion on interstate procedures and the rule of law, 6 November 2019, at: https://www.commissie-meijers.nl/sites/all/files/cm1909_opinion_of_the_meijers_committee_on_interstate_procedures_and_the_rule_of_law.pdf

³ Reg. 1141/2014 on the statute and funding of European Political Parties and European Political Foundations.

⁴ This procedure has been put in motion by the European Commission with regard to Poland (https://ec.europa.eu/commission/presscorner/detail/en/IP_17_5367), and by the European Parliament against Hungary (https://www.europarl.europa.eu/doceo/document/TA-8-2018-0340_EN.html). A challenge brought by Hungary with regard to whether a sufficient quorum was in place when the vote took place is still pending before the European Court of Justice, Case C-650/18, brought on 18 October 2018. A hearing will take place on 29 June 2020.

⁵ See <https://www.europarl.europa.eu/news/en/headlines/eu-affairs/20180222STO98434/rule-of-law-concerns-how-the-eu-can-act-infographic>

⁶ https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-framework_en

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- Rule of law report: an additional comprehensive rule of law mechanism⁷ (annual reporting by the Commission based on monitoring that is the same for each Member State) (currently under development – to be published in the fourth quarter of 2020); this initiative will also build on longer-running projects such as the Justice Scoreboard that measures independence, quality and efficiency of national legal systems.⁸

- Cooperation and Verification Mechanism for Bulgaria & Romania (agreed upon their accession in 2007); Periodic monitoring by the European Commission focused on judicial reform, fight against corruption (both Member States) and fights against organized crime (just Bulgaria).⁹

[Note: various cases are pending about the legal force of Commission recommendations made in this context].¹⁰

- Use Article 258 & 260(2) TFEU: Commission infringement action against a Member State when it has failed to fulfil an obligation under the Treaties related to the rule of law¹¹ & possibilities to ask for financial penalties if the Court finds a violation, but a Member State fails to implement that finding. Requests for interim measures pending those actions.

[Note: The Commission is still using this possibility occasionally¹², but not in a comprehensive way.]¹³

- European semester¹⁴: although presented as a mechanism for economic governance coordination, Commission recommendations to Member States can include recommendations (in)directly related to the rule of law situation in Member States.¹⁵

Council of Ministers: - Rule of law dialogue; Based on a political resolution, the Council of Minister's General Affairs Council configuration holds a regular meeting (usually one per

⁷ Commission Political Guidelines https://ec.europa.eu/info/sites/info/files/political-guidelines-next-commission_en_0.pdf (p. 14).

⁸ https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/eu-justice-scoreboard_en

⁹ https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/assistance-bulgaria-and-romania-under-cvm/reports-progress-bulgaria-and-romania_en and https://ec.europa.eu/commission/presscorner/detail/en/QANDA_19_6137

¹⁰ Case C-397/19, AX v Statul Roman – Ministerul Finantelor Publice, lodged 22 May 2019; Case C-355/19, Asociația 'Forumul Judecatorilor din România' etc., lodged on 6 May 2019; Case C-83/19, Asociația 'Forumul Judecatorilor din România' v. Inspectoratul Judiciar, lodged on 5 February 2019.

¹¹ Case C-286/12 Commission v Hungary, 6 November 2012 (compulsory early retirement of judges); Case C-192/18 Commission v Poland, 5 November 2019 (compulsory early retirement of judges).

¹² The Commission is currently pursuing Hungary for its Lex-CEU (Case C-66/18) and Poland for issues relating the judicial independence Cases C-619/18 and C-791/19). It has also recently launched infringement proceedings for the so-called Muzzle Law (https://ec.europa.eu/commission/presscorner/detail/en/ip_20_772).

¹³ E.g. the Commission has not initiated infringement actions against Poland for to take full control of the Council for the Judiciary (KRS), leading the European Network for Councils of the Judiciary to expel the KRS. It has also not acted against Poland for reforms in its media landscape putting a strain on media independence

¹⁴ https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester/framework/european-semester-why-and-how_en

¹⁵ https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester/european-semester-timeline/setting-priorities_en

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presidency) to discuss rule of law related themes¹⁶; that same configuration (General Affairs Council, i.e. Ministers of European Affairs), based on the Article 7(1) TEU procedures put in motion by the Commission and the European Parliament against Poland and Hungary respectively also holds regular exchanges of view with regard to the rule of law situation in these Member States.

[Note: These dialogues reportedly have had little discernible result, including because many Member States never use the opportunity to speak¹⁷].

European Parliament: - Use Article 7(1) TEU

[Note: the EP has done so with respect to Hungary¹⁸].

-Adoption of rule of law related resolutions with regard to various Member States, as well as own initiative reports, such as in 't Veld's Pact for Democracy, Rule of Law and Fundamental Rights¹⁹ proposing a rule of law monitoring system that was adopted by Parliament (and now awaiting implementation by the Commission).

- Organize public hearings where experts and NGOs from the Member State can provide evidence on the situation, also offering them a forum/platform.

National parliaments: - Discussing and controlling the rule of law approach that their governments take inside the Council of Ministers.

[Note: practices vary widely from one Member State to another].

National courts: - Article 267 TFEU: preliminary ruling procedure: this is 'standard procedure', has particular rule of law saillance too, however. Courts in various Member States have made references to the Court of Justice in which they raised questions about compliance of recent national legislation with the rule of law and other basic values as codified in the Treaties or the Charter. It concerns both national courts that ask about the situation in their own Member States, as well as court that ask about the implications of the rule of law situation in another Member State²⁰, e.g. regarding the European Arrest Warrant.

¹⁶ For a recent evaluation see: Presidency Conclusions, Evaluation of the annual rule of law dialogue, 19 November 2019, at: <https://www.consilium.europa.eu/media/41394/st14173-en19.pdf>

¹⁷ Laurent Pech, From "Nuclear Option" to Damp Squib? A Critical assessment of the four Article 7(1) TEU hearings to date, Verfassungsblog 13 November 2019, at: <https://verfassungsblog.de/from-nuclear-option-to-damp-squib/>

¹⁸ There is still an ECJ case pending to decide where Hungary disputes that there was the required quorum to adopt this resolution. See above, note 3.

¹⁹ European Parliament Resolution on the need for a comprehensive EU mechanism for the protection of democracy, the rule of law and fundamental rights, 2018/2886, at:

[https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2018/2886\(RSP\)](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2018/2886(RSP))

²⁰ There are currently very many cases pending from Polish judges alone, e.g. Case C-487/19 (lodged 26 June 2019); Case 508/19 (lodged 3 July 2019); Case C-132/20 (lodged 10 March 2020); Case C-623/18 (lodged on 3 October 2018); Cases C-748/19 and C-754/19 (lodged on 15 October 2019); Case C-824/18 (lodged on 28 December 2018); Case C-55/20 (lodged on 31 January 2020). All of these deal with questions relating to judicial independence. There are other such preliminary ruling cases pending from judges from other Member States too, including Romania (Cases C-83/19, C-127/19, C-291/19, C-355/19, C-357/19, C-379/19, C-547/19), Malta (Case C-896/19), and Hungary (Case C-564/19).

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4. Further avenues available (but not currently used) inside the EU setting

a. Multiple possible initiators

Article 7(2)/(3)TEU: On a proposal of **1/3 of Member States or by the European Commission** a unanimous European Council (after consent European Parliament) may determine the existence of a **serious and persistent breach** by a Member States with the values laid down in Article 2 TEU (i.e. human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities). After such a determination a qualified majority of the Council may decide to suspend certain rights of that Member States, including voting rights.

[Note: proposal rather than reasoned proposal; European Parliament cannot initiate it; “existence of a serious and persistent breach” rather than “clear risk of serious breach”; European Council rather Council of Minister (different EU institution) decides about the qualification; Council rather than European Council decides on any subsequent suspension of the rights of the Member State in question; this clause is not limited to Member State actions within the scope of Union law; nor can it only be invoked once or after 7(1) TEU has been invoked – it is a different avenue involving different institutions and different procedures; A special voting procedure (Article 354 TFEU) applies, i.e. the Member State against which the procedure is initiated does not take part in the vote on itself and is not counted in the 1/3 Member States threshold; the European Parliament needs to provide its consent by a 2/3 majority of votes cast, representing the majority of its 705 (post-Brexit) component Members (i.e. at least 353 Members (a majority) need to be present and at least 2/3 of those present need to support the proposed finding of the European Council]²¹.

Regulation 1141/2014: This Regulation lays down rules for funding of European Political Parties (EuPP) and European Political Foundations (EPF), particularly by linking funding to a registration requirement and such registration to a statement of allegiance to Article 2 TEU values. An EuPP, according to the Regulation, is a political alliance pursuing political aims that is registered with the Authority for European political parties and European political foundations (APPF) (established under the Regulation). A condition for registration (and subsequently funding) is that an EuPP must consist of member parties from at least one quarter of the Member States, that are either already represented in the European Parliament, national parliaments, regional parliaments or regional assemblies, or otherwise have at least received three per cent of the votes in each of the one quarter of Member States at the most recent European Parliament elections.²² This means that all national political parties, through which Members of European Parliament are elected, cooperate in the EU-setting through EuPPs. The APPF is tasked to verify continued compliance with this requirement that an EuPP or EPF observe Article 2 TEU values in its

²¹ <https://www.europarl.europa.eu/news/en/headlines/eu-affairs/20180222STO98434/rule-of-law-concerns-how-the-eu-can-act-infographic>

²² Article 3, para 1, subsection b.

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programme and actions²³. The **European Parliament itself (i.e. at least a quarter of all members, representing at least three political groups), the Commission, the Council or Union citizens)**²⁴ can submit requests for verification in cases of suspected non-compliance with the Regulation, including the obligation to continuously comply with Article 2 TEU in programme and actions, to the said Authority²⁵, that can in its assessment of whether EU values are indeed being violated ask for the help of an Independent Committee of Experts.²⁶ The Authority can recommend de-registration, after which the Council and Parliament need to vote on it.

[Note: this Regulation has so far been never been put into action, including not with regard to EuPP that harbour MEPs linked to and elected through the governing political parties of the two Member States against which Article 7(1) TEU procedures are ongoing inside the Council, i.e. PiS for Poland (member of the ECR group) and Fidesz for Hungary (member of the EPP group), and whose programme and activities nationally have evidently triggered EU attention from the viewpoint of Article 2 TEU]

FRA Regulation: - Commission, Council or Parliament asking EU Fundamental Rights Agency for advice, or the FRA on its own initiative providing advice on specific thematic topics for the Union institutions and the Member States when implementing Union law, including on role of law related issues or (when asked by one of the EU institutions) relating to legislative proposals under consideration.²⁷

ENNHRI/EQUINET - Commission, Council or Parliament using more systematically, and more exclusively, their options to use the unique and comprehensive network of Member State-level equality bodies, ombudspersons and national human rights institutions, individually as well as through their umbrella organisations of EQUINET (for equality bodies) and the European Network for Human Rights Institutions (ENNHRI), to provide independent background information about the situation in each Member State, particularly in scenarios where Member States under investigation under Article 7 TEU make claims – often superficially plausible but easily substantively debunked – about equivalence of level of protection or approach in other Member States.

b. Further possibilities for specific actors

European Commission: - Making use of its powers under Regulation 1141/2014 to request the APPF to verify compliance with Article 2 TEU of those European political parties and European political foundations that are linked to and have been elected through the governing parties of the two Member States against which Article

²³ Article 3, paras 1 and 2, subsections c, in connection with Article 10, para 2, Regulation 1141/2014.

²⁴ Article 10, para 3 Regulation 1141/2014. The additional requirements and regulations for the European Parliament are laid down in Rule 235, para 2 of its Rules of Procedures: https://www.europarl.europa.eu/doceo/document/RULES-9-2020-02-03-RULE-235_EN.html

²⁵ <http://www.appf.europa.eu/appf/en/authority/welcome.html>

²⁶ For extensive analysis of this instrument, see Responding to “populist” politics at EU level: Regulation 1141/2014 and beyond, at: <https://academic.oup.com/icon/article/17/2/617/5523748> (particularly p. 630).

²⁷ Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights; article 4, para 1, under d) and 4 para 2.

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7(1) TEU procedures have been initiated (see above). In this way it can ensure that it acts consistently across the different rule of law possibilities, and that it does not openly rely on the support of EUPPs in the European Parliament whose component national parties it is effectively pursuing via Article 7 TEU (i.e. Fidesz for Hungary and PiS for Poland).

- Making use of its power under Article 70 TFEU: launch a proposal for the Council to adopt measures to lay down arrangements whereby Member States, in collaboration with the Commission, conduct objective and impartial evaluation of the Union policies referred to in the Area of Freedom, Security and Justice by Member States' authorities, in particular to facilitate full application of the principle of mutual recognition. The European Parliament and national parliaments would be informed of the content and results of the evaluation.

- Multi-Annual Financial Framework: Invoking or including rule of law conditionality under the current or future Multiannual Financial Framework (7 year EU-budget), or specific budgetary instruments flowing from it (e.g. instrument on cohesion funds).²⁸

- Showing systematic rule of law leadership in international organisations where EU Member States are members too, such as the Council of Europe and the United Nations, by taking the lead that findings that concern Member States are given proper political attention and follow-up (see below).

- Systematic funding of the human rights apparatus of these international organisations and of national and international human rights NGOs (and professional organisations of judges and journalists?) active in Member States, e.g. through supporting a dedicated budget-line for this purpose.

- Making more systematic use of Commission representations present in Member States under Article 7 TEU review, instructing its personnel to systematically and visibly act as representatives of the Guardian of the Treaties, e.g. by systematically monitoring trials against judges by courts that have been declared illegal as a matter of Union law by the Court of Justice, or by visibly speaking up for media freedom.

European Parliament: - One quarter of the component members representing at least different political groups can make use of their powers under Regulation 1141/2014 and Rule 235 of the Rules of Procedure to confront the political groups that harbor those Members of European Parliament that are linked to and have been elected through the governing parties of the two Member States against

²⁸ Some have argued current budgetary instruments already allow this and perhaps even require this legally. See, e.g., Civil Liberties Union for Europe, Two proposals to promote and protect European values through the multiannual financial framework – conditionality of EU funds and a financial instrument to support NGOs, March 2018, at: <https://drive.google.com/file/d/1UG4PIg7tObjUoK9tBKq3ldqCT-eB5iM9/view> (paper prepared by Israel Butler, head of advocacy); Daniel Kelemen & Kim Lane Scheppele, How to stop funding autocracy in the EU, Verfassungsblog, 19 September 2018, at: <https://verfassungsblog.de/how-to-stop-funding-autocracy-in-the-eu/>. In any event, in the context of current MFF negotiations, rule of law conditionality is reportedly on the table and strongly defended by European Commission Vice-President Vera Jourova.

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which Article 7(1) TEU procedures have been initiated, i.e. PiS for Poland and Fidesz for Hungary (see above). This is a way to ensure consistent use of competences, after the European Parliament triggered Article 7 TEU with regard to Hungary (and therefore, effectively, against Fidesz).

[Note: if any of these attempts runs into procedural trouble with the current EP Rules of Procedure: these can be changed by simple majority in the EP – see Article 232 TFEU].

- Asking the Commission to start infringement procedures in appropriate concrete cases of systematic rule of law violations in a Member State

- Systematic EP intervention in rule of law cases before the Court of Justice in support of the rule of law argument, which can be ordered and greenlighted by the JURI (Legal Affairs) committee

[Note: At this moment more than 15 references by national courts²⁹ or infringement cases³⁰ raising rule of law issues regarding four Member States are pending before the CJEU]

- Asking the EU Fundamental Rights Agency to do fact finding work in Member States concerned (just like it was active in Greece for a while during the refugee crisis), and to make and maintain a public rolling overview of relevant EU and ECHR (case) law relating to Member States under Article 7 TEU review.

- Discussing rule of law issues in other committees than just LIBE (civil liberties).

- Consistent use of the possibility to ask parliamentary questions to both the Commission and the Council about rule of law related matters.

- Requesting the OSCE to monitor the European Parliament elections in all Member States, but particularly those under Article 7 TEU proceedings, to assess whether these have been conducted in a manner that is free and fair (see also below, under possibilities for individuals).

Council of Ministers: - Making use of its powers under Regulation 1141/2014 to request the APPF to verify compliance with Article 2 TEU of those European political parties and European political foundations that are linked to and have been elected through the governing parties of the two Member States against which Article 7(1) TEU procedures have been initiated (see above). In this way it can ensure that it acts consistently across the different rule of law possibilities, and that it does not end up having to rely on the votes of those EUPPs in the European Parliament that harbour national parties that it is effectively pursuing via Article 7 TEU (i.e. Fidesz for Hungary and PiS for Poland).

²⁹ See above, note 18.

³⁰ See above, note 11.

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- Structural rule of law dialogue in Council of Ministers' formations other than the General Affairs Council (e.g. Justice and Home Affairs Council, Social Affairs Council, Budget Council)
 [Note: this will show the full width of rule of law concerns in EU files and show better that it cannot be isolated but is rather a cross-cutting theme important and indispensable to achieving any EU policy goal].
 - Having an open debate about whether Member States that are under investigation as a matter of Article 7(1) TEU at the time they are scheduled to hold the rotating EU Presidency should be able to hold that function. A relevant consideration could be that such Member States could not chair Article 7(1) TEU hearings that would concern themselves as an honest broker. Poland is currently scheduled to hold the presidency in the second semester of 2024, and Hungary in the first semester 2025.³¹
- European Council: - European Council president structurally putting rule of law issues in Member States on the agenda as *sine qua non* of any (legal) Union action
- Member States: - Use Article 259 TFEU³²: EU Member State(s) suing other Member State(s) for failure to fulfil an obligation under the Treaties linked to the rule of law, e.g. judicial independence indispensable for fair trial (Article 47 Charter) or freedom of expression or freedom of the media indispensable for exercising the right to vote and stand for election under Article 22 TFEU and Article 39 and Article 40 EU Charter of Fundamental Rights.
- National parliaments: - Structural attention for EU rule of law topics, e.g. in COSAC format (the periodic meetings of Member State-based parliamentarians working on EU affairs).
- Individuals: - Article 263(4) TFEU: Action brought by an individual Union citizen or legal person against an act or regulatory act with a direct link to the rule of law that is (in)direct concern to him/her.
 [Note: this remedy would be relevant in some highly specific rule of law situations, e.g. for politicians running for a seat in the European Parliament but seeing their effort thwarted because the national election by which they run is not 'free and fair' according to outside monitoring bodies (as happened in Hungary twice now, in 2014 and 2018 parliamentary elections)³³. Under the Act concerning the election of the members of the European Parliament by direct universal suffrage (Electoral Act)³⁴ national election bodies communicate national results to the European Parliament. The

³¹ See <https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=CELEX:32016D1316&from=EN>

³² Meijers Committee, Opinion on Interstate procedures and the rule of law, November 2019, at: https://www.commissie-meijers.nl/sites/all/files/cm1909_opinion_of_the_meijers_committee_on_interstate_procedures_and_the_rule_of_law.pdf

³³ Both in 2014 and 2018 the OSCE judged parliamentary elections in Hungary "free but not fair", see here: <https://www.osce.org/odihr/elections/hungary>

³⁴ For a consolidated version, see here: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:01976X1008\(01\)-20020923](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:01976X1008(01)-20020923) A European Parliament information note can be found here: https://www.europarl.europa.eu/ftu/pdf/en/FTU_1.3.4.pdf

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European Parliament, under article 12 of the Electoral Act³⁵, then verifies the result and transposes it into a Union law act with a direct link to the politician concerned. As with any act the European Parliament, in doing so, will be under an obligation to verify whether it acts in compliance with Union law, including with Article 2 TEU (value of democracy), Article 22(1) TFEU and Article 39 Charter (right to vote).]

5. Further available avenues (not currently used) outside the EU setting – Council of Europe (or other International Organisations)³⁶

Committee of Ministers Concerted insistence by EU Member States (together with the European Commission) on execution of ECHR judgments relevant to EU law by other EU Member States of rule of law concern in the context of the regular Council of Europe Committee of Ministers discussions.

Venice Commission³⁷ Concerted insistence by EU Member States (together with the European Commission) on follow-up on non-binding reports relevant to EU law by other EU Member States of rule of law concern.

6. Further avenues available to EU Member States outside the EU setting (not currently explicitly used) – bilateral

Diplomacy (Concerted) bilateral action(s) in Member State(s) of rule of law concern.

Funding (Concerted) support for NGOs in Member State(s) of rule of law concern.

³⁵ The article reads: “The European Parliament shall verify the credentials of members of the European Parliament. For this purpose it shall take note of the results declared officially by the Member States and shall rule on any disputes which may arise out of the provisions of this Act other than those arising out of the national provisions to which the Act refers”.

³⁶ Similar arguments could be made with regard to the United Nations.

³⁷ A similar argument could be made to other expert bodies and treaty bodies within the Council of Europe, such as the Commissioner for Human rights.