



REPORT OF THE CO-RAPPORTEURS ON RULE OF LAW DEVELOPMENTS IN THE EUROPEAN UNION

Adopted 18 January 2021

1. Introduction

In October 2018, the European Affairs Committee of the House of Representatives of the Netherlands decided to institute a rapporteurship into rule of law developments in the European Union. In March 2019, the first report¹ of the then rapporteur, MP Van der Graaf (ChristenUnie), was published. The rapporteurship was thereafter continued by MPs Anne Mulder (VVD) and Drost² and, since October 2019, by MPs Anne Mulder and Van der Graaf. Since September 2020, MPs Bosman (VVD) and Van der Graaf have acted as rapporteurs.

It had been the intention of the co-rapporteurs to raise the subject of the rule of law at a number of planned commission activities. Due to the coronavirus pandemic a number of these did not take place. A working visit to Brussels planned for March 2020, for example, was cancelled. The intention had been to have discussions with European Commissioners Reynders (Justice) and Jourova (Values and Transparency) on this occasion. The working visit to Hungary also had to be cancelled due to the coronavirus pandemic. The co-rapporteurs therefore tried to find other ways of calling attention to rule of law development in the European Union. This is their report on these activities, which report concludes their rapporteurship.

2. Findings and recommendations

The March 2019 report of rapporteur Van der Graaf painted a worrying picture of the functioning of the institutions underpinning the rule of law in a number of member states of the European Union. These concerns remain undiminished at present. The House of Representatives has shown great commitment to rule of law development in the past term, and we expect that attention to this issue will remain necessary in the period ahead. We have in the meantime seen the development of new instruments for addressing shortcomings, such as

¹ Parliamentary document 21 501-02, No. 1976. For the Cabinet response, see: Parliamentary document 21 501-02, No. 2037.

² Between March 2019 and September 2019, MP Drost replaced MP Van der Graaf in the House of Representatives.

the European Commission's annual rule of law reports and the introduction of the rule of law conditionality as part of the new EU budget and the Recovery Fund.

Besides these measures, it remains important to continue to seek meaningful dialogue. This can be sought at various levels and between various parties, as is currently the case in the Council, the European Parliament or between various umbrella organisations of professional groups. The national parliaments of the member states can make a material contribution to this dialogue given the unique position they occupy in terms of European cooperation. Their representative function puts them in the perfect position, with due appreciation of political diversity, to enter into dialogue with parliamentarians of other member states regarding democracy and the rule of law. This allows them to learn from others' experience, share with one another current trends in society and exchange ideas as equals. In this regard, parliaments might also collaborate in arriving at and advocating shared points of view. Transparent discussion and the exchange of opinions can contribute in an important way to lending the issue visibility. This applies not only to debates within and between parliaments but also to other fora that concern themselves with the rule of law, such as the Council.

As part of their activities, the co-rapporteurs explored ways in which this could be achieved in the coming period. It has become clear that various other national parliaments share an interest in developing further activities around this subject and doing this jointly as far as possible. In the co-rapporteurs' view, there are important opportunities here, and the aim should be to build relations with all of the national parliaments in the European Union.

Against this backdrop, the co-rapporteurs have arrived at the following recommendations:

1. *Explore within COSAC the opportunities for establishing a permanent working group on the rule of law in the European Union.* This working group could meet at regular intervals, for instance at the margins of COSAC conferences. The aim of the working group would be to promote dialogue between members of national parliaments on developments in this area. The European Commission's annual rule of law report could serve as a basis for discussion. The outcomes of activities undertaken by the national parliaments themselves, such as hearings or briefings, could be shared.
2. *Hold a committee debate in the House of Representatives twice a year on rule of law development in the European Union.* In scheduling these debates, the publication of the European Commission's annual rule of law report and the further progress of rule of law dialogue in the Council could be taken into account. In preparation for the debates, holding a hearing or technical briefing could be considered.
3. *Promote knowledge and information exchange between national parliaments concerning rule of law development.* A pilot could be set up between a number of parliaments who are active on this subject, to the extent that the constitutional frameworks and procedures allow this. The House of Representatives could take a lead in this regard. In the long run, this could contribute to improving coordination between parliaments, for example with regard to the questioning of national governments or European institutions.

4. *Organise a working visit to Brussels together with a number of like-minded parliaments.* The purpose of the visit would be to gain more knowledge of the rule of law-related EU instruments and to further explore opportunities for cooperation. This will obviously depend on how the coronavirus pandemic develops.
5. *Call upon the Dutch government to promote making Council debates on the rule of law public.* In principle, these peer reviews are currently not open to the public unless the Council were explicitly to decide that they be open to the public. There does not currently seem to be majority support for such a decision.³ More public access, concerning member states' contributions as well as the debate itself, could however increase the significance of this instrument. The working procedure at the Universal Periodic Review of the United Nations Human Rights Council could serve as a reference. The reports that form the basis of these periodic reviews are made publicly available.
6. *Recommend to the House of Representatives that the rapporteurship on rule of law development in the European Union be instituted anew after the March 2021 elections.* This would ensure continuing attention to this issue and secure the contacts that have been built with other parliaments, and would allow the above recommendations to be implemented in coordinated fashion.

3. Report of activities

COSAC side session

The six-monthly plenary COSAC conference took place in Helsinki from Sunday 1 December to Tuesday 3 December 2019.⁴ One session of this conference was devoted to '*Promoting the Rule of Law in the EU and the EU Charter of Fundamental Rights*'. During this session, rapporteur Van der Graaf thanked the Finnish Chair for its efforts in the area of the rule of law and towards involving national parliaments in decision-making in the Council. She also stated that the stable rule of law is of great importance to the proper functioning of the internal market and for cooperation on judicial matters. She stressed the support of the House of Representatives for the European Commission's measures in support of the rule of law in the EU, as well as the strengthening of rule of law dialogue and the initiative from Belgium and Germany to institute a peer review mechanism. In conclusion, she pointed to the important role national parliaments can play and asked what support the European Human Rights Agency could give.

The Dutch delegation to this COSAC conference also organised a side session on the rule of law with a number of parliaments who are active on this subject. This informal consultation was moderated by rapporteur Van der Graaf. In her introduction, rapporteur Van der Graaf outlined her first report to the House of Representatives on this subject. This was followed by each delegation in turn explaining their efforts and activities within their own parliament on the subject of the rule of law. The consultation ended with the conclusion that more

³ Report of the General Affairs Council of 13 October 2020, Parliamentary document 21501-02, No. 2225.

⁴ Parliamentary document 22660, No. 78.

parliaments were interested in a joint effort into the subject, possibly including a joint working visit to the European Union institutions in Brussels.

There was a follow-up to this secondary session during a video conference with a few like-minded parliaments on 6 February 2020. The outcome of this video conference was the intention to organise a working visit to Brussels with like-minded parliamentary delegations in April 2020 to broaden the joint knowledge on this theme and to exchange ideas with persons from the EU institutions. Due to the coronavirus crisis, however, this working visit could not take place. The possibility of arranging a working visit to the European institutions in Brussels in the autumn of 2020 on the subject of rule of law development in the European Union for like-minded parliamentarians, albeit in somewhat adapted form, would be considered. One or more video conferences could perhaps be arranged to supplement or replace this visit.

Since a working visit this autumn proved unfeasible due to the coronavirus pandemic, the co-rapporteurs decided to arrange a number of online activities.

Informal video meeting with a number of national parliaments

On 10 December 2020, the co-rapporteurs arranged an informal video meeting with a number of members of national parliaments who have been active on the subject of the rule of law in the European Union recently. Contact had already been established with these parliaments at the COSAC conference in Helsinki or bilaterally.⁵ Academic and civil society experts also contributed to this meeting. The purpose of the meeting was, on the one hand, to broaden the collective knowledge of the instruments at the European Union's disposal for the protection of rule of law values and to discuss the latest developments regarding these. On the other hand, the meeting aimed to highlight the role the national parliaments can play in this regard.

The experts pointed out the unique position the national parliaments occupy. Parliaments have direct democratic legitimacy they can put to use. This involves, for example, the ongoing Article 7 proceedings currently before the Council. Parliaments can call on the governments represented in the Council to make progress in this regard. Parliaments can also draw the attention of their governments to the new rule of law dialogues in the Council, in which five of the new European Commission reports on the member states are considered in each instance. What is more, these member state reports are a perfect instrument for putting shortcomings on the political agenda. Moreover, the questions posed by parliamentarians and the answers given by governments can be exchanged as far as possible, in order for the efforts and knowledge acquired to be more broadly shared. Through the European Parliament, which plays an important role in the EU as a co-legislative body and has taken various initiatives concerning the rule of law, political families can try to forge ties at national and European level. The proposed rule of law mechanism for protecting the EU budget and the Recovery Fund affords national parliamentarians an important position. After all, any sanctions that are levied against member states are ultimately levied by the Council, in which the national

⁵ The meeting took place under the Chatham House Rule.

governments are represented. National parliaments can exert influence on the EU institutions to encourage them to use the powers they have to protect the rule of law to the fullest, for instance by continuing to call on the European Commission to use its powers to the fullest and by closely following the rulings of the Court of Justice. The worrisome and deteriorating situation in a number of member states was also considered. Surveys show that support for the European Union among the people of these countries is still high. National parliaments are in a position to bring the systematic problems in these countries into discussion in a transparent way. They can do this, for example, by keeping informed of developments in these countries through hearings with local non-government organisations or independent journalists, and also by studying the very thorough reports of the Venice Commission of the Council of Europe. In all these areas, mutual cooperation between parliaments can strengthen the reach.

The informal dialogue between the participating parliamentarians showed a great commitment to rule of law values and of their importance to the European Union and the member states. It also showed a desire to cooperate more closely. The point was made that the 27 national parliaments in the European Union have different positions and different powers vis-à-vis their governments. A shared basis is an important condition for acting together. Methods of government scrutiny as to the possibility for exchanging information between parliaments were discussed. The question also arose as to how parliaments could effectively consider the rule of law report of the European Commission and how they should deal with the new rule of law dialogues in the Council. Additionally, the participants considered the ways in which they could continue to act together in future. The role of COSAC and opportunities for forming a working group were also addressed.

Online Meeting with European Commissioner Reynders

On 14 December 2020 and at the suggestion of the co-rapporteurs, a public, online meeting took place with the European Commissioner Didier Reynders (Justice) about the recent rule of law report of the European Commission.⁶ Both the European Affairs Committee and the Justice & Security Committee of the House of Representatives took part in this discussion.

Mr Reynders started the discussion by giving an impression of the report, paying special attention to the country report about the Netherlands in addition to a number of general trends. The report is the result of an intensive process to which the member states and many other stakeholders provided input. Focused consultations also took place. In the report, both positive and negative developments in the member states are brought together under four pillars: the judicial system, the anti-corruption framework, media pluralism, and other issues related to checks and balances. Preparations for the second annual report are already under way.

The report has a primarily preventive function. For this reason it is important that it be followed by reforms implemented by member states. This requires continued dialogue and

⁶ European Commission, *2020 Rule of Law Report. The rule of law situation in the European Union*, 30 September 2020, COM (2020) 580 final.

open debate. Exchanging best practices, too, is of great value. The report has now been discussed in the General Affairs Council twice, with an initial group of five member states being discussed more closely on the last occasion. The report has also been presented in the European Parliament. European Commissioner Reynders has by now also spoken to a number of national parliaments (including those of Germany, France, Denmark, Spain, Bulgaria and Estonia). The European Commissioner intends to speak to all of the national parliaments about the country reports. In answer to a question, Mr Reynders indicated that parliaments play an important role in the discussion of rule of law development at national level. For the European Commission, dialogue with national parliaments provides opportunities to speak to opposition parties as well. Moreover, Mr Reynders sees opportunities for cooperation between parliaments via COSAC, as well as in regional groupings. Parliaments can exchange best practices, and also apply political pressure together. Ultimately, this will contribute to the development of a proper rule of law culture in all of the member states.

Mr Reynders also dealt with current developments regarding the introduction of rule of law conditionality as part of the new Multi-annual Financial Framework and the Recovery Fund. The European Council has underscored the purpose of the proposed conditionality regulation, which means that it will be introduced soon. In answer to a question in this regard, Mr Reynders indicated that this new instrument would be available as of 1 January 2021 in respect of expenditure under the new multi-annual budget and the Recovery Fund. On 1 January, the Commission can start verifying rule of law aspects in all of the member states, with some member states perhaps getting more attention than others. The guidelines have yet to be set out. Once the European Court of Justice has ruled on the rule of law regulation, the guidelines for implementation can be adopted and if any shortcomings are identified the Commission can start proceedings in the Council. A decision will have retroactive effect to 1 January 2021. Besides this, the Commission will proceed with infringement proceedings against member states where necessary, particularly in cases of systematic violations. The European Public Prosecutor's Office (EPPO) will also have an important responsibility when it comes to combating fraud and corruption in respect of European funds. Mr Reynders therefore called on the Dutch parliament, and the Senate in particular, to proceed swiftly with the adoption of the implementation measures to allow the EPPO to commence activities on 1 March 2021.

The co-rapporteurs,
Bosman
Van der Graaf