**Follow-up to the European Parliament non-legislative resolution on the situation of fundamental rights in the European Union in 2017**

1. **Rapporteur:** Josep-Maria TERRICABRAS (Greens / ES)
2. **Reference numbers:** 2018/2103 (INI) / A8-0466/2018 / P8\_TA-PROV(2019)0032
3. **Date of adoption of the resolution:** 16 January 2019
4. **Competent Parliamentary Committee:** Committee on Civil Liberties, Justice and Home Affairs (LIBE)
5. **Brief analysis/ assessment of the resolution and requests made in it:**

Particular emphasis in this year's resolution on the situation of fundamental rights in the EU is put on the rule of law, migration, women’s and children's rights, freedom of speech and assembly and the role of the Fundamental Rights Agency.

**Rule of law, democracy and fundamental rights**

The resolution affirms that the separation of powers and the independence of the judiciary are essential to ensure the effective functioning of the rule of law in any society. The rule of law is part of and a prerequisite for the protection of all values listed in Article 2 of the Treaty on European Union (TEU) and all relevant actors at EU and national level, including governments, parliaments and the judiciary, should step up efforts to uphold and reinforce it. It recalls the legitimacy and authority of the Commission, in accordance with the Treaties, to ensuring that all the Member States are upholding the principles of the rule of law and the other values enshrined in Article 2 TEU.

The resolution notes the limited impact so far of the procedures initiated under Article 7(1) TEU and takes the view that it should be used only when other measures, such as infringement proceedings against the Member States, have failed. The Commission should submit a proposal for the EU mechanism on democracy, the rule of law and fundamental rights[[1]](#footnote-1), and a proposal, on the basis of Article 295 on the Treaty of the Functioning of the European Union (TFEU), for the conclusion of a Union Pact for democracy, the rule of law and fundamental rights (EU Pact for DRF).

The resolution regrets the Commission’s decision not to publish the second biannual resolution on corruption in the EU, and urges it to continue publishing its anti-corruption reports. It welcomes the Commission’s statement in its Communication ‘Fighting Corruption in the EU’ that it will seek approval to participate in the Group of States against Corruption (GRECO), the anti-corruption network set up by the Council of Europe.

The resolution calls for the fundamental rights of EU citizens and their families who have moved within the Union under freedom of movement to be protected after Brexit.

**Migration**

The resolution condemns the abuses and human rights violations suffered by migrants and refugees, in particular with regard to access to territory, reception conditions, asylum procedures, immigration detention and the protection of vulnerable persons. It focuses especially on children, women and lesbian, gay, bisexual, transgender and intersex (LGBTI) asylum seekers who are particularly vulnerable. With regard to children, the resolution recalls that detention should be avoided and that refugee children have the right to education based on Article 14 of the EU Charter of Fundamental Rights.

The resolution refers also to the work carried out by different non-governmental organisations (NGOs) operating in the Mediterranean and their efforts to save lives and provide humanitarian assistance to those in need. It recalls that sea rescue is a legal obligation under international law, specifically Article 98 of the United Nations (UN) Convention of the Law of the Sea (ratified by the Union and all its Member States), Member States should support NGOs instead of hindering their work and together with the Commission develop and guarantee search and rescue operations.

**Women's rights**

The resolution refers to the 2017 Fundamental Rights Agency (FRA) paper entitled “Challenges to women’s human rights in the EU” which confirms that women and girls experience persistent gender discrimination, sexist hate speech, and gender-based violence in the EU, and to the European Disability Forum report entitled ‘Ending forced sterilisation of women and girls with disabilities’.

It calls on the Commission to submit a legal act to support the Member States in the prevention and elimination of all forms of violence against women and girls and of gender-based violence.

The resolution deplores the sexism and gender stereotypes that have a severe impact on women’s fundamental rights in all spheres of life and recalls that women are often the victims of multiple discrimination arising from, inter alia, ethnic minority status, sexual orientation, disability or migrant status.

**Media freedom, freedom of expression and freedom of assembly**

The resolution stresses that public deliberation and debate are vital to the functioning of democratic societies, and in this context encourages the EU and its Member States to take further steps to safeguard and protect freedom of speech and assembly.

The resolution also stresses the importance of EU-wide projects, such as the Media Pluralism Monitor and Mapping Media Freedom, that assess risks to media pluralism across Europe, map limitations, threats and violations that affect media freedom, conduct awareness-raising campaigns, and provide support for journalists under threat and for cross-border investigative journalism; underlines that financing related to these and similar issues should be secured under the new Multiannual Financial Framework (MFF).

It emphasises the key role of whistle-blowers in safeguarding the public interest and in promoting a culture of public accountability and integrity in both public and private institutions. It welcomes the Commission’s proposal of 23 April 2018 for a horizontal directive on the protection of persons reporting on breaches of Union law, and underlines the importance of a swift follow-up by the co-legislators, so that the proposal can be adopted before the end of the present legislative term.

The resolution welcomes the Commission Communication of 26 April 2018, ‘Tackling online disinformation: a European approach' and the actions it contains[[2]](#footnote-2) and expresses its concern about the potential threat the notion of 'fake news' could pose to freedom of speech and expression and to the independence of the media, while underlining the negative effects that the spread of false news might have on the quality of political debate and on the well-informed participation of citizens in democratic society.

The resolution mentions obstacles such as serious restrictions on freedom of association and freedom of speech for the civil society and human rights defenders, as well as restrictions on financing. It expresses concern at the challenges civil society organisations are facing (the so called ‘shrinking space’) in some Member States and calls on the EU and the Member States to address proactively the root causes of shrinking civil society space and to uphold fundamental rights. It reiterates the call for adequate EU funding, as outlined in Parliament’s resolution of 19 April 2018 on establishing a European Values Instrument (EVI)[[3]](#footnote-3), in order to provide support to civil society organisations engaged in promoting fundamental values in the Union, and to prevent any misuse of such funding.

**Racism, xenophobia, discrimination, hate speech and other forms of intolerance**

The resolution expresses concern that 2017 saw no major improvement in terms of achieving the goals of the National Roma Integration Strategies and points out that European Structural and Investment Funds (ESIF) resources are not linked to the National Roma Integration Strategies and often do not benefit Roma people.

The resolution notes the discrimination against LGBTI people and calls on the Commission to mainstream a gender identity perspective within the EU’s remit on gender-based violence. It welcomes the implementation of certain items contained in the list of actions by the Commission to advance LGBTI equality (2014-2019) and calls on the Commission to maintain its ambitious multiannual planning in this field, in close cooperation with civil society organisations working in the area.

With regard to the rights of persons with disabilities, the resolution notes that they are still disadvantaged and discriminated against regarding employment, education and social inclusion, as stated by the Commission in its implementation report on the European Disability Strategy published in February 2017.

The resolution calls on the Commission to renew its commitment to set out a new EU Agenda for the Rights of the Child, as well as a new strategy for children’s rights, and to aim to mainstream children’s rights in EU policies, legislation and financial decisions, as well as taking them into account when programming and implementing regional and cohesion policies.

The resolution takes note of the Commission's proposal for a regulation to prevent the dissemination of terrorist content online, and calls for the Council and Parliament to work on the text in order to ensure judicial control over decisions to remove online content.

**Role and mandate of the Fundamental Rights Agency**

The resolution calls for the global statutory mission of the Agency to be extended to include the operational task of providing technical assistance, training and capacity-building on fundamental rights issues to the EU institutions, bodies and agencies, as well as to Member States when implementing EU law. It reiterates its call for alignment of the Fundamental Rights Agency’s mandate with the Lisbon Treaty, including by making it explicit that the Founding Regulation covers police and judicial cooperation.

The resolution welcomes the opinions of the Agency on draft EU legislation and recommends that EU legislators should request independent and external human rights advice from it whenever a legislative file raises serious fundamental rights issues; calls on the Commission to ensure that the Fundamental Rights Agency has the requisite mechanisms to enable it to fulfil its mandate.

**6. Response to requests and overview of action taken, or intended to be taken, by the Commission:**

**On the Rule of Law**

The rule of law is one of the core values of the EU and a prerequisite for protecting all our other fundamental values, for the application of EU law, for the internal market, for an investment friendly environment, as well as for mutual trust between the Member States and the authorities.

The Commission proposed in May 2018 a regulation[[4]](#footnote-4) on protecting the Union’s budget in case of generalised deficiencies as regards the rule of law in the Member States. The Commission will present in 2019 an initiative to strengthen the 2014 rule of law framework. The announcement of the initiative reflects the joint efforts to strengthen the enforcement of the rule of law in the EU and to promote and uphold common European values in all the Member states. The Commission's initiative will draw lessons from the experiences of recent years. It will also take due account of the work of the European Parliament, including the resolution adopted on 25 October 2016, which will feed the reflection, even if this does not mean that the proposal will take up all elements of the Parliament’s proposal. The key issue is to identify the best means of achieving this objective.

After repeated efforts to engage the Polish authorities in a constructive dialogue in the context of the Rule of Law Framework, the Commission concluded on 20 December 2017 that there is a clear risk of a serious breach of the rule of law in Poland, and invoked the Article 7(1) TEU procedure, proposing to the Council to adopt a decision on the determination of a clear risk of a serious breach of the rule of law by Poland. On 26 June, 18 September and 11 December 2018, the Council held hearings on Poland under the Article 7(1) TEU procedure. In September 2018, the Parliament decided to initiate such procedure against Hungary. The Commission shares a significant number of the concerns expressed by the European Parliament, in particular as regards fundamental rights, corruption, segregation of Roma in education and the independence of the judiciary. The European Parliament’s reasoned proposal has already been on the agenda of the General Affairs Council on 12 November and 11 December 2018 and 13 February 2019. On 30 January 2019, the Commission presented the state of play to the European Parliament.

The Commission is also using infringement proceedings to address values-related violations of EU law by Member States. On 24 September 2018, the Commission decided to refer Poland to the Court of Justice for violations of the principle of judicial independence by the new law on the Supreme Court lowering the retirement age of judges. On 17 December 2018, the Court of Justice adopted a final order, which grants all the Commission’s request for interim measures until the Court has rendered a final judgment on the substance of the case. There is currently a series of ongoing values-related infringement procedures against Hungary.

The Commission is using other instruments, including audits and investigations relating to the use of EU funds, as well as measures through the European Semester to monitor justice reforms in the Member States. Overall, the EU is encouraging the Member States to improve the independence, quality and efficiency of their justice system and is monitoring justice reforms. In the context of the European Semester, the Commission is currently assessing the laws establishing a new administrative courts system in Hungary as regards their compatibility with EU law and European standards on judicial independence.

On 13 November 2018, the Commission adopted its latest report on progress under the Cooperation and Verification Mechanism (CVM) for Romania. The Commission also took note of the resolution of the European Parliament of the same day. The resolution states that while some steps have been taken to implement the final recommendations from the January 2017 report, the developments over the past 12 months have put into question and reversed the progress made over the past 10 years. The Commission has therefore set out eight additional recommendations for immediate follow up, referring in particular to the justice laws, the pressure on judicial independence and on the criminal codes. The Commission is of course continuing to follow closely the developments in Romania and is assessing progress again still under this Commission’s mandate.

The 2014 EU Anti-Corruption Report provided a useful overview of the situation of corruption in each Member State: measures in place, outstanding issues, policies that are working and areas that could be improved. The report showed that the nature and scope of corruption varies from one Member State to another and that the effectiveness of anti-corruption policies is quite different. It also showed that corruption deserved attention in all EU Member States. In the past years, the Commission has increasingly prioritised integrity and anti-corruption also in the European Semester of economic governance, focusing on anti-corruption policies in the Member States and their efforts, including on effective investigation and prosecution of corruption. Corruption is still a key issue in a number of Member States, hampering investment, efficient resource allocation, economic performance and growth. The situation calls for continued, persistent and coherent action.

It is against this background, that, in line with the general approach of this Commission to streamline processes and focus on key issues in the relevant fora, the Commission considered that the European Semester, which is the main economic policy dialogue with Member States, is the most appropriate policy instrument for systematically engaging with the Member States in this area of major common interest. In February 2019, the issue of corruption was included in 15 country reports (Bulgaria, Croatia, Czech Republic, Cyprus, Greece, Hungary, Italy, Latvia, Lithuania, Malta, Portugal, Romania, Slovakia, Slovenia, Spain). For several Member States, the Commission underlined the need to strengthen effective investigation and prosecution of corruption and enhance prevention. Other areas requiring improvements are whistle-blower protection, lobbying legislation, assets and interests disclosure and verifications, adequate resourcing for anti-corruption bodies, as well as transparency and public access to information. Among the 2018 Country Specific Recommendations published on 23 May, at the end of the previous European Semester cycle, recommendations focusing on these aspects were proposed for six countries (Czech Republic, Hungary, Italy, Latvia, Malta, and Slovakia).

The Commission has set out its position on the EU participation in the Group of States against Corruption (GRECO) under the auspices of the Council of Europe already in 2012. At that time, accession was envisaged in a two-step approach: full participant status (i.e. participation in GRECO meetings but no voting rights and no obligation to be reviewed) in a first stage, followed by full membership in a second stage. EU participation in GRECO has been the subject of discussion among all EU institutions, including on the legal basis. The proposed legal basis was Article 220 TFEU on cooperation with international organisations. The Council rejected this proposal arguing that Article 218 TFEU, on the conclusion of agreements with international organisations would be the correct legal basis. Article 218 gives the Council a more prominent role in the accession process, whereas for Article 220 the involvement of the Council is more limited. Further work is necessary for all EU institutions to reach a common understanding on the matter. In the meantime, the Commission agrees on the need to cooperate with GRECO on capacity building measures and implementation of standards in order to strengthen the fight against corruption. The Commission has cooperated informally with GRECO in the framework of the experience-sharing programme that the Commission is rolling out for Member States anti-corruption experts. Another possibility in the future would be to request an observer status. Currently the United Nations Office on Drugs and Crime (UNODC) and the Organisation for Economic Co-operation and Development (OECD) are also observers to GRECO, and this status is used by the three organisations to coordinate the peer-reviews under each monitoring mechanism.

The withdrawal of the United Kingdom from the European Union continues to be a main concern of citizens. Safeguarding the status and rights derived from EU law at the date of withdrawal of EU citizens and UK nationals, and their families, was an essential objective of the negotiations with the United Kingdom. In November 2018 the EU and the United Kingdom reached agreement on a draft Withdrawal Agreement at negotiators’ level, which was then endorsed by the European Council (Article 50) on 25 November 2018. The draft Withdrawal Agreement enshrines in legal form the understanding reached in the December 2017 Jjint report that those EU and the United Kingdom citizens who have exercised their right to move and reside freely in accordance with EU law in the host State at the end of a defined transition period and continue to enjoy the plethora of free movement rights including, the right to equal treatment, the right to work, study or run a business. These rights also cover the family members of the EU and the United Kingdom citizens concerned. One important principle that the Agreement safeguards is that its concepts and rules will need to be interpreted using the methods and general principles of interpretation applicable in Union law. This covers, for instance, the obligation to interpret the concepts or provisions of Union law referred to in the Withdrawal Agreement in a manner consistent with the Charter of Fundamental Rights. This will be particularly important in the application of the citizens’ rights Part of the Agreement. The Withdrawal Agreement still needs to be formally approved by both the EU and the United Kingdom, in accordance with their respective internal procedures before it can enter into force so that citizens and businesses can actually rely on it. The EU is taking every step in view of its ratification, however the ratification in the United Kingdom is uncertain.

**On migration**

The EU legal framework concerning migrant smuggling is in place since 2002. It consists of the ‘Facilitators package’ (Directive 2002/90/EC and Framework Decision 2002/946/JHA) that requires the Member States to adopt appropriate sanctions on anyone who intentionally assists another person who is not a national of a Member State to enter or transit or, for financial gain, to reside in the territory of a Member State in breach of its national law. Member States can decide not to apply sanctions when such facilitation to enter or transit is conducted for humanitarian reasons and a number of Member States (BE, EL, ES, FI, IT, MT, UK, HR and IT) have included certain types of exemption in national law.

The Commission has repeatedly underlined that criminalisation of genuine humanitarian assistance should be avoided. The 2017 evaluation of the EU legal framework against facilitation of unauthorised entry, transit and residence, did not provide solid evidence to support the need for a legislative review; the review however identified possible improvements, in particular as regards the clarity of the humanitarian exemption clause.

Against this background, the Commission has expressed its readiness to further support information sharing for an improved implementation of the Facilitators Package, including through a dialogue with civil society. The Commission is now actively engaging with civil society on this particular aspect. The exemption of criminalisation of humanitarian assistance to migrants in the framework of migrant smuggling was discussed in a dedicated meeting with civil society representatives and the Fundamental Rights Agency on 3 May 2018, in Brussels. This dialogue continues. This issue was also discussed with specialised prosecutors during the last Eurojust meeting on migrant smuggling on 30-31 May 2018.

The Commission recalls that the coordination of Search and Rescue (SAR) operations in the Mediterranean, takes place under international law and falls under the responsibility of the national Maritime Rescue Coordination Centre in charge. The Commission calls on all actors to respect the duty of cooperation and to operate keeping the humanitarian imperative in mind. In parallel, the Commission, invests in improving the situation in origin and transit countries, fighting smugglers, supporting search and rescue operations as well as strengthening our external borders, and enhancing legal and safe pathways. The support of SAR activities remains a priority in the new Integrated Border Management Fund, proposed in June 2018, under the 2021-2027 Financial Framework.

In the new Multiannual Financial Framework (MFF) the Commission proposed increased support to the Member States for external border management and Search and Rescue under the new EU budget, with an overall envelope of EUR 21.3 billion for border management. As part of our priorities in strengthening external border management, funding will also be channelled towards support for search and rescue at sea – in addition to tackling migrant smuggling and trafficking in human beings as well as intercepting and stopping those who pose a threat, support equipment and training for border guards, and swift operational support for Member States under pressure.

EU legislation also ensures that employers of irregular migrants are appropriately sanctioned (Employers' Sanctions Directive (2009/52/CE) adopted in 2009).and the European Platform tackling undeclared work enhances cooperation between EU countries by bringing together relevant authorities and actors in the Member States. The EU has also stepped up its work to reinforce the protection of children in migration, at all stages of migration routes. The Communication on the protection of children in migration, adopted in April 2017[[5]](#footnote-5), and followed by Council Conclusions of 8 June 2017, has set out comprehensive actions including recommendations to EU Member States for actions to protect children in migration. The Commission is monitoring progress, by publishing online and updating regularly an overview of Commission and EU agency actions following up to the April 2017 Communication, and by publishing, in cooperation with the Member States’ migration and child protection authorities, survey responses progress made at national level. While the Commission will continue monitoring developments and encourage exchange of good practice with migration and child protection experts, also in close cooperation with international and non-governmental organisations, it is noted that child protection for migrant children is still fragmented across the Member States. A number of challenges remain to be addressed in order to make the policy on the protection of children in migration tangible and consistent.

Detention conditions are primarily a responsibility of the Member States who agreed to respect the existing Council of Europe standards on the matter, such as the European Prison Rules adopted in 2006. The Commission has devoted the 2017 European Forum on the rights of the child to the topic of children deprived of liberty, in an effort to promote good practices on alternatives to detention. The Commission is also contributing to the financing the ongoing United Nations (UN) Global study on children deprived of their liberties and alternatives to detention. Under the Asylum, Migration and Integration Fund (AMIF), a call for proposal was launched in 2018 to finance the exchange of good practices and/ or provision of the necessary training so as to support the alternative care systems (such as family-based care, or foster care, or supervised independent housing arrangements) or of effective alternatives to detention. 2019 will be a particularly important year, as it marks the 30th Anniversary of the UN Convention on the Rights of the Child and the 10th Anniversary of the UN Guidelines on the Alternative Care for Children. In addition, the 2019 UN Resolution on the Rights of the Child will focus on ‘Children without parental care’. The EU is one of the main donors to ensure children’s survival and development around the world. It is also playing an active role in promoting family and community-based care for children both within and outside the EU. In external action, the EU is supporting a number of projects around the world and is raising awareness of this issue in human rights dialogues with partner countries. The third priority of the call for proposals for Union grants in 2018 under the AMIF addressed the integration of third country national victims of trafficking in human beings, with focus on gender-specific and child –sensitive approach.

The Commission in its 2017 Communication on the protection of children in migration, called on the Member States to reflect the diverse social and economic background and conditions of children when establishing integration policies. The Communication highlighted how education is one of the most important and powerful tools for the integration of children. The Commission supports financially the European Agency for Special Needs and Inclusive Education, which works closely with Education Ministries of the Member States. The Agency provides analysis, evidence and information about inclusive education across Europe, recommendations for policy and practice as well as tools for monitoring progress.

The Commission has funded numerous projects to protect children from violence, through the Rights, Equality and Citizenship programme and the DAPHNE programme. At the 9th European Forum on the rights of the child in 2015, the Commission proposed 10 Principles for integrated child protection systems.

The Commission considers that the important work on the rights of the Child of the last years is not complete and should continue delivering the objectives set in 2017; work should now focus on mainstreaming these issues across all policy fields, rather than embarking on any new initiatives.

With regard to the Information Systems for Border and Security: on 12 December 2017, the Commission adopted proposals on a framework for interoperability between EU information systems to close information gaps and better protect EU citizens. Co-legislators have reached political agreement on the file. The aim is to improve the efficiency and effectiveness of EU-wide information-sharing tools by making it possible for them to work together in a better way. Authorised users (such as police officers, migration officials and border guards) will have faster, seamless and more systematic access to the information they need to do their jobs, in full compliance with fundamental rights. The Commission’s overall evaluation of the instruments will include an examination of their impact on fundamental rights.

No additional information about people will be collected as a result of the interoperability measures in this proposal. The high existing standards of EU data protection laws will be maintained and will ensure that personal data is processed fairly and proportionately. Interoperability of information systems is a way to ensure that information is shared appropriately and efficiently with those who have both the need and the right to access it. Ensuring efficient information sharing will also contribute to simplifying procedures for the individuals concerned. Overall, the measures will help reassure EU citizens that any third-country national on the European territory has a known genuine identity and a valid reason to be there. Furthermore, the interoperability measures will strengthen the capability of the EU to combat crime and terrorism and to ensure security.

As regards the call for stronger effort on integration and the stepping-up of the sharing between the Member States of good integration practices, the Commission is supporting the Member States in the framework of a revamped European Integration Network. Regular meetings of this network, as well as study visits – within past months to Germany, Sweden, Portugal and Norway – provide ample possibilities to exchange of good practices on integration between the Member States. The most recent meeting of the Network in November 2018 addressed specifically the situation of migrant women. Member States exchanged their ideas on how to effectively outreach to and empower migrant women, strengthen their participation in the labour market and their social integration. The Commission finances also mutual assistance projects - targeted bilateral exchanges between Member States on specific integration challenges they face.

The Asylum Migration and Integration Fund provides support to strengthen integration measures and enable the dissemination of good practices. Several projects were deployed recently to support the integration of migrant women and to raise awareness on migrants' contribution to EU societies.

**On women’s rights**

The Commission continues to be unequivocally committed to protecting, and promoting women's fundamental rights, and to achieving gender equality. This continued and unwavering commitment is evident in our ongoing work on, for instance, promoting equal sharing of paid and unpaid work between women and men, closing the gender pay gap, preventing violence against women and supporting victims, and striving towards gender balance in decision-making within and outside the EU.

Violence against women and girls is a serious violation of their human rights. This is why the Commission has placed combating all forms of violence against women at the front line of its work in achieving gender equality. It has in particular pushed for the EU to accede to the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention). The ratification of the Istanbul Convention is a top priority for the Commission. We thank the European Parliament for its strong support for as broad a scope of the EU’s accession as possible. So far, 20 Member States have ratified the Convention and all the others (BG, HU, IRL, LT, LV, SK, CZ and, UK) are encouraged to ratify as soon as possible.

As to the calls on the Commission to propose a new legal act on the prevention and elimination of all forms of violence against women and girls and of gender-based violence, the completion of the ongoing accession process by the Union to the Istanbul Convention is a priority for the Commission. The Istanbul Convention sets out comprehensive measures to address violence against women and domestic violence. In addition, the so-called “passerelle clause” in Article 83(1) TFEU can only be activated subject to strict conditions laid down in the said provision and related to the cross-border dimension of the serious crimes in question. The Council is the institution authorised to identify, by a unanimous decision, violence against women and girls as an area of crime covered by Article 83(1) TFEU.

It is important to note that the definition of sexual harassment in the Istanbul Convention corresponds to already existing EU law on non-discrimination. Such behaviour is sanctioned in EU legislation, but reporting rates continue to be very low and cases rarely make it to courts. The Commission is committed to continue working with national equality bodies to address this problem and provide support to victims. The Victims' Rights Directive, which came into force in 2015, requires the Member States to protect and support victims and give them an active role in criminal proceedings. Unfortunately, not all the Member States have transposed the directive and in November 2018 the Commission issued Reasoned Opinions to Romania, Slovenia and Ireland. Currently, the Commission is carefully analysing the state of completeness and correctness of transposition in all the Member States and may proceed with further infringements proceedings if necessary. In 2019, the Commission will publish a report to the European Parliament and to the Council assessing the extent to which the Member States have taken the necessary measures in order to comply with the Victims’ Rights Directive.

Commissioner Jourová dedicated 2017 as a Year of Focused Actions to Combat Violence against Women. The aim was to support national authorities, as well as local actors, in their ongoing fight to prevent and combat violence against women, and to support its victims. EUR 15 million was made available to fund 32 civil society and national authority-led projects. The aim was also to raise awareness about the problem and call on people to reject violence against women and speak up against it, with a dedicated communication campaign was launched, under the hashtag #SayNOStopVAW. The campaign ran until the end of 2018, with communication outputs still being disseminated in 2019.

With regard to the call on the Commission for the gender mainstreaming, the Commission points out that its gender equality policy framework, the Strategic Engagement on Gender Equality 2016-2019, focuses on five priority areas (increasing women’s labour market participation and equal economic independence; reducing the gender pay /earnings/ pension gaps and thus fighting poverty among women; promoting equality between women and men in decision-making; combating gender-based violence and protecting and supporting victims; as well as promoting gender equality and women's rights across the world). The Commission is implementing its Gender Action Plan (2016-2020) to transform lives of girls and women through EU external relations. The 2017 Gender Action Plan Implementation Report underlines that 62.8 % of EU Official Development Aid was committed in a gender sensitive or gender focused way in 2017; a steady progression from 13 % in 2011 and slightly above 30 % in 2014. The importance of economic empowerment of women has been highlighted also in the European Pillar of Social Rights, which was endorsed by the European Council in November 2017. In 2019, the Commission is taking stock of the progress on gender equality under the Strategic Engagement, identifying gaps and reflecting on the priorities for the next five years. The aim is to present the incoming Commission with a robust and ambitious policy framework for gender equality. The decision on the institutional format of the next action will be taken by the next Commission.

A crucial instrument to achieve gender equality in the European Union is the initiative adopted by the Commission in April 2017 on work-life balance of working parents and carers, allowing for both men and women to better balance their working life and family responsibilities. A provisional agreement was reached by the co-legislators in January 2019 on the proposal for a directive included in the initiative. The provisional agreement ensures that fathers across the Union will have the right to paid paternity leave (for ten working days at sick pay level). In addition, each parent will have the right to a parental leave of four months, of which at least two months will be reserved for each parent, non-transferable between the parents and paid. Finally, carers will be entitled to a carers’ leave of at least five working days per year and parents with children up to at least eight years old and carers will have the right to request flexible working arrangements. This provisional agreement needs to be adopted by both the European Parliament and the Council.

Finally, the Commission recalls its legislative proposal to improve gender balance in corporate boards from 2012. It is based on a flexible and proportionate approach, which does not imply binding quota obligations. It sets a quantitative objective of at least 40 per cent representation for each gender among non-executive directors, or of 33 per cent for all types of directors. This objective is not linked to a binding quota obligation that would lead to sanctions if not reached, but to a procedural commitment: listed companies that do not meet the target would need to ensure fair and transparent selection procedures for the selection of candidates for board positions. The proposed directive explicitly provides for the possibility of the Member States to reach the objectives by alternative means - they would be free to maintain and apply their existing effective measures aimed to improve gender balance in corporate boards. The proposal is being negotiated between the Member States, with the majority of them supporting it. Unfortunately, some Member States have not yet defined their position, which does not permit the co-legislators to complete the negotiation process.

As concerns advocacy and civil society involvement, apart from support of European Women’s Lobby the Commission also financially supports the operating costs of a number of EU level networks on disability through the Rights, Equality and Citizenship programme. They work on issues relevant to people with disabilities, including women, girls and boys. For example, the European Disability Forum was implementing a Gender Equality Action Plan 2015-2017.

At the same time the Commission provides for sharing information and good practices via the High Level Group on Disability (which is composed of representatives of the Member States, civil society and the Council of Europe). There were three discussions in the group on women on 15 December 2016 (in general on women with disabilities, and on the Strategic Engagement for gender equality), on 18 May 2017 (campaign on violence) and on 25 October 2018 (the European Economic and Social Committee presented its opinion on the situation of women with disabilities). Other discussions take place in scope of annual Work Forums and European Day of Persons with Disabilities conferences.

For making policy and legal practitioners aware of the UN Convention on the Rights of Persons with Disabilities and its legal implication, the Commission supports the Academy of European Law to provide trainings on this area. Partners of the Academy of European Law are European Disability Forum and the European Foundation Centre. In 2017 they organised six seminars. The seminars covered the Convention and its legal status in general, and several specific topics, articles of the Convention and case studies. For example during a seminar in Prague in October 2017 women with disabilities were specifically covered.

**On media freedom, freedom of expression and freedom of assembly**

The Commission defends media freedom and pluralism within its competences. It also acts as a facilitator. In particular, the Commission has provided funds for the establishment and activities of the European Centre for Press and Media Freedom (ECPMF), based in Leipzig, to unite Europe’s fragmented media freedom community and to address media freedom violations in EU member states and beyond. The Centre has operated a funding scheme for cross-border investigative journalism, with the International Press Institute (IPI). In June 2018, an independent jury selected 12 investigative journalism projects for funding under the inaugural round of the Investigative Journalism for EU (IJ4EU) fund. More than 60 teams of EU-based journalists presented projects worth more than EUR 3 million as part of the call. Also thanks to EU funding, Index on Censorship managed the mapping media freedom platform, to provide further assistance to journalists and disseminate knowledge about media freedom in Europe.

Another EU-financed project is the Media Pluralism Monitor, which aims at identifying and highlighting risks faced by media pluralism in the EU with a broad set of indicators, covering legal, economic and socio-demographic aspects. Over the past years, the European University Institute (EUI) in Florence has monitored the situation in all the Member States in an independent manner. While the level of risks vary significantly across the EU, the results of this monitoring exercise show that no Member State is immune from risks when it comes to media pluralism. In 2019, the Centre for Media Pluralism and Media Freedom (CMPF) is conducting a study on the Indicators required to assess risks to Information Pluralism in the Digital Age. It will then implement this Media Pluralism Monitor in the EU Member States and in two candidate countries, covering the years 2018 and 2019.

Following the initiative of the European Parliament, the Commission has launched three calls for new pilot projects which are expected to establish exchange programmes for media practitioners and training for minority languages journalists, support media councils.

It is expected that the next MFF will allow funding activities in the field of quality journalism, media freedom, media pluralism and media literacy in a more stable and structured way under the Creative Europe Programme proposed by the Commission and currently under negotiation by Parliament and Council.

On 26 April 2018 the Commission adopted a Communication on Tackling online disinformation: a European approach. The Communication is the Commission's policy response to the phenomenon of disinformation. The Communication reflects the Commission's commitment to improving European citizens' access to quality and unbiased information online. It was developed following a multi-stakeholder consultation which delivered rich results, notably the recommendations of the independent High Level Group. This comprehensive approach to disinformation seeks to be both inclusive and action-oriented in order to achieve a speedy reduction in the volume of fake news. It incentivises the market players and civil society to take immediate action starting in July 2018. On 5 December 2018 the Commission adopted its Action Plan against Disinformation which is based on four pillars: (i) improving the capabilities of Union institutions to detect, analyse and expose disinformation; (ii) strengthening coordinated and joint responses to disinformation; (iii) mobilising private sector to tackle disinformation; (iv) raising awareness and improving societal resilience.

The Commission is aware of challenges to media freedom and pluralism in the Member States and is taking a number of measures to strengthen media freedom and pluralism across the EU[[6]](#footnote-6). For example, the revised Audiovisual Media Services Directive will require regulatory authorities in the field of audiovisual media services to be independent and lays down the requirements of independence with which they have to comply. The Commission's proposal for a directive on copyright in the Digital Single Market includes a new related right for press publishers.

The Commission has also presented an initiative for the protection of whistle-blowers, with an aim to adopt it before the end of the mandate. Whistle-blowers play an important role also as a source of information for journalists. Protecting them is therefore crucial for safeguarding the "watchdog" role of investigative journalism.

With regard to the freedom of assembly and of association, they constitute the essential foundations of our democratic societies, enshrined in the Charter of Fundamental Rights. The provisions of the Charter, however, are addressed to the Member States only when they are implementing European Union law. Accordingly, under the Charter and the Treaties, the Commission has no general power to intervene with the Member States in the area of fundamental rights. Moreover, the definition and application of rules governing the exercise of the right to freedom of assembly and the holding of demonstrations, and the sanctions thereof, is a matter which pertains to the Member States only. It is for the Member States, including their judicial authorities, to ensure that fundamental rights are effectively respected and protected in accordance with their national legislation and international human rights obligations.

The importance of preserving and protecting the civil society space, highlighted in the resolution, has become more evident recently, when fundamental rights and values are under pressure. The “shrinking space” for civil society in some Member States was underlined in the Fundamental Rights Agency report of 2018, and also discussed at length in various *fora*. In its role as guardian of the Treaties, the Commission monitors legislative developments at national level that have an impact on the role and functioning of civil society organisations. The Commission has already undertaken enforcement action with regard to a number of measures adopted at national level which affect the work of civil society organisation in a manner contrary to EU law and the Charter, as was the case in Hungary, where laws limiting the activities of civil society in breach of EU law were passed in 2017. The Commission did not hesitate to take action again where necessary.

The Commission engages in a regular dialogue with civil society organisations, both on general fundamental rights issues and on thematic areas falling within the remit of its competences. It will reflect on how to maximise the added value and effectiveness of existing tools and fora, as a means to discuss and showcase the space and work of civil society organisations promoting and protecting fundamental rights and values in the EU.

A reflection on how further to support the development of a free and vibrant civil society space in Europe has been at the core of the Colloquium on Fundamental Rights, devoted to the topic of "Democracy in the EU” on 26-27 November 2018. The discussions revolved around current challenges facing civil society organisations and key avenues to enhance support for the development and sustainability of the civil society space: as we cannot expect democracy to remain resilient and inclusive if we do not invest in preserving and protecting it.

The Commission is also aware that the capacity of civil society must be reinforced. On 30 May 2018 the Commission adopted its proposal for a new Justice, Rights and Values Fund comprising both the Rights and Values Programme and the Justice programme. The Commission intention is to further enhance synergies between the current different funding programmes to give EU values an ever more prominent and visible place in our funding priorities. The new Justice, Rights and Values Fund is also a response to the 2018 resolution of the European Parliament to promote core support civil society organisations. Working together with national budgets and complementing other efforts at European and national level, the Union budget will provide concrete support to civil society in many key areas. In particular, the Rights and Values programme will aim "to protect and promote rights and values as enshrined in the EU Treaties, including by supporting civil society organisations, in order to sustain open, democratic and inclusive societies". The role of non-governmental organisations is therefore recognised at the highest level, in the general objective of the programme and this is a key element of the Commission proposal.

The Commission is also implementing a preparatory action for an “EU fund for financial support for litigating cases relating to violations of democracy, rule of law and fundamental rights”. The Commission is determined to make good use of the envelope entrusted to it by the Parliament, and implement the preparatory action swiftly and efficiently, in order best to achieve its objectives within the possibilities of the existing legal and financial framework – to that end, the Commission plans to launch the call for proposals and a procurement procedure for a feasibility study in the first quarter of 2019.

Through its Human Rights Defenders Mechanism under the European Instrument for Democracy and Human Rights, the Commission takes a leading role in the protection of human rights defenders worldwide.

**Racism, xenophobia, discrimination, hate speech and other forms of intolerance**

Combatting racism and discrimination is central to the Commission’s work on fundamental rights. It is about what the EU does to implement Article 2 TEU, namely to promote a society in which pluralism, non-discrimination, justice, solidarity and equality prevail.

The High-Level Group on combating racism, xenophobia and other forms of intolerance continued to work hard in 2018 on improving responses to hatred and intolerance. Following a number of practical guidance tools in key areas such as hate crime training, access to justice, support and protection for victims of hate crime and hate speech and hate crime recording, the work of the High Level Group led to the publication in 2018 of a comprehensive guidance document on the practical application of the Framework Decision on combating racism, on the occasion of the 10th anniversary of adoption. The guidance is aimed at assisting national authorities to ensure the implementation and enforcement on the ground of national hate crime legislation. It will be important for the Member States to build on this work and make concrete progress on the ground, to address difficulties and challenges they have faced to translate their obligations into practice. In order to support these efforts, building on the fruitful cooperation and the results achieved, we intend to further use the group, in the future, to strengthen support and assistance to the Member States' authorities and intensify practical cooperation between key actors at national level, with the support of the Fundamental Rights Agency and of relevant international bodies such as the Office for Democratic Institutions and Human Rights (ODIHR) and the European Commission against Racism and Intolerance (ECRI).

The Commission also further worked on implementing the Code of conduct on countering hate speech on line with the four participating IT companies (Facebook, Twitter, YouTube and Microsoft), national authorities and civil society organisations. The aim of this cooperation is and remains to ensure that online illegal hate speech is quickly identified and taken down. The 2017 monitoring of the implementation of the Code of conduct showed that 70 % of all the illegal hate speech notified to the four companies by non-governmental organisations and public bodies participating in the evaluation was removed. This shows remarkable progress when compared to only 29 % a year earlier. Instagram, Google+ and Snapchat joined the Code in 2018, bringing the cooperation to 7 major IT companies.

Similarly, the Commission worked within the EU Internet Forum bringing together *inter alia* the Member States, internet companies as well as Europol, the Radicalisation Awareness Network and academia to tackle terrorist content online both through actions aimed at ensuring the swift removal of terrorist content online as well as the development of effective alternative and counter narratives (under the so-called Civil Society Empowerment Programme).

The Commission's overall approach to illegal content online is laid down in the Commission Communication of September 2017 (COM(2017) 555) and the Recommendation on tackling illegal content online published in March 2018 (C(2018) 1177). The recommendation addresses issues which require a horizontal response and contains recommendations aimed at improving the detection, removal and disabling access to illegal content, with specific recommendations for terrorist content online. At the same time it introduces important safeguards to avoid over-removal, ensure transparency and protect the freedom of expression.

Given the urgency for specific actions ensuring that terrorist content is taken down quickly to avoid further harm of material that radicalises, recruits and instructs in carrying out terrorist attacks, the Commission proposed, in September 2018, a regulation on preventing the dissemination of terrorist content online (COM(2018) 640). Measures that ensure the swift and effective removal of terrorist content online are paired with strong safeguards against the erroneous removal of material protected by the freedom of speech. In addition to transparency obligations and complaint procedures, both hosting services providers and content providers have the possibility of judicial redress against any decision affecting their rights, as enshrined in Article 19 TEU and Article 47 of the Charter of Fundamental Rights of the EU.

The Commission monitors the implementation of the Race Equality Directive. The next report from the Commission to the European Parliament and the Council on the application of this directive will be developed after the Member States communicate all information necessary to draw up the report. The deadline for the Member States to communicate the information, as set by the directive, is 19 July 2020.

The Commission is committed to combatting all discrimination based on sexual orientation, gender identity and sex characteristics within the competences given to it by the Treaties. To do so, while fully respecting the Member States competences, it has developed the List of Actions to Advance LGBTI equality. The list of actions includes activities in policy areas like non-discrimination, education, employment, health, free movement, asylum, hate speech/ hate crime, enlargement and foreign policy. The Commission is committed to successfully and positively handover its work to advance LGBTI equality to the next Commission. In 2019 a new Eurobarometer on Discrimination and a new Fundamental Rights Agency LGBTI survey will take place and provide us with new data on the position of LGBTI people in the EU. An exchange with stakeholders will be organised to discuss the current situation of LGBTI people in Europe, and most importantly: the way forward. It is however up to the next Commission to decide how it will continue the LGBTI equality policies.

Based on the proposal from the Commission, the Council Recommendation on Promoting common values, inclusive education and the European dimension of teaching, adopted on 22 May 2018, indicates ways in which education can help young people understand the importance of and adhere to common values set out in Article 2 TEU and aims at strengthening social cohesion and contributing to fight the rise of populism, xenophobia, divisive nationalism and the spreading of fake news.

In December 2018, the Commission published a Communication on the evaluation of the EU Framework for National Roma Integration Strategies. The Communication is based on the results of an in-depth evaluation of the relevance, effectiveness, coherence, efficiency and the EU added value of the Framework. The evaluation confirmed that the priority areas and Roma integration goals - access to education, employment, healthcare, and housing – are key to Roma inclusion and continue to be valid today. However, while antigypsyism has increasingly been recognised as a root cause for Roma exclusion, a specific non-discrimination goal alongside the four Roma integration goals and stronger focus on the fight against antigypsyism would make the Framework stronger. The evaluation showed that the Framework had a positive added value by putting Roma inclusion on the EU and national agendas, developing structures and increasing coherence between EU policy, legal and funding instruments that have been mobilised and aligned for Roma inclusion, such as the European Semester of Europe 2020, the Racial Equality Directive or the 2014-2020 European Structural and Investment Funds and EU anti-trafficking framework. The Racial Equality Directive prohibits discrimination on the basis of racial or ethnic origin in a range of areas and in this context the Commission launched infringement proceedings on the discrimination of Roma children in education. In the 2014-2020 multiannual financial framework a Roma specific investment priority (socio-economic integration of marginalised communities such as Roma) was included under the European Social Fund with a linked *ex ante* conditionality concerning National Roma Integration Strategies. Twelve Member States selected this investment priority.

The evaluation also showed that the Framework could have been more relevant to the needs of all Roma if it had had a specific focus on Roma women, children and EU-mobile Roma. The evaluation concluded that the EU Framework is the beginning of a process that, despite many limitations and taking into account the massive task involved, has shown positive results and an initial change in trends. Addressing trafficking in Roma, in particular women and children, is still a need with child sensitivity and gender - specific dimension.

Furthermore the European Union and the Council of Europe have identified education as a key element to foster social inclusion. Important challenges remain, in particular to eliminate segregation in education through inclusive education. Since May 2017 the Commission and the Council of Europe implement a joint project called “Inclusive Schools: Making a difference for Roma children”. The project aims at enhancing social inclusion of Roma children by promoting inclusive education and training in selected national support and pilot schools. It does so by setting up support mechanisms for the schools and by providing support to teachers to improve learning outcomes of Roma children.

As far as the rights of persons with disabilities are concerned, the Commission recalls that Principle 17 of the European Pilar of Social Rights is devoted to the inclusion of people with disabilities. The have the right to income support that ensures living in dignity, services that enable them to participate in the labour market and in society, and a work environment adapted to their needs. In addition, disability concerns are mainstreamed into the principles related to education, training and long-life learning, equal opportunities, work-life balance, childcare and support to children, long-term care, housing and assistance for the homeless and access to essential services. The Commission is currently evaluating the European Disability Strategy 2010-2020, and all aspects of disability will be taken into account during the process, including the situation of women and girls with disabilities and intersectional discrimination. The Commission already disaggregates the disability-related data that it collects to identify multiple discriminations and translate them into clear commitments to improve the situation of women and girls with disabilities. Furthermore after the political agreement on the European Accessibility Act on November 2018, final adoption is expected in March 2019. The European Accessibility Act contains legally binding accessibility requirements for certain key products and services in the EU.

**On the Fundamental Rights Agency**

The Commission is assessing the conclusions of the external evaluator and of the Fundamental Rights Agency Management Board.

With regard to Fundamental Rights Agency's legal opinions, the Commission recalls that according to its founding regulation (article 4 (2)), the Fundamental Rights Agency can only provide opinions on legislative proposals by the Commission at the request of the Commission. It can provide opinions on European Parliament’s amendments or positions in the course of the negations at the request of the European Parliament.

Within its core mandate the Fundamental Rights Agency plays a role in the legislative process through the data and evidence it provides about issues on the ground. This evidence guides the Commission in its legislative and policy-making work. The Commission highly appreciates cooperation with the Fundamental Rights Agency in this upstream process.

1. European Parliament’s resolution of 10 October 2016, P8\_TA(2016)0409 [↑](#footnote-ref-1)
2. COM(2018) 236 [↑](#footnote-ref-2)
3. P8\_TA(2018)0184 [↑](#footnote-ref-3)
4. COM(2018) 324 final [↑](#footnote-ref-4)
5. COM(2017) 211 [↑](#footnote-ref-5)
6. As regards the concentration in the Hungarian media market, the Commission refers to its [written answer to Question P-006172/18](http://www.europarl.europa.eu/doceo/document/P-8-2018-006172-ASW_EN.html) [↑](#footnote-ref-6)