**Follow up to the European Parliament non-legislative resolution on the impact of COVID-19 measures on democracy, the rule of law and fundamental rights**

1. **Resolution tabled pursuant to Rule 112(2) and (3) of the European Parliament's Rules of Procedure**
2. **Reference numbers:** 2020/2790 (RSP) / B9-0343/2020 / P9\_TA-PROV(2020)0307
3. **Date of adoption of the resolution:** 13 November 2020
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:**

The resolution recalls that, even in a state of public emergency, the fundamental principles of the rule of law, democracy and respect for fundamental rights must prevail, and that all emergency measures, derogations and limitations must be subject to the conditions of necessity, proportionality in the narrow sense and temporariness. The resolution notes that reactions to the COVID-19 pandemic have, overall, shown the strength and resilience of national democratic systems, and underlined the importance of the checks and balances in these systems. The resolution emphasises the importance of free and plural media and of protecting the freedoms of expression and assembly and of the safety of journalists to our democratic societies. It notes the impact of the COVID-19 crisis on these freedoms and of the proliferation of disinformation in this context, which also undermined citizens’ trust in democracy and institutions.

The resolution calls on the Member States to respect the right to family life, in particular of families living and working across different Member States and beyond, to respect the right to privacy and data protection, and to uphold the right to free and fair elections, with particular reference to the work of the Venice Commission. The resolution calls for action from the EU to tackle disinformation, including in relation to democracy.

The resolution calls on the Commission to commission an independent and comprehensive evaluation of crisis measures taken during the ‘first wave’ of the COVID-19 pandemic, and welcomes that an assessment of COVID-19 measures adopted by the Member States has been included in the 2020 Rule of Law Report. The resolution calls on the Commission and the Council to engage in the negotiation of an interinstitutional agreement, as called for in the European Parliament resolution of 7 October 2020 on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights.

The resolution calls on the Commission to continue its monitoring of the measures taken, to step up its activities to coordinate the Member States, and to proactively guide authorities in their handling of the pandemic in line with democratic rule of law and fundamental rights. The resolution also calls on the Commission to take legal action and use other tools available whenever necessary to safeguard respect for the Union’s fundamental values, as well as take the lead to ensure that restrictive measures are lifted as soon as possible.

The resolution calls on the EU institutions and the Member States to draw lessons from the COVID-19 pandemic and to engage in far stronger cooperation in the area of health, including through the creation of a European Health Union, as put forward in the European Parliament resolution of 10 July 2020.

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

The Commission has been closely monitoring the measures taken to fight the COVID-19 pandemic in all Member States and will continue this monitoring. The Commission presented an update on the results of this ongoing monitoring of emergency measures at the European Parliament’s plenary meeting of 12 November 2020.

The Commission has insisted from the outset that measures taken in response to the crisis must respect the fundamental values as set out in the Treaties, and that even in a state of public emergency, the fundamental principles of the rule of law, democracy and respect for fundamental rights must prevail. This includes the respect of the rights to data protection, privacy and safeguards to prevent stigmatisation of infected persons or their close contacts[[1]](#footnote-1). Emergency measures must be necessary, strictly proportionate, and clearly limited in time. Furthermore, measures taken must be in line with constitutional guarantees, as well as with European and international standards.

The Commission agrees that close scrutiny is required to ensure that emergency powers do not lead to a more permanent change in the balance of powers at national level, and governments must ensure that emergency measures are subject to regular parliamentary scrutiny, in full respect of democratic balances. Moreover, effective judicial oversight needs to be ensured.

These key requirements have been reflected, following the Commission’s proposal, in the country-specific recommendations adopted by the Council in the context of the European Semester in 2020. Furthermore, the first annual Rule of Law Report has highlighted the need to maintain established checks and balances, including the role of Parliaments, in particular where measures affect fundamental rights.

As regards the call to commission an evaluation of the measures taken during the ‘first wave’ of the COVID-19 pandemic, the Commission notes that its monitoring of emergency measures takes account of all relevant sources, including the assessments prepared by a variety of independent experts and bodies, comprising the European Union Agency for Fundamental Rights.

As regards the call for an interinstitutional agreement on a monitoring mechanism on rule of law, democracy and fundamental rights, the Commission fully supports the underlying objective of the European Parliament’s resolution of 7 October 2020. In that regard, the Commission has presented on 30 September 2020 its first annual Rule of Law Report, which is at the centre of the new comprehensive European Rule of Law Mechanism, and which will strengthen the inter-institutional approach to rule of law challenges.

As regards the call to continue the monitoring of emergency measures, and to use the available tools to safeguard respect for the Union’s fundamental values, the Commission will continue its monitoring until all emergency measures are lifted. The ongoing monitoring exercise is reflected, where relevant, in recent policy documents such as the Democracy Action Plan (COM(2020) 790 final of 3 December 2020), the Strategy to strengthen the application of the Charter of Fundamental Rights in the EU (COM(2020) 711 final of 2 December 2020), and the 2020 Rule of Law Report (COM/2020/580 final of 30 September 2020).

The Commission has also worked closely with the Member States to foster the exchange of good practices to promote free and fair elections and necessary adaptations in the COVID-19 context, within the framework of the European Cooperation Network on Elections. In its recent 2020 EU citizenship report[[2]](#footnote-2), the Commission proposed new priorities and actions aiming to bring concrete benefits to EU citizens in terms of effectively enjoying their rights linked to EU citizenship, including strengthening democratic participation, citizens’ empowerment and fostering inclusion of citizens in the EU.

As regards the call for action on disinformation, the Commission recalls that the Joint Communication “Tackling COVID-19 Disinformation” (June 2020) took stock of the situation and of the actions taken to limit the impact of COVID-19 related disinformation. It proposed additional actions to protect European citizens from dangerous disinformation campaigns, which sought to make our democratic systems and societies more resilient by anticipating and preparing against future challenges, while confronting hostile actors in the immediate term. The Commission has also set up a monitoring framework where online platforms report on their actions taken to counter COVID-19 related disinformation on a monthly basis. The actions include promoting authoritative content on the pandemic, improve users' awareness, and limit coronavirus disinformation and advertising related to it. To accompany the EU’s efforts to the deployment of safe and efficient vaccines, platforms now also report specifically about their action taken on COVID-19 vaccines related disinformation. The European Democracy Action Plan sets out a number of measures to step up the fight against disinformation in a longer term perspective, including by strengthening the EU’s capacities to counter disinformation and by increasing the transparency and accountability of platforms. In addition, the Action Plan contains specific measures to promote free and fair elections and strong democratic participation and to support free and independent media.

The Commission also announced in its Democracy Action Plan that it would present in 2021 a legislative proposal on the transparency of sponsored political content. The proposal will complement the rules on online advertising in the Digital Services Act, adopted by the Commission on 15 December 2020, with the aim to have dedicated rules in place sufficiently ahead of the May 2024 European Parliament elections. It will target the sponsors of paid content and production/ distribution channels, including online platforms, advertisers and political consultancies, clarifying their respective responsibilities and providing legal certainty. It will ensure that relevant fundamental rights and standards are upheld as effectively online as they are offline. The Commission will further assess whether a targeted approach is needed during election periods.

As regards the situation in Hungary, the Commission has expressed serious concerns regarding measures taken under the first ‘state of danger’ declared in March 2020. Now that a state of danger has been reintroduced in November 2020, the Commission needs to remain vigilant and closely monitor the application of emergency powers in practice. Most of the concerns raised by the previous ‘state of danger’ remain valid: under the Constitution, its duration is not predefined and the Government has discretionary power to maintain it or to terminate it; the Government may set aside any law by decree, the emergency powers granted appear extensive. On 10 November 2020, Parliament passed a new law authorising the government to extend the applicability of emergency measures for a period of 90 days only. This limitation on the authorisation is a positive step compared to the situation under the previous ‘state of danger’ where there was no clear time limit, even if the authorisation is ex ante. Moreover, on 15 December 2020, Parliament amended the Constitution, including provisions related to the ‘state of danger’. Under the amendment, to enter into force in July 2023, the Government could declare a ‘state of danger’ for a period of 30 days and would be able to extend it only following an authorisation by Parliament.

The Commission will not hesitate to take further action to uphold the Union’s fundamental values, where necessary.

Regarding the call on the EU institutions and the Member States to engage in far stronger cooperation in the area of health (in paragraph 22), the European Commission is mobilising all means at its disposal to support Member States in tackling the current coronavirus pandemic. The protection of our citizens is our first priority. While the Member States are in the front line, the Commission plays a key coordination role and issues recommendations for a common course of action in many areas, including public health, transport, border controls, internal market and trade. The EU is fully involved in the multilateral response to the coronavirus crisis and continues to stand alongside the United Nations, the World Bank, the International Monetary Fund and the World Health Organisation to step up a forceful and coordinated global response to the pandemic.

As regards fundamental rights, the Commission has worked intensively with Member States in the eHealth Network to ensure digital technology and data are harnessed to combat the pandemic and to safeguard individual rights and freedoms. The Commission Recommendation[[3]](#footnote-3) of April 2020, and Implementing Decision of July 2020 under Directive 2011/24/EU on the application of patients’ rights in cross-border healthcare[[4]](#footnote-4), paved the way for most Member States to deploy interoperable contact tracing apps that keep the processing of personal data to minimum and conforming to the highest standards of security. The Commission has also issued Guidance on apps supporting the fight against the COVID-19 pandemic in relation to data protection (C/2020/2523 final of 17 April 2020), setting up key data protection principles for tracing apps that individuals can trust.

1. See in particular the Communication from the Commission Guidance on Apps supporting the fight against COVID 19 pandemic in relation to data protection (C(2020) 2523 final, 16.4.2020) [↑](#footnote-ref-1)
2. [https://ec.europa.eu/info/sites/info/files/eu\_citizenship\_report\_2020\_-\_empowering\_citizens\_and\_
protecting\_their\_rights\_en.pdf](https://ec.europa.eu/info/sites/info/files/eu_citizenship_report_2020_-_empowering_citizens_and_protecting_their_rights_en.pdf) [↑](#footnote-ref-2)
3. <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1587153139410&uri=CELEX:32020H0518> [↑](#footnote-ref-3)
4. [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.LI.2020.227.01.0001.01.ENG&
toc=OJ:L:2020:227I:TOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.LI.2020.227.01.0001.01.ENG&toc=OJ:L:2020:227I:TOC) [↑](#footnote-ref-4)