

# **Strengthening the rule of law in the EU: what role for the interparliamentary cooperation?**

Working Paper Series

SOG-WP63/2020

ISSN: 2282-4189

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December 2020

## Summary

<b>Abstract</b>	<b>4</b>
<b>1. Introduction</b>	<b>5</b>
<b>2. The state of the art in the academic debate</b>	<b>8</b>
2.1. Should the EU intervene in case of democratic backslidings within Member States?	8
2.2. The search for new tools to protect the EU rule of law dimension	9
2.3. The contribution from the studies on the interparliamentary cooperation in the EU	11
<b>3. An empirical analysis of the EU Parliaments' activity from an interparliamentary angle</b>	<b>13</b>
3.1. The limited debate in the existing interparliamentary <i>fora</i>	13
3.2. The EP's proactivity in involving National Parliaments	15
3.2.1. The EP's call on National Parliaments through the Union Pact for DRF	15
3.2.2. The reaction from the other EU Institutions...	17
3.2.3....and the National Parliaments' lukewarm reception	17
3.3. The heterogeneous National Parliaments' attitude	18
3.3.1. The COSAC Biannual reports	18
3.3.2. NPs' engagement at domestic level	19
3.3.3. The "political dialogue" with the European Commission	20
<b>4. Explaining the low degree of interparliamentary cooperation in the rule of law field</b>	<b>23</b>
4.1. The European Parliament's approach	23
4.2. The National Parliaments' approach	24
4.3. The lack of a strong legal basis	25
4.4. Is the stalemate insuperable?	27
<b>5. Conclusions</b>	<b>29</b>
<b>Bibliography</b>	<b>31</b>
<b>Author information</b>	<b>38</b>
<b>About Luiss School of Government</b>	<b>39</b>

<b>Submission Guidelines</b>	<b>40</b>
<b>SoG Working Papers</b>	<b>41</b>

## Abstract

*The potential role of the interparliamentary dialogue in addressing the internal dimension of the rule of law has recently emerged in the institutional debate at EU level. However, stable interparliamentary formats have not been implemented yet and the interparliamentary dimension is much less developed than in other comparable fields. By analysing the European Parliament and National Parliaments' activity related to the EU rule of law dimension through an interparliamentary lens, the paper identifies an asymmetric approach expressed by the two parliamentary levels and a heterogenous attitude among National Parliaments. This is due not only to the specificities of the rule of law area but also to different general views on the role of the interparliamentary cooperation in the EU. The diverseness of the EU Parliaments' positions, combined with the lack of a strong legal basis, contributes to explaining the limited degree of interparliamentary cooperation in the rule of law area.*

# 1. Introduction

For the first time in the *Les Verts* ruling, the Court of Justice defined the then European Economic Community (EEC) as a “Community based on the rule of law, inasmuch as neither its Member States nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the basic constitutional charter, the Treaty” (Court of Justice, Case 294/83, *Les Verts*). Afterwards, the rule of law was formally enshrined in the Treaties and recognised as a foundational value of the EU (art. 2 TEU), to be respected by European Institutions and Member States. As pointed out by the Court of Justice, the compliance with the rule of law at domestic level is the prerequisite of the mutual trust between Member States, being the EU legal system based on “the fundamental premise that each Member State shares with all the other Member States, and recognises that they share with it, a set of common values on which the EU is founded, as stated in Article 2 TEU” (Court of Justice, opinion 2/13). Consequently, a deviation from the rule of law inside Member States can affect the principle of mutual confidence and threaten the proper working of the EU legal system (Pech 2020, 16; Baratta 2016, 360); this explains why the Treaties envisage specific mechanisms to react to breaches of Art. 2 values inside Member States.

Recently, some challenges to the rule of law within Member States have revealed the limits of the current tools (Article 7 mechanism, infringement procedures, Rule of law framework) directed to address systematic deficiencies in the rule of law and triggered the debate on how to better promote and protect the internal dimension of the rule of law. New instruments outside the Treaties (such as the Rule of law conditionality and the Rule of Law Review Cycle) have emerged, raising strong democratic concerns. In this context, the role of the European parliamentary system, composed of the European Parliament (EP) and National Parliaments (NPs), has recently appeared in the institutional debate. In that respect, the interparliamentary dialogue has emerged as a political tool both for addressing rule of law issues in the EU and for providing democratic legitimacy to the new mechanisms recently implemented or proposed in the area. However, the strong support for the interparliamentary dimension expressed by the European Parliament and the Commission has not been translated in stable formats of interparliamentary cooperation. In the field of the rule of law, the interparliamentary mechanisms appear in fact to be largely less developed than in connected or comparable policy areas, strictly linked to the values expressed by art. 2 (Area of Freedom, Security and Justice) or where, similarly to the rule of law area, new mechanisms beyond the Treaties have been implemented, generating alike democratic deficit concerns (economic governance).

Starting from the identified puzzle, this paper explores to what extent the EP and NPs have developed the interparliamentary dimension in the rule of law field and tries to explain why stable formats of interparliamentary cooperation have not been set up yet. In this context, as main hypothesis, the paper argues that the rule of law field registers a low degree of interparliamentary cooperation, and this is due to the asymmetric approach to the subject expressed respectively by the EP and NPs, and the heterogenous attitude among National Parliaments. The topic has a limited relevance at academic

level, despite the increasing focus on the interparliamentary mechanisms in the institutional debate and the emerging attention from the civil society. Some aspects of the EP's activity related to the rule of law have been recently studied, but, with some limited exceptions, the role of National Parliaments and the interparliamentary cooperation has not been addressed by scholars yet.

The paper is structured in three sections. The first one conducts a review of the literature; while the specific topic addressed in the paper is new in the academic debate, the wide literature on the mechanisms to promote and protect the rule of law in the EU, on the one hand, and the many contributions on the general topic of the interparliamentary cooperation, on the other hand, provide valuable inputs for addressing the subject. In particular, the models elaborated by scholars for conceptualising the combined engagement of the two parliamentary levels through interparliamentary mechanisms offer the theoretical framework for exploring the topic and explaining the misaligned approach expressed by the EP and NPs, and the heterogeneous attitude among National Parliaments.

In the second section, the hypothesis is tested on the basis of an empirical analysis of the EU Parliaments (EP and National Parliaments) activity related to the EU internal dimension of the rule of law. Given the limited attention to the topic at academic level, this section represents the core of the research. It selects only cases with an interparliamentary dimension, which can be related either to the *fora* where issues related to rule of law were discussed (e.g. Interparliamentary Conferences, Interparliamentary Committee Meetings) or to the identification of a specific focus on the interparliamentary dialogue. The paper explores public institutional resources (mainly EP and NPs' official documents and debates), making a large use of the institutional websites and the interparliamentary platforms (mainly IPEX-*Platform for EU Interparliamentary Exchange*). Moreover, the privileged position of the Author, part of the network of the Permanent Representatives of National Parliaments in Brussels, contributes to provide further informal insights on the topic and helps overcome the difficulties of the empirical analysis, mainly linked to the availability of many National Parliaments documents only in their original language.

The temporal scope of the empirical research is limited to the period 2016-2020. In 2016, rule of law issues started to have an interparliamentary relevance; the development of interparliamentary mechanisms was addressed for the first time by the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC) and, in the same year, the EP launched its proposal on the EU pact for democracy, rule of law and fundamental rights, formally involving National Parliaments in this field. The collected data are examined through a quantitative method (e.g. number of EP and NPs' contributions focusing on the interparliamentary dimension; meetings of interparliamentary *fora* dedicated to the rule of law; *ad hoc* interparliamentary committee meetings on the internal dimension of the rule of law), in order to measure the different intensity of the commitment to the topic respectively expressed by the EP and NPs and assess the diverse willingness of National Parliaments to support mechanisms of interparliamentary cooperation.

A qualitative analysis of the collected data is accomplished in the third section. The analysis, framed in the models of interparliamentary cooperation elaborated by scholars, is directed to explore whether the asymmetric approach manifested by the European Parliament and National Parliaments and the heterogeneous attitude among National Parliaments are connected to the specificities of the rule of law area and/or to a different general vision on the interparliamentary cooperation in the EU. Finally, a short glance from a legal angle at other policy areas (such as the AFSJ and the economic governance) provides comparative inputs leading to integrate the original hypothesis and elaborate the main

finding of the research: the asymmetric approach expressed by the EP and NPs and the diverseness of NPs' positions on the topic, combined with the lack of a strong legal basis pushing the different parliamentary actors towards interparliamentary compromise solutions, represent the main obstacle to the development of stable interparliamentary mechanisms in the rule of law area.

## 2. The state of the art in the academic debate

The academic interest in the role of Parliaments in the rule of law area is limited. Conversely, on the one hand, the literature shows a deep attention to the EU mechanisms to promote and protect the rule of law in the Union, and, on the other hand, increasingly focuses on the functioning of the interparliamentary cooperation. In addressing the research question, both the literature strands have to be explored. A wide literature review can contribute firstly to providing the EU parliamentary system with the theoretical legitimacy to address purely domestic situations and, secondly, to exploring, from an academic angle, if the obstacles to the development of the interparliamentary cooperation can be found in the specificities of the rule of law area or rather originate from the general mechanisms of the interparliamentary cooperation.

### **2.1 Should the EU intervene in case of democratic backslidings within Member States?**

Scholars adduce historical, normative and constitutional arguments to justify the legitimacy of EU interventions for addressing purely domestic situations. The historical reasons are founded on the explicit goal of the EU enlargement to the East “to consolidate liberal democracies” and the acceptance from new Member States of a post-war model of “constrained democracy”, based on strengthening a system of check and balances and delegating powers to unelected institutions, such as Constitutional Courts, to monitor the excesses of parliamentary democracy (Muller 2013, 10). Although history does not automatically generate legitimacy, it is considered a reasonable presumption that “radical, sudden departures from this post-war model of politics require special justification” (Muller 2013, 11). At normative level, some contributions point out the so-called “Copenhagen dilemma”, consisting in the fact that the EU requires strict compliance with rule of law to the candidate countries, but lacks in monitoring and sanctioning tools for Member States. Arguing from the “principle of consistency”, which demands that “the same requirements apply through time and across policies”, these scholars refer to the maintenance of the conditionality requirements after the accession and justify the EU involvement in monitoring mechanisms of compliance with the Rule of Law requirements by its Member States (Closa 2016, 19).

From a constitutional angle, scholars observe that the EU is an autonomous legal order, founded on a set of common values, outlined in art. 2 TEU. This implies that the “EU legal ecosystem” is deeply interconnected (Pech 2020, 16) and based on “the existence of mutual trust between the Member States that those values will be recognised and, therefore, that the law of the EU that implements them will be respected” (Court of Justice, Opinion 2/13). Member States not respecting rule of law undermine mutual trust and the intertwined principle of mutual recognition, which represents the cornerstone of the EU functioning (Ballin 2016, 137) and, in particular, the bedrock of the core internal market *acquis*



and the AFSJ (Magen 2016, 1056). In this view, on the one hand, Member States are expected to protect rule of law at national level as “instrumental for ensuring the correct functioning of a supranational system without borders for citizens, goods and judgments” (Baratta, 2016, 360; Pech 2010); on the other hand, being not possible to eject Member States, the EU constitutional order “implies a right to safeguard its constitutional settlement through interventions within the MS” (Muller 2015, 145).

Other scholars recall the “All affected principle”, observing that the deep interpenetration and mutual interdependency between the EU Member States imply that disrespect for the rule of law in one Member State can have negative externalities on other Member States and affect all citizens and states (Closa 2016, 18). Furthermore, some scholars emphasise the link between art. 2 values and European citizenship; they observe that, even beyond the scope of Article 51, par. 1, EU Charter of Fundamental Rights, a systemic violation by a Member State of those values, also in purely internal situations, can be considered an infringement of the “substance of Union citizenship”, to be protected through judicial remedies (Von Bogdandy et al. 2012, 489).

Conversely, the objections to the EU legitimacy to react to democratic backslidings in one Member State are isolated, and mainly founded on the respect of national sovereignty and the constitutional identities of Member States. EU interventions are deemed as not compliant with the principle of conferral of competences (which limits the EU action to the competences that EU countries have conferred upon it in the Treaties), and the principles of proportionality and subsidiarity (which govern the exercise of the EU competences). Furthermore, representing the Art 2 values “political and philosophical categories”, without a proper legal definition, the rule of law debate is considered “a political debate masquerading as a legal one”, with the primary aim to interfere with the sovereignty of the Member States (Stakeholders Contributions: Center for Fundamental Rights; “Nézőpont” Institute).

## **2.2 The search for new tools to protect the EU rule of law dimension**

Scholars emphasise a regulatory gap in the assessment, monitoring and enforcement of the rule of law at EU level, produced by the combination of the Member States’ “sovereignty-defending reflex”, reluctant to transfer power to the EU level, and the fragmentation of the Commission’s political authority (Coman 2015, 174). The tools provided by the Treaties (art. 7 mechanism and infringement procedures) are generally considered not fully effective for reacting to rule of law backslidings in Europe. On the one hand, the art. 7 mechanism is essentially a political tool, which relies on Member States’ willingness to confront one of their peers actively, voting unanimously to determine the existence of a serious and persistent breach of EU values (Muller 2015, 17; Bond & Gostyńska-Jakubowska 2020, 10; Coman 2018, 370). On the other hand, the infringement procedures cannot be used to address issues beyond the EU competence and are specifically designed for dealing with specific violations of the EU law, rather than for systematic infringements of the foundational values of the EU (Pech 2016, 44). Furthermore, it can be registered a generalised scepticism about the effectiveness of other tools recently introduced for addressing rule of law issues in one Member State. The implementation of the Rule of law Framework against Poland shows as the dialogue format is bound to fail “in a situation where national authorities are pursuing a *deliberate* strategy of *methodically* annihilating the rule of law” (Pech 2020, 23; Uitz 2019). Similarly, the recently introduced

Rule of Law Review Cycle continues to reflect “a naïve belief in the virtues of dialogue with legal actions presented as last resort solution” (Pech 2020, 31).

The dichotomy between *hard* and *soft* mechanisms characterises the academic debate on possible new tools in order to address rule of law issues. Some scholars support the idea of new legal or institutional mechanisms directed to stop and sanction rule of law shortcomings in EU Member States, mainly providing greater judicial protection in this area (Von Bogdandy 2012), linking the breach of the rule of law to the suspension of EU funds (Halmai 2018; Heinemann 2018) or establishing new bodies for assessing democracies in Member States (Muller 2013, 23). Conversely, others stress the limit of a legal “punitive” approach to address issues, which are political in the substance. These Authors emphasise the role of the civil society and the European party system in building democracy and rule of law, propose to further develop dialogue formats and political pressure to react to domestic rule of law backslidings (Bugaric 2014; Muller 2013, 21; Thym, Lindseth 2012) or, adopting a network approach, suggest increasing the cooperation between the European Commission and other International organizations and bodies, in order to strengthen the action capacity of the Commission and enhance the EU’s input, output and throughput legitimacy (Coman 2015).

In this respect, the institutional level has increasingly recognised the potential function of the interparliamentary dialogue in promoting and addressing the internal dimension of the rule of law; however, at academic level, this subject has been studied only to a limited extent. The academic debate has not even focused on the role of the EU parliamentary system for addressing the democratic concerns raised by the implementation of new mechanisms (such as the Rule of law Framework or the Rule of Law conditionality) which, as observed, show the emerging of a “EU law of constitutional crisis” in the field of rule of law, “outside the “normal” constitutional framework of the EU” (Von Bogdandy & Ioannidis 2014, 85). As for the European Parliament, scholars’ attention is concentrated on the EP’s function in the formal mechanisms foreseen by the Treaties and, at empirical level, on the political groups’ behaviour in addressing rule of law issues (Sedelmeier 2017; Kelemen 2017); conversely, the attention to the EP’s proposal on the Union Pact for democracy, the rule of law and fundamental rights (*see infra*) is rather limited (Sargentini & Dimitrovs 2016; Pech 2016). As for National Parliaments, with very few exceptions (e.g. Butler 2016), a reflection on their role and an approach centred on the cooperation between the EP and NPs in the field of the rule of law have not been developed yet.

### **2.3 The contribution from the studies on the interparliamentary cooperation in the EU**

The literature on the role of National Parliaments in the EU and on the interparliamentary cooperation is rich. The interactions between EP and National Parliaments have been conceptualised through different models. The pre-Lisbon federalist approach, based on a rigid separation of functions between EP and National Parliaments, seems not to be able anymore to describe the complexity of their interactions. Similarly, the further elaboration of the interparliamentary relations as “parliamentary network” (Slaughter, 2004, Chapter 3) cannot make sense of the fact that “individual parliaments not only act on each other as isolated entities but rather as intrinsic parts of the process of

Europeanization” and “cannot conceive the impact of the network as a whole, as an integrated structure” (Crum and Fossum 2009, 259).

After the entry in force of the Lisbon Treaty, new models have emerged for explaining the complex formal and informal relations, at horizontal level, among National Parliaments and, at vertical level, between them and the European Parliament. A first theory stresses the collective dimension of National Parliaments, arguing from the new powers assigned to them through the *Early Warning System* (EWS). The EWS would represent a new model of parliamentary involvement in international affairs, allowing National Parliaments to collectively vet new legislative proposals on a subsidiarity ground. According to this approach, National Parliaments, despite not meeting physically, to some extent would fulfil the functions of a “virtual third chamber” in the EU, alongside the EP and the Council of Ministers (Cooper 2012).

A second model is based on the idea of a “Multilevel Parliamentary Field” where the two channels of representation (EP and NPs) interact through formal and informal mechanisms of interparliamentary cooperation, without fixed hierarchies and with overlapping constituencies, and are kept together by the shared function and the role perception of representing people’s interest in EU decision making (Crum and Fossum 2009). As in the network model, the multilevel parliamentary field approach recognises the disaggregation of the democratic representation in the EU, but is premised “on a greater level of coherence, if not in organizational structures, then at least in norms and orientations than would be a EU parliamentary network”; as in the federal model, the field approach focuses on the division of competences across levels, but “allows for greater variation among the component units and patterns of formal and informal parliamentary interaction (horizontally and vertically)” (Crum and Fossum 2009, 261). A further elaboration of the same model suggests the idea of a “Multilevel Parliamentary Battle-field”, where EP and NPs act according to competitive and even conflictual dynamics, triggered by the imbalances between formal constitutional authority and the actual parliamentary capital that parliaments enjoy in a given field (Herranz-Surrallés 2014). This mismatch can mainly occur because of “a strengthening of the EP’s institutional position via *informal* rules and practices or a de facto reinforcement of the collective role of NPs in an area where the Treaties assign primary responsibility to the EP” and it is likely to happen in areas falling between the intergovernmental cooperation and community methods, where the EP may try to increase “its parliamentary capital despite its limited constitutional powers” (Herranz-Surrallés 2014, 961-962).

A recently emerged model identifies the limits of the multilevel field approach in the fact that it exclusively refers to the parliamentary dimension and does not include the interplay with the EU fragmented executive. This model moves from the concept of “field” to that one, more structured, of “system” (Manzella 2020, 209) and builds the concept of a “Euro-national parliamentary system”, based upon the idea that “the functions of representation, policy-setting and oversight – traditionally attributed to every legislature – are now necessarily networked and shared among the different parliaments in the EU” (Fasone & Lupo 2018, 349). In this model, the interparliamentary cooperation is detected “as a new parliamentary function, jointly exercised by national parliaments and the European Parliament” (Fasone & Lupo 2018, 8). While not representing “an autonomous channel of parliamentary legitimation and representation”, it would contribute to reconcile the European and national dimension of parliamentary democracy, helping the two channels “to find better ways to exercise their functions and to design more coordinated strategies of parliamentary oversight” (Fasone & Lupo 2018, 9).

In the absence of a specific literature on the interparliamentary dialogue in the field of the rule of law, the many general contributions on the interparliamentary cooperation in the EU can offer the theoretical framework to the paper; furthermore, some valuable inputs can be also provided by the studies on the interparliamentary dimension in the AFSJ and economic governance. For the aim of this paper, the rule of law, on the one hand, and the AFSJ and the economic governance, on the other hand, can be considered as comparable, touching upon sensitive issues of national sovereignty and being characterised by similar institutional dynamics. As for the AFSJ, mutual trust and mutual recognition - which, as seen, are deeply interconnected with the Member States compliance with the rule of law - represent the “bedrock” upon which the AFSJ rests (Magen 2016, 1056) so that “a common understanding, culture and implementation of the rule of law across European countries is therefore needed to realise the AFSJ” (Wolff 2013, 120). As for the economic governance, the European Semester has increasingly focused on the rule of law dimension, and, as pointed out by the European Commission, well-performing public institutions, along with “the rule of law, effective justice systems and robust anti-corruption frameworks” are considered key priorities of the economic and policy coordination (EC, Annual Growth Survey 2019).

The establishment of interparliamentary mechanisms, respectively, in the AFSJ and economic governance have attracted scholars’ attention mainly to two aspects: firstly, the complex institutional processes leading to set up new interparliamentary conferences in those areas, which registered strong confrontations between the two parliamentary levels and different positions on the nature, objective, and functioning of the new interparliamentary *fora*; secondly, the potential of the interparliamentary cooperation as a tool for addressing democratic concerns (Cooper 2016; Crum 2018; Kreilinger 2018; Lupo & Griglio 2018; Mitsilegas 2007; Cooper 2018) and, in particular in the AFSJ, for a more human rights oriented rationale (Tacea 2018, 437).

### 3. An empirical analysis of the EU Parliaments' activity from an interparliamentary angle

The parliamentary debates and documents presented in this section are selected on the basis of their interparliamentary relevance. They consist, on the one hand, of contributions produced by existing interparliamentary *fora* and, on the other hand, of activities performed by the European Parliament and National Parliaments in the field of the rule of law containing a specific focus on the interparliamentary dimension. As for the interparliamentary *fora*, the following paragraph in particular analyses the interparliamentary activity related to the EU dimension of the rule of law, carried out by the Conference of Speakers of the EU Parliaments and the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC).

The EU Speakers Conference, which represents the highest level of the interparliamentary cooperation in the EU, aims at “safeguarding and promoting the role of Parliaments” and “overseeing the coordination of interparliamentary EU activities” (Speakers Conference, Stockholm Guidelines). It is composed of the Speakers of the EU National Parliaments and the President of the EP, and meets in the first semester of each year, under the Presidency of the Parliament of the Member State holding the EU Council Presidency in the previous semester. COSAC, directly based on the Treaty (art 10, Prot. 1, TFEU), gathers members of the EU affairs Committees of National Parliaments and European Parliament’s representatives, and is organised each semester in the context of the parliamentary dimension of the EU Council Presidency. It has the primary function of promoting the exchange of information and best practices between National Parliaments and the European Parliament; furthermore, it may submit contributions to the European Institutions and organise interparliamentary conferences on specific topics.

#### 3.1 *The limited debate in the existing interparliamentary fora*

In 2015, the Speakers Conference organised under the Italian Presidency discussed the internal dimension of the rule of law, welcoming the European Commission Communication on the Rule of law framework and the Council initiative to establish an annual Rule of law dialogue (Conclusions of the Presidency, 20-21 April 2015); in the following meeting organised by the Luxembourg Presidency, the Speakers emphasized the EU duty to preserve and protect its founding values (Conclusions of the Presidency, 22-24 May 2016). However, only the Speakers Conference organised by the Austrian Presidency, in 2019, recognised the European Parliament and National Parliaments’ key task “to cooperate among themselves and with all stakeholders at both European Union and Member State

level, including civil society, in order to effectively preserve and promote (art. 2) values” (Conclusions of the Presidency, 8-9 April 2019). Nonetheless, the Speakers Conference has never debated specific interparliamentary mechanisms in the rule of law field.

Conversely, a greater attention to the subject was dedicated by COSAC. In the first semester 2016, under the Dutch Presidency, COSAC debated the role of Parliaments in protecting the Rule of Law within the EU. In its final contribution, it underlined “the NPs shared responsibility in upholding and fostering the rule of law and democratic governance” and supported “initiatives to establish permanent dialogue mechanisms in relevant *fora* on these matters”, proposing itself as “a platform for such inter-parliamentary dialogue”. As for the structural involvement of National Parliaments in the EU Pact on democracy, the rule of law and fundamental rights (which, at that time, was being debated by the European Parliament), COSAC did not express any formal positions, only welcoming future exchanges on this subject (LV COSAC, Contribution). In the following meetings, COSAC did not continue the discussion on the role of the interparliamentary cooperation in the rule of law area and the proposal to establish permanent interparliamentary dialogue mechanisms has not been implemented.

Nevertheless, the rule of law dimension in the EU was addressed in general terms in the meeting organised under the Finnish Presidency, in the second semester 2019. On that occasion, the debate taking place in the session “Promoting the Rule of Law in the EU and the EU Charter of Fundamental Rights” showed strong divisions on the Rule of law conditionality proposed by the European Commission in the context of the Multiannual Financial Framework and, conversely, more convergence on the Belgo-German initiative to create a peer review mechanism. The same legitimacy of the EU to intervene in case of domestic democratic backsliding was questioned, in particular by Visegrad parliamentarians and Members belonging to far-right political groups (LXII COSAC, Minutes). The variety of National Parliaments positions resulted in the adoption of an unambitious compromise, where COSAC, on the one hand, referring to the rule of law conditionality, stressed that “European Union is a community, where mutually respectful dialogue is the rule and sanctions are only a last resort for when dialogue and preventive mechanisms fail”; on the other hand, despite supporting transparent and impartial monitoring and peer review mechanisms, felt the need to explicitly clarify that the Union and its Member States have legitimate grounds for concern and appropriate action only “where deficiencies in the rule of law jeopardise the functioning of the single market or the implementation of European policies” (LXII COSAC, Contribution). Most recently, rule of law issues in the EU were discussed during an informal exchange among Chairs of EU Affairs Committees organised by the German Presidency. On that occasion, the representative of the Italian *Camera dei deputati* launched the proposal that National Parliaments would simultaneously address the European Commission’s Rule of Law Report, through dedicated parliamentary sessions. The findings of these parallel national debates would be afterwards discussed at interparliamentary level and conveyed to the European Institutions (Italian *Camera dei deputati*, Summary report).

### **3.2 The EP’s proactivity in involving National Parliaments**

#### **3.2.1 The EP’s call on National Parliaments through the Union Pact for DRF**

The EP has stressed the potentialities of the interparliamentary cooperation in the rule of law field since 2016, when a Union Pact for Democracy, the Rule of law and Fundamental rights (DRF) was proposed (EP resolution, 25 October 2016). The Pact, to be concluded through an inter-institutional agreement under art. 295 TFEU, would establish a comprehensive mechanism for DRF, integrating, aligning and complementing existing mechanisms, including the Commission's Rule of law Framework, the Council's Rule of Law Dialogue (Annex, art. 3), the EU Justice Scoreboard, the peer evaluation procedures based on art. 70 and the Cooperation and Verification Mechanism applicable to Bulgaria and Romania (Annex, art. 5). The mechanism would be based on an annual report on the state of democracy, rule of law and fundamental rights in the Member States. The report would contain a general part and country-specific recommendations, assessing each of Member States with regard to specific aspects related to democracy, rule of law and fundamental rights, identifying possible risks and breaches (Annex, art. 7). It would be drawn up by the European Commission in consultation with a panel of experts, transmitted to the European Parliament, the Council and National Parliaments and made available to the public (Annex, art. 4).

On the model of the European Semester, the adoption of the DRF European Report would be the first step of a policy cycle, directed to provide some formal grounds for actions toward the State not compliant with one or more aspects related to the DRF (further dialogue, infringement procedures, activation of art. 7 TEU). The cycle would have its key moments in the annual dialogue in the Council (resulting in conclusions) and in an annual interparliamentary debate organised by the EP (followed by a Parliament resolution), structured in such a way as to set "benchmarks and goals to be attained and to provide the means to evaluate changes from one year to another within the existing Union consensus on democracy, the rule of law and fundamental rights" (Annex, art. 10). The interparliamentary debate would go beyond the traditional format of dialogue and informal exchange of views among Parliaments. National Parliaments would be involved in a formal mechanism, equipped with both a preventative and corrective arm, and, as clarified in the EP's resolution, the debate would be "part of a multi-annual structured dialogue between the European Parliament, the Council, the Commission and national parliaments" involving "civil society, the FRA and the Council of Europe" (Annex, art. 10).

The involvement of National Parliaments would not be limited to the interparliamentary meeting. On the one hand, the panel of independent experts, assessing the state of DRF in Member States and developing the country-specific draft recommendations, would be composed of experts appointed by National Parliaments (one per country) and the European Parliament (Annex, art. 8). On the other hand, the conclusions following the dialogue in the Council would invite National Parliaments to provide a response to the European DRF Report, proposals or reforms. Furthermore, the resolution envisaged the possible activation, on the basis of the report, of the Evaluation mechanisms within the framework of the Area of freedom, security and justice under Article 70 TFEU, which expressly provides that the European Parliament and National Parliaments are informed of the content and results of the evaluation.

The DRF mechanism was not established and the EP has constantly reiterated its proposal, most recently last January (EP resolution, 16 January 2020), calling on the Commission and the Council to enter without delay into negotiations with Parliament and announcing the possible launch of a pilot DRF report and an interparliamentary debate (EP resolution, 14 November 2018). Lastly, in October, the European Parliament adopted a new resolution on the establishment of the Mechanism on DRF. The new mechanism largely builds on the Parliament's 2016 proposal and the Commission's Rule of

law Review Cycle (*see infra*). It keeps the main features of the previous mechanism and the idea of an Annual Monitoring Cycle. The latter would consist of a preparatory stage, the publication of an annual monitoring report on Union values ('Annual Report') including recommendations, and a follow-up stage. The report would be drafted by the Commission, mainly on the basis of a stakeholder consultation and fact-finding visits by designated representatives of any of the three institutions.

The involvement of National Parliaments is expressly envisaged in the follow-up stage. In particular, the European Parliament shall organise, in cooperation with national parliaments, an interparliamentary debate on the findings of the Annual Report. Furthermore, the resolution encourages the three institutions to promote the debate on the Annual Report in national parliaments, in a timely manner. Conversely, differently from the previous report, a formal role of National Parliaments in the panel of experts is not directly foreseen. In fact, the October's resolution does not clarify the selection criteria of the panel, established with the task of advising a permanent Interinstitutional Working Group on Union Values and, in cooperation with the European Union Agency for Fundamental Rights, identifying the main positive and negative developments in each Member State and contributing to the development of a methodology for the Annual Report.

The EP's willingness to structurally involve NPs in the rule of law area was confirmed by its first reading position on the proposal on the Rule of law conditionality (EP resolution, 4 April 2019). In particular, the EP proposed an advisory panel of independent experts, composed of five experts appointed by the European Parliament and one expert per National Parliament. In the EP's position, the panel was tasked with assisting the Commission in its assessment of generalised deficiencies as regards the rule of law in Member States and undertaking an independent annual assessment of the issues as regards the rule of law in all Member States that affect or risk affecting the sound financial management or the protection of the financial interests of the Union. However, the establishment of a panel of experts encountered strong objections from the Council and it is not envisaged in the compromise text recently agreed by the two Institutions.

### **3.2.2 The reaction from the other EU Institutions...**

If the Council did not react to the EP's proposal, the European Commission expressed serious doubts about the need and the feasibility of the mechanism for DRF, mainly objecting to the central role attributed to an independent expert panel for reasons of "legality, institutional legitimacy and accountability". However, it supported the establishment of an inter-parliamentary dialogue on the rule of law, in order to "discuss the different options and means which are currently on the table to ensure that our common values are respected and enforced" (EC, 17 January 2017).

The EC's attention to the interparliamentary dimension was confirmed by the Communication adopted last year (COM/2019/343), proposing a Rule of Law Review Cycle. The cycle is centred on the annual Rule of law Report, providing a synthesis of significant developments related to rule of law in the Member States and at EU level. In the Communication, the Commission called on the European



Parliament and National Parliaments to develop specific inter-parliamentary cooperation on rule of law issues. To this end, it suggested an annual interparliamentary event, expressly mentioning COSAC and the Speakers Conference as inter-parliamentary *fora* where the dialogue on rule of law issues should be prioritised. The first Rule of Law report, including the Member State-specific assessment, was adopted last September and focused on four areas (Justice systems; anti-corruption framework; media pluralism; institutional issues related to check and balances). The Report is being debated by several National Parliaments and has been recently discussed during an interparliamentary meeting organised by the LIBE Committee of the European Parliament.

The Rule of Law Review Cycle shows some similitudes with the European Parliament's proposal. However, two fundamental differences can be identified: the scope and the nature of the two mechanisms. As for the scope, the EC's Cycle covers only the rule of law, while the EP's Pact would be extended to the set of EU common values enshrined in art. 2 TEU. As for the nature, only the EP's proposal envisages a formal and structured mechanism, potentially leading to actions towards a Member State and based on an interinstitutional agreement, binding for the three Institutions. The difference in the nature reflects also on the role of the interparliamentary cooperation. As already mentioned, the interparliamentary debate is structurally part of the cycle in the mechanism envisaged by the European Parliament; conversely, in the EC's cycle, it appears to be limited to the promotion of a rule of law culture and it is not clear what will be done with the outcome of the interparliamentary discussion and how it influences the follow-up of the Rule of Law Review Cycle (van Ballegooij 2020).

### **3.2.3 ....and the National Parliaments' lukewarm reception**

If COSAC only took note of the EP's proposal on a Pact for DRF, welcoming further exchange on it, a general view on NPs' attitude towards the subject is offered by the Interparliamentary Committee Meeting (ICM) on the Establishment of an EU Mechanism on Democracy, Rule of Law and Fundamental Rights, organised in 2017 by the European Parliament LIBE Committee. The ICM, chaired by the LIBE Rapporteur for the Pact, the Dutch Member Sophie in't Veld (*Alliance of Liberals and Democrats for Europe, ALDE*), registered strong objections from NPs to the EP's Pact, mainly based on the respect of national sovereignty (Hungarian and Polish Members) and the risk of overlapping with other tools (Polish delegation). Moreover, some Members objected specific aspects of the Pact, such as the definition of the values protected by the new mechanism (German *Bundestag*) or considered it as not sufficiently precise and detailed (Dutch *Tweede Kamer*). Only the Member of the French *Assemblée Nationale*, coherently with a parliamentary resolution adopted in 2018 (*see infra*), expressly endorsed the European Parliament's initiative.

On a more general note, the meeting showed a diffused scepticism towards the implementation of structured mechanisms of interparliamentary cooperation (clearly expressed by the Luxembourg Member) and a generalised preference towards loose formats of interparliamentary dialogue. This attitude was confirmed by the lack of follow-up to the proposal launched during the meeting by the Greek Member and endorsed by the European Parliament, to create a joint standing committee, composed of rapporteurs appointed by the EP and NPs, regularly meeting with the task of further elaborating and detailing the European Parliament's proposal.

Afterwards, the role of interparliamentary mechanisms had limited relevance in the meeting organised by the European Parliament following the October's resolution on the DFR and dedicated to the first annual Rule of Law Report. Conversely, on that occasion, the Commissioner for Justice

emphasised the need to involve National Parliaments in the cycle for promoting the rule of law in the EU and, to this end, announced bilateral visits in each National Parliament directed to present and discuss the Rule of Law Report. As mentioned, the Rule of Law report was also debated during the informal meeting organised by the German Presidency under the COSAC umbrella.

### **3.3 The heterogeneous National Parliaments' attitude**

#### **3.3.1 The COSAC Biannual reports**

On the basis of National Parliaments' answers to the questionnaire sent in preparation of the 25<sup>th</sup> COSAC Biannual report (presented in the meeting under the Dutch Presidency) many Chambers considered the inter-parliamentary existing *fora* as a possible platform to address the EU rule of law dimension. In particular, 24 out of 36 Parliaments/Chambers expressed the view that, within COSAC, they could discuss more often the rule of law and human rights in the EU and raise awareness in the coming years. Furthermore, according to 3/4 of those 24 Chambers, COSAC could be a suitable platform to further a dialogue on safeguarding the rule of law, such as working towards a common understanding with regard to compliance with the rule of law.

Conversely, only seven Parliaments/Chambers expressed the opinion that COSAC was not the best forum to discuss rule of law issues, underlining the risk of duplication with the work of existing institutions, such as the Parliamentary Assembly of the Council of Europe (PACE) (UK House of Lords, Hungarian Parliament) or objecting to the extension of COSAC's scope and rather proposing regular interparliamentary conferences of committees dealing with the rule of law and human rights (Croatian Parliament). Few of them did not provide any further explanations of their negative view on a role of COSAC for discussing rule of law issues. Among them, on the one hand, Visegrad Parliaments and, on the other hand, Chambers, such as the Italian *Camera dei deputati*, traditionally not in favour of extending COSAC's competences at the expense of interparliamentary meetings of sectorial Committees.

The last Biannual report, presented in the virtual COSAC under the German Presidency, registered an overwhelming majority of Chambers in favour of interparliamentary exchange of views on the Rule of Law Reports, confirming a National Parliaments' wide support for the development of the interparliamentary cooperation in the area. However, this alleged positive attitude needs to be proved on the basis of the analysis of National Parliaments' activity, through an interparliamentary lens. In general, National Parliaments have been particularly active in addressing the European dimension of the rule of law and even challenges in specific Member States. To this end, they have used, on the one hand, domestic parliamentary institutes (motions, resolutions, questions, etc.) for steering and monitoring the European activity of their Government and, on the other hand, the tools at their disposal at European level for a direct interaction with the European Institutions. At European level, NPs made large use of the "political dialogue" procedure, engaging bilaterally with the European Commission on the communications and proposals recently adopted in the rule of law field. According to this well-established procedure, launched by the Barroso Commission in 2006, the European Commission transmits the draft legislative acts and non-legislative initiatives to National Parliaments, which can scrutinise them and send their contributions to the European Commission. The latter responds to NPs expressing its view on National Parliaments' comments.

### 3.3.2 *NPs' engagement at domestic level*

At domestic level, National Parliaments mainly held debates on the EU internal dimension of the rule of law at Plenary and/or Committee level (e.g. the debate in the German *Bundestag* on 14 May 2020 and in the Austrian *Nationalrat* Committee on EU Affairs on 17 October 2018) and they usually interacted with their Government before the Council meetings and/or addressing written or oral questions (e.g. Belgian *Chambre des Représentants*). Few of them took a more active position, adopting resolutions, reports and political declarations. Among them, the French *Assemblée Nationale* in November 2018 adopted a resolution on the respect of rule of law within the EU, supporting the EP's initiative against Hungary and condemning the deterioration of the rule of law in Poland and in Romania. The Portuguese Parliament in 2017 adopted two political declarations, condemning respectively the detention camps of immigrants implemented by the Government of Hungary and the limitation of freedom of association and scientific and academic research in Hungary. The Dutch *Tweede Kamer* in 2018 appointed rapporteurs on developments in relation to the rule of law in the European Union, with a specific focus on Hungary and Poland; most recently, the same Chamber adopted a motion asking the Government to take preparatory actions directed to refer Poland to the Court of Justice of the EU. Conversely, some Parliaments reacted to the activation of the art. 7 and to the launch of infringement procedures against Poland and Hungary, supporting and defending Poland's rights (Hungarian Parliament), condemning the European Parliament vote against Hungary (Czech Chamber), recommending to address the issue of possible sanctions through dialogue (Lithuanian Parliament and National Council of the Slovak Republic). It can be also mentioned the position adopted by the Belgian *Chambre des Représentants* which, in January 2016, refrained from assuming political initiatives directed to condemn or demand firmer action towards EU specific Member States on the ground that the issues were being processed within the EU.

By analysing these contributions from an interparliamentary angle, a specific focus on the interparliamentary dimension was found exclusively in the French *Assemblée Nationale* resolution and in the recommendations elaborated by the Dutch *Tweede Kamer* Rapporteur. The French legislator, on the one hand, expressly supported the European Parliament's proposal aimed at establishing an EU global mechanism for the Democracy, Rule of law and Fundamental rights, applicable to Member States and EU Institutions. On the other hand, it proposed a voluntary "*démarche commune*" of National Parliaments in order to collectively support new tools for protecting the rule of law at EU level. The reference to the NPs' collective engagement was inserted during the debate in the *Commission des lois constitutionnelles, de la législation et de l'administration générale de la République*, with the view of inviting willing Chambers to adopt similar resolutions, taking into consideration that "*seul un soutien politique sans faille permettra en effet aux instances européennes d'aller au terme des procédures qu'elles ont engagés*". As for the Dutch *Tweede Kamer*, the report produced by the Rapporteur on rule of law developments in the EU recommended greater cooperation with other National Parliaments not only for "the necessary dialogue between representatives of the people to take place", but also, wherever possible, in order to take "joint action" (Dutch *Tweede Kamer*, Report, 13 March 2019).

### 3.3.3 *The "political dialogue" with the European Commission*

At European level, some Parliaments engaged in the debate on the promotion and protection of the rule of law dimension through the “political dialogue” with the European Commission. As shown in Table 1, several Chambers scrutinised (or are still scrutinising) the two Communications respectively published by the European Commission in April (COM(2019)163) and July 2019 (COM(2019)343) and the proposal of regulation on the protection of the Union’s budget in case of generalised deficiencies as regards the rule of law in the Member States (COM(2018)324, adopted in the context of the Multiannual Financial Framework 2021-2027). Moreover, few Chambers participated in the stakeholders’ consultation on Further Strengthening the Rule of Law within the Union, launched by the mentioned April Communication. As for the recent Rule of law Report, it is being discussed in several Parliaments; however, National Parliaments were not involved or consulted by the European Commission in the preparation of the Report.

Table 1. NPs’ engagement in the political dialogue with the EC

Parliament/ Chamber	COM(2018)324 <i>Rule of law Conditionality</i>	COM(2019)163 <i>April Communication</i>	<i>Stakeholders Consultation</i>	COM(2019)343 <i>July Communication</i>	COM(2020)580 <i>Rule of law Report</i>
Belgian House of Representatives	✓			✓	✓
Czech Senate	✓				
Czech Chamber	✓	✓		✓	
Danish Parliament	>>				>>
Dutch Senate				>>	
Dutch House of Representatives		>>	✓		
Finnish Parliament	>>	>>			
French Senate	✓				
German Bundestag	>>	✓		✓	>>
German Bundesrat	✓	✓	✓	✓	✓
Hungarian National Assembly	>>				

Parliament/ Chamber	COM(2018)324 <i>Rule of law Conditionality</i>	COM(2019)163 <i>April Communication</i>	<i>Stakeholders Consultation</i>	COM(2019)343 <i>July Communication</i>	COM(2020)580 <i>Rule of law Report</i>
Italian Senate	>>				
Italian Chamber of deputies	√			>>	
Seimas of the Republic of Lithuania		√		>>	>>
Luxembourg Chamber of deputies	√				
Maltese House of Representatives	>>				
Polish Senate	>>				
Polish Sejm	>>	>>		>>	
Portuguese Assembleia da República	√				
Romanian Senate		√			
National Council of the Slovak Republic	>>	>>		>>	>>
Slovenian National Assembly	>>				
Swedish Parliament	>>	√	√	>>	>>

Source: Platform for EU Interparliamentary Exchange (IPEX)

(last visit: 10 December 2020)

√= completed scrutiny

>>= ongoing scrutiny

Excluding the Dutch reply to the consultation, based on the mentioned report drafted on rule of law developments in the EU, the interparliamentary focus is rather absent in the documents so far adopted by NPs in the context of the political dialogue. They expressed their position on the new tools proposed by the European Commission (in particular, the Rule of law conditionality and the Rule of Law Review

Cycle) but they did not even either mention the call from the European Commission to develop forms of interparliamentary dialogue or seize the Commission's availability to contribute to it. Furthermore, as for the role of National Parliaments in the promotion of rule of law, only a vague reference to the promotion of debates in NPs was included in the opinion approved by the Romanian Senate on the April Communication.

## 4. Explaining the low degree of interparliamentary cooperation in the rule of law field

The empirical analysis showed that the European Parliament has constantly tried to structurally involve National Parliaments in formal mechanisms directed to address rule of law issues in the EU. Conversely, the institutionalised interparliamentary *fora* (COSAC and Speakers Conference) only marginally touched on the topic; moreover, the only interparliamentary meetings dedicated to the subject were organised by the EP (rather than the Presidency Parliaments) and connected to the proposed mechanism for democracy, the rule of law and fundamental rights. As for National Parliaments' engagement, the empirical analysis confirmed a general willingness to address the EU dimension of the rule of law (and even rule of law issues inside Member States), but a diversified attitude to the development of the interparliamentary cooperation in the rule of law area.

### 4.1 The European Parliament's approach

The EP's approach has to be contextualised in the institutional design of the current and proposed mechanisms to protect the rule of law, which shows an unbalanced role of the EP towards the other Institutions. As for art 7, the EP can initiate the procedure, but is largely excluded from the following steps, as confirmed by the current arm wrestling with the Council on the EP's right to formally participate in the on-going hearings under art. 7 TEU regarding Poland and Hungary (EP resolution, 16 January 2020); moreover, in the regulation introducing the rule of law conditionality, the role of the EP is limited to its right to be informed of the proposed, adopted and lifted measures in the event of breaches of the principles of the rule of law.

Following dynamics also observable in other policy areas, such as the AFSJ and the economic governance, the European Parliament seems to unleash the potential of EP driven formats of interparliamentary cooperation as an effective tool for asserting its role in the rule of law field. The EP's proactivity in engaging with National Parliaments and the emphasis put on their "key role" in measuring the progress of, and monitoring the compliance with the shared values of the Union (Resolution 2016, recital 9), can be read as functional to redress its institutional competitive disadvantage compared to the European Commission and the Council. The DRF is conceived as a comprehensive mechanism, replacing the existing ones, with a central role of the European Parliament; the latter is strengthened by the NPs involvement, which goes beyond the traditional

format of interparliamentary dialogue and results in a new stable interparliamentary *forum*, capable of producing procedural effects in the frame of the DRF mechanism.

From a theoretical angle, the EP appears to (and takes advantage from) promote and drive the vision of the interparliamentary cooperation as expression of a Euro-national parliamentary system, based upon the idea that “the functions of representation, policy-setting and oversight – traditionally attributed to every legislature – are now necessarily networked and shared among the different parliaments in the EU” (Fasone & Lupo 2018, 9). Conversely, a multilevel field approach (if not a lighter “network” approach), where the two channels interact through formal and informal mechanisms of interparliamentary cooperation, without fixed hierarchies and with overlapping constituencies, seems to inspire most NPs. They do not accept the EP’s lead in driving the interparliamentary processes and prefer informal *fora* of interparliamentary dialogue, without renouncing a role in the protection of the fundamental EU values through different mechanisms.

## 4.2 The National Parliaments’ approach

The heterogeneity of Parliaments’ view on the role of the interparliamentary cooperation in the field of rule of law can be linked, on the one hand, to the specificities of the area, strictly connected with national sovereignty, and, on the other hand, to their approach to the interparliamentary cooperation. According to some Parliaments, setting up new stable interparliamentary mechanisms or using the existing interparliamentary *fora* for discussing the EU rule of law dimension (or even rule of law challenges in specific Member States) on a regular basis would correspond to recognise European relevance to domestic rule of law issues and let supranational *fora* “meddle with the member states’ domestic affairs” (Hungarian National Assembly, Resolution 2018). This argument explains the strong objections to the EP’s mechanism on DRF raised by the Hungarian National Assembly and Polish Sejm during the ICM in 2017 and the reservations expressed by the Visegrad Parliaments on assigning a formal role to COSAC in addressing the subject. Furthermore, the traditional preference towards light, if not informal and deconstructed, formats of interparliamentary cooperation and/or the fear of duplicating other EU mechanisms or the work of existing institutions (such as the Parliamentary Assembly of the Council of Europe) contribute to explain why Parliaments which have always been extremely committed to promote and defend the rule of law principle (such as the Swedish *Riksdagen*) did not take the lead in the process of developing new formal interparliamentary mechanisms.

Conversely, as for the Dutch *Tweede Kamer*, the proactive role played in COSAC and the efforts in networking with other National parliaments (without a preeminent role for the EP) are consistent with a model of NPs acting collectively, beside and not always in tune with the EP (a sort of “virtual third Chamber” approach). This would also explain the cold reception of the proposal on a Pact for DRF, where the interparliamentary mechanisms would be driven and shaped by the European Parliament. As for the French *Assemblée Nationale*, the positive evaluation of the EP’s Pact, together with the proposal of a “*démarche commune*” of NPs, seems to confirm its support for a model of interparliamentary cooperation based on formal mechanisms and institutionalised *fora*, coherently with the position expressed by the French National Assembly and Senate in other policy area, such as the economic governance, in favour of structured formats of interparliamentary cooperation, capable of expressing common EP-NPs formal positions.



In the end, a lowest common denominator of the NPs' position can be found in the development of light formats of interparliamentary dialogue and exchange of information and best practices on the rule of law. Even the Parliaments of Member States subject to the art. 7 procedure grasped the potential of non-formalised mechanisms of interparliamentary cooperation for asserting their position and searching for consensus. In this sense, a "network" approach, based on deconstructed and essentially bilateral interparliamentary relations, seems to inspire the latest initiative of the Hungarian Speaker to address a letter to the EP and NPs Presidents, asking for support and cooperation on the recent coronavirus legislation, as fully in line with the country's Constitution. On a similar note, but clearly with a different political aim, it can be also mentioned the sharing through informal networks of interparliamentary cooperation of two resolutions adopted by the Polish Senate, respectively in defence of the independence of the judiciary and rejecting the Government's position on the EU budget and the rule of law conditionality.

### ***4.3 The lack of a strong legal basis***

The asymmetry in the approach expressed by the EP and NPs and the heterogeneous positions of National Parliaments represent the main obstacle to the development of stable formats of interparliamentary cooperation in the field of rule of law. This finding can be further enriched with a legal argument, which emerges from the comparison with other policy areas, such as the AFSJ and the economic governance. Those areas register some similitudes at institutional level with the rule of law field; they in fact present substantial elements of intergovernmentalism, which are reflected in an unbalanced role assigned to the European Parliament towards the Council and raise strong concerns in terms of democratic legitimacy. If, in the rule of law field, the EP performs limited functions in the implementation of art. 7 mechanism and in the institutional design of the new emerging tools (such as the Rule of law conditionality), scholars observe that "Member States in the Council still appear to remain privileged policy entrepreneurs in the AFSJ" (Trauner-Ripoll Servent 2016, 1429). As noted, despite the shift to the codecision, and the consequent formal empowerment of the European Parliament, the institutional changes have not led to major policy changes in many subareas of the AFSJ (Ripoll Servent 2018, 391), such as the judicial and police cooperation, still characterised by a predominant role of Member States. As for the economic governance, it is enough the recall the intergovernmental nature of the instruments adopted in the aftermath of the Eurozone crisis to strengthen the governance of the euro area (Fiscal Compact, European Stability mechanism) and the democratic concerns raised by the new mechanisms of economic coordination established beyond the Treaties. Scholars in particular observe as "parliamentary powers have been compromised in EU economic governance" (Crum 2017, 268), being the political authority "suspended between the collective of national governments and the (quasi-)technocratic assessments by the Commission, leaving the EP without any authority to hold to account" (Crum 2017, 282).

However, in those areas, the interparliamentary cooperation has been widely debated in the Speakers' Conference and many meetings of the responsible Committees have been organised by the EP and the Presidency Parliaments. Moreover, despite the strong confrontations between the two parliamentary levels and different positions on the nature and purpose of the interparliamentary cooperation, the interparliamentary dimension appears to be greatly institutionalised. Dedicated Conferences have

been set up and meet on a regular basis (respectively, the Interparliamentary Conference on Stability, Economic Coordination and Governance (SECG) and the Joint Parliamentary Scrutiny Group on Europol (JPSG); furthermore, new formats are being discussed at level of Speakers Conference for the evaluation of Eurojust's activity and the scrutiny over the European Border and Coast Guard.

Looking at the interparliamentary cooperation in the three areas from a legal angle, the main distinctive feature can be identified in the different legal basis. In the AFSJ and economic governance, the interparliamentary dimension is founded on specific primary legal bases, expressly foreseeing formats of interparliamentary cooperation (art. 88 and art. 85 TFEU for the JPSG and Eurojust; art. 13 *Fiscal Compact* for the SECG). Conversely, in the field of the rule of law, it exclusively relies on the "light" provisions contained in article 9 and article 10 Protocol (n. 1) on the role of National Parliaments in the EU, which apply in general to interparliamentary cooperation in the EU. The first article foresees that "the European Parliament and national Parliaments shall together determine the organisation and promotion of effective and regular interparliamentary cooperation within the Union", while article 10 assigns to COSAC the function of promoting "the exchange of information and best practice between national Parliaments and the European Parliament, including their special committees" and organising interparliamentary conferences on specific topics.

In the AFSJ and economic governance, the need of implementing specific legal provisions sped up the establishment of interparliamentary mechanisms, pushing the two parliamentary levels to find compromise solutions. Conversely, for lack of a specific legal basis, the development of the interparliamentary dimension in the rule of law field even more requires a common EP and NPs' willingness and a shared vision for the nature and role of the interparliamentary cooperation. From this perspective, the asymmetric approach expressed by the EP and NPs and the NPs' heterogeneous attitude, shown in the empirical part, represent a stronger obstacle to the interparliamentary cooperation in the area of the rule of law. Furthermore, the role to be played respectively by the Speakers Conference and COSAC in governing the process directed to establish interparliamentary *fora* in the field of rule of law is not clear. More broadly, this reflects on the uncertainty on which model of interparliamentary cooperation could be established, whether a COSAC model, founded on article 10 and "characterised by intense interaction among national parliaments, rather than among national parliaments and the EP" (Griglio & Lupo 2018, 361) or a Speakers Conference oriented model, based on art. 9, presenting an equal involvement of the EP and of NPs

#### **4.4 Is the stalemate insuperable?**

The reference to the interparliamentary cooperation in the economic governance area and the AFSJ offers interesting prospective elements in the rule of law field.

Firstly, in the mentioned areas, the parliamentary side of the EU Council Presidencies played a decisive role in launching and governing the processes directed to establish new interparliamentary mechanisms. In particular, the Italian and the Slovak Presidencies provided a crucial contribution to overcome the deadlock in the establishment respectively of the SECG Conference (Speakers Conference in Rome, 20-21 April 2015) and the JPSG (Speakers Conference in Bratislava, 23-24 April 2017). As for the rule of law, the role of the Presidency is even more critical, in the absence of a strong

legal basis pushing the development of interparliamentary mechanisms. As seen, the topic of the interparliamentary dimension was strongly brought to the COSAC table by the Dutch Presidency in 2016, but substantially dismissed by the following presidencies. Even the Finnish COSAC, in spite of the attention to the issue at level of Presidency of the Council, debated the EU rule of law dimension in general, but did not address its possible interparliamentary side. However, inferring from the engagement of the respective Parliaments, the sequence of the current (Germany) and next (Portugal, Slovenia, France) Presidencies could be now particularly favourable for launching processes of interparliamentary cooperation in the field of the rule of law.

The relevance of the EU rule of law dimension in the context of the parliamentary dimension of the Presidencies is confirmed by the Trio declaration, signed by the Parliaments of Germany, Portugal and Slovenia, which contains an express commitment “to move forwards the discussion on a new strategy for the implementation of the Charter on Fundamental Rights and on a common rule-of-law mechanism, to apply in equal measure to all”. As for the German Presidency, democracy, human rights and the rule of law are “at the heart of interparliamentary deliberations”. In this respect, the German *Bundestag* intends to “press for full adherence to our common values and discuss what can be done to strengthen the rule of law effectively in the European Union”. To this end, the German Parliament has already organised a dedicated (although informal) debate on the Rule of law Report in the COSAC context and the next Speakers Conference in Berlin (first semester 2021) could be an important step for addressing the development of the interparliamentary cooperation in the rule of law area.

Secondly, especially in the area of the economic governance, an important role in the establishment of the SECG was played by *ad hoc* meetings and joint initiatives from groups of Parliaments expressing homogenous views on the nature and role of the Conference. In particular, the paper produced by the Speakers of parliaments of the six founding members of the EU, the joint declaration of the Speakers of the Visegrad group and the letter sent by several Chairs of EU Affairs Committees, following an initiative from the Danish Parliament (Cooper 2016, 200), contributed to keep the Presidency’s attention on the development of interparliamentary mechanisms in the area and provided strong and structured inputs to the debate. As for the rule of law, a joint engagement from like-minded Chambers could be crucial for the development of interparliamentary mechanisms. To this regard, a first step in this direction is represented by the latest initiative of the rule of law rapporteurs of the Dutch *Tweede Kamer* to gather a small number of Lower Houses, selected on the basis of their engagement on the topic, in order to discuss the developments regarding the rule of law instruments at EU level and exchange ideas on the role of National Parliaments.

Finally, the recent political agreement on the rule of law conditionality in the context of the Multiannual Financial Framework 2021-2027 provides inspiration for a closing remark. Rule of law and the area of union finances have become increasingly intertwined. On the one hand, the new mechanism which links EU funds and rule of law is explicitly directed to protect the EU budget, its sound financial management and the financial interests of the Union; on the other hand, respect for the rule of law and good governance, independent and efficient justice systems, robust anti-corruption systems are considered as important determinants of a Member State’s business environment in the context of the European semester (Annual Sustainable Growth Strategy 2021) and rule of law issues are regularly assessed in the Country Specific Recommendations. The formal connection between the two areas could foster a growing focus on the EU rule of law dimension in the well-established interparliamentary *fora* dedicated to the economic governance and budgetary policy. This could ultimately contribute to asserting the interparliamentary relevance of rule of law issues within

Member States. The parliamentary dimension of the German Presidency, which assigns a primary focus to the rule of law conditionality in the interparliamentary exchanges on the Multiannual Financial Framework (Work programme), appears to move forward in that direction.

## 5. Conclusions

The dilemma at the origin of this paper was the following: why, in the rule of law field, have stable mechanisms of interparliamentary cooperation not been set up, despite the European Parliament's strong demand and the explicit support expressed by the European Commission? To address this puzzle, the paper focused on the contributions from existing interparliamentary *fora* (in particular EU Speakers Conference and COSAC) and, adopting an interparliamentary lens, analyzed the activity carried out by the European Parliament and National Parliaments for addressing the EU dimension of the rule of law. The empirical analysis, framed in the theoretical categories of the interparliamentary cooperation, demonstrated an asymmetric approach to the interparliamentary dimension in the field of rule of law expressed respectively by the European Parliament and National Parliaments and a heterogeneous attitude among National Parliaments. The reasons of this misalignment – both at vertical (European Parliament-National Parliaments) and horizontal (among National Parliaments) level - were found, on the one hand, in the specificities of the rule of law area, strictly linked with national sovereignty, and the institutional design of the mechanisms directed to protect it in case of democratic backslidings inside Member States; on the other hand, in the divergent views expressed by EU Parliaments on the role of the interparliamentary cooperation in the EU.

The EP has constantly tried to formally involve NPs in the field of rule of law, promoting and driving the vision of the interparliamentary cooperation as expression of “a Euro-national parliamentary system”. The EP seems to take advantage of a combined engagement of the two levels, in order to redress its institutional unbalance towards the European Commission and the Council in the current and emerging mechanisms directed to protect the rule of law in the EU. Conversely, National Parliaments do not present a homogenous attitude to the topic, and their approach varies from the support to formal and stable mechanisms of interparliamentary cooperation, in line with the EP's position, to the idea of common actions taken by National Parliaments, without a clear role for the European Parliament (a “virtual third Chamber” model), to a lighter approach based on more informal mechanisms of cooperation (a “multilevel parliamentary field” or even a “network approach”). The paper linked the greater or lesser willingness of National Parliaments to establish stable mechanisms of interparliamentary cooperation, on the one hand, to their political position on the EU intervention to address democratic backslidings within Member States; on the other hand, to their divergent approach to the interparliamentary dimension in the EU. In this context, the lower common denominator of the interparliamentary cooperation in the field of the rule of law was found in the preference towards informal and deconstructed formats of interparliamentary dialogue.

These findings were enriched with a legal argument emerging from the comparison with the AFSJ and the economic governance normative framework. Although those areas show similar institutional dynamics between the two parliamentary levels in the development of interparliamentary mechanisms, the interparliamentary dimension is much more developed and institutionalized. Analyzing the asymmetry from a legal angle, the paper observed that in the rule of law field, the

interparliamentary cooperation relies on the general “light” provisions contained in article 9 and article 10 TFEU, Protocol 1, TFEU. Conversely, in the AFSJ and in the economic governance, it is founded on specific primary legal bases, respectively contained in the Treaties (art. 12 TEU, art. 88 and art. 85 TFEU) and in the “Fiscal compact” (art.13). The need of implementing these provisions pushed the Presidencies to constantly insert the topic in the Speakers’ Conference agenda and the different parliamentary actors to find acceptable compromise in the long processes directed to establish new interparliamentary *fora*. In the rule of law field, in the absence of a specific legal basis, the asymmetric approach expressed by the EP and NPs and the NPs’ heterogeneous attitude represent a strong obstacle to the interparliamentary cooperation.

The reference to the AFSJ and the economic governance provided inspiration for some final remarks. The paper observed that a key role in the processes to establish new interparliamentary Conferences in those areas was played by the parliamentary side of the Presidencies. In this regard, it recalled how the potential of the interparliamentary cooperation in the field of the rule of law was strongly brought to the COSAC table by the Dutch Presidency and found that the present and next Presidencies, which are expression of Parliaments actively engaged on the topic, could play an important function in overcoming the stalemate produced by the institutional dynamics and the specificities of the rule of law area. Moreover, as in the mentioned areas, *ad hoc* initiatives from like-minded Parliaments could contribute to keep the Presidency’s attention high and provide important inputs to the debate. Finally, taking inspiration from the recent political agreement on the rule of law conditionality, the paper conjectured that the increasing connection between the rule of law and the area of union finances is expected to produce a growing focus on the EU rule of law dimension in the well-established interparliamentary *fora* discussing the economic governance and the budgetary policies. This could ultimately contribute to asserting the interparliamentary relevance of rule of law issues within Member States.

In conclusion, if the paper analysed and tried to explain the limited degree of interparliamentary cooperation in the field of the rule of law, it did not address and left a fundamental question open: why should mechanisms of interparliamentary cooperation be developed in the field of rule of law? This topic, new in the rule of law field, but addressed in the AFSJ and economic governance, would deserve future attention from scholars. To this end, the interparliamentary cooperation in the field of rule of law could be studied, on the one hand, as a soft mechanism for promoting the EU rule of law dimension and reacting to rule of law issues in Member States and, on the other hand, as a tool for addressing the democratic concerns raised by the emerging of new mechanisms outside the constitutional framework of the EU.

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