

A TIMELY INVITATION TO VALUES REALIGNMENT:

THE COMMISSION'S THREE 'MANUALS ON CONSTITUTIONAL ESSENTIALS'

As the second decade of the new millennium approaches its close, we cannot but feel tired, worried and disheartened. Covid-19 is still with us and pain, grief owing to the tragic loss of human life, fear and uncertainty have not dissipated. But this is not all. The last twenty years have been quite hard; both testing and troublesome. We have witnessed crises, austerity policies, wars, dictators and demagogues, the demise of honesty and integrity and the erosion of democratic standards even in the oldest democracies as self-serving political elites are keen on calling into question, and undermining, fundamental norms and constitutional essentials.

Reversals and regressions in the conditions of our lives, be they relating to health, livelihood, rights and freedoms, have created a fertile environment for negative discourses and 'crises talk', such as the alleged crisis of liberal democracy or the crisis of European integration. But beyond the noise generated by all those who wish to divide and dismantle for their own ideological, or purely self-interested, ends, the European Commission's initiative to articulate, and to publish, what may be called three 'manuals on constitutional essentials' – namely, the [2020 report on the rule of law](#), a strategy to strengthen the application of the [Charter on Fundamental Rights](#) and an [action plan on the European Democracy](#), is laudable. The strategy and the action plan on democracy were published on 2 and 3 December 2020, respectively, while the 2020 Rule of Law Report was published on 30 September 2020.

The publication all three documents in chronological proximity reinforces the idea that democracy requires respect for human rights in the same way that respect for the rule of law underpins and effectuates both democracy and human rights. Democracy, rule of law and human rights are both complementary and mutually reinforcing. The timing of the Commission's intervention is also important. This is not because it could be seen to reflect a supranational mistrust of localism and nationalist politics in the Member States. Nor is it because of Brexit. Nor does Europe need a special reminder of the importance of the values of freedom, equality, democracy, human rights and respect for the rule of law over authoritarian and totalitarian challenges to them. In a continent historically plagued by state aggression, wars, genocide and colonial expansion, such reminders are everywhere at any point in time, provided one wishes to see them.

The timing of the Commission's intervention is important because a) it provides a clearly focused and accurate portrait of an age that is more attuned to power and elite actions than to law and citizens' rights and b) with it we see a more self-assured position about what the European Union stands for and where it is heading. Taken both separately and together, the three documents focus clearly our minds on the

fact that European integration is so much more than economic integration (in fact, it has never been purely about economic integration).¹ They also highlight that European integration is unfolding confidently forward, notwithstanding oppositional noise, in the third decade of the 21st century. It continues to strive to deliver peace, prosperity, respect for human rights, labour, social and environmental protection and fruitful cooperation regionally and [globally](#). And in this process, values, that is, the values of the EU (Article 2 TEU) matter a lot. The commitment to democracy and the rule of law is highlighted in the [Charter of Fundamental Rights of the European Union of 7 December 2000](#), as adapted at Strasbourg on 12 December 2007, which forms part of primary EU law following the entry into force of the [Lisbon Treaty](#) (in force on 1 December 2009). Its preamble states that ‘the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law’.

More specifically, the 2020 Rule of Law Report is accompanied by 27 country chapters presenting an assessment of the functioning of the justice system, anti-corruption initiatives, media pluralism and other institutional checks and balances in the Member States. It was compiled by the Commission on the basis of active input on the part of the Member States, dialogue with statal and non-statal actors and dedicated virtual country visits. It manifests the European Rule of Law Mechanism – an annual process of inter-institutional cooperation in order to strengthen the rule of law and to address key challenges to it. Having considered measures adopted by the Member States during the Covid-19 pandemic and the impact of emergency powers, the Commission noted that judicial independence remains an issue in the Member States and highlighted the importance of effective anti-corruption national frameworks, including effective criminal legislation to combat corruption. The report also discussed the potential risks arising from restrictions in the exercise of freedom of expression and on access to information and the threats and attacks on journalists and other media actors as well as the independence of media authorities and transparency of media ownership. In the last section of the report entitled ‘other institutional issues linked to checks and balances’, the importance of debates on the rule of law, of an active and activist civil society, efforts to increase the accountability of the executive in the Member States and reduce their reliance on accelerated and emergency legislation was underlined. The Commission hopes that this process will lead to a new dialogue with the Member States and to an enhanced mutual trust. The objective is to sediment ‘a robust political and legal rule of law culture’ in the EU so that its systems function well in line with democratic standards and fundamental rights and freedoms. One discerns in the Report a cautious hope that this will be achieved via dialogue and a reinforced commitment to common principles and values. Following a difficult year, it is refreshing to witness what one may term ‘a positive capability’, that is the Commission’s belief that the antidote to

¹ ‘The European Union is not only about parties and politics, rules or regulations, markets or currencies. It is ultimately — and above all else — about people and their aspirations. It is about people standing together. For their liberty, for their values, simply for a better future’, Commission President von der Leyen, 27 November 2019 cited in the *European Democracy Action Plan*, COM(2020) 790 Final, Brussels, 3.12. 2020.

degrading standards in public life is a robust critique of law breaking and a multi-actor dialogue that restores respect for the underlying values of the EU and its Member States and bolsters compliance.

The Commission's strategy to strengthen the application of the Charter of Fundamental Rights acknowledges the increasing importance of the Charter to the protection of people's fundamental rights and the need for 'a renewed institutional commitment' to the effective application of Charter rights and principles. The [previous strategy](#) was ten years old and needed a revision in the light of new challenges, such as digitalisation, and developments, including the recent states' responses to the pandemic. The Commission has built the strategy on the basis of four strands: namely, i) ensuring the effective implementation of the Charter; ii) empowering civil society organisations, rights defenders and justice practitioners; iii) fostering the use of the Charter as a compass for EU institutions and iv) strengthening people's awareness of their Charter rights. Concrete actions and 'invitations' to the Member States to act in specific ways accompany each strand. Through such initiatives a more structured and targeted approach is formed. For example, under the first strand, the Commission will strengthen the partnership with the Member States and local authorities, will invite the Member States to nominate a Charter focal point, will present an annual report on the application of the Charter, will endure EU budgetary conditionalities and will bring infringement proceedings for breaches of EU law. The 2021 new Charter report will focus on fundamental rights in the digital age. The important role of civil society organisations and national human rights institutions will be further enhanced through EU programmes, capacity building and the training of judges and other justice practitioners through the use of EU funds and the tools developed by the [Fundamental Rights Agency](#), such as Charterpedia and the Handbook on the application of the Charter for practitioners. Guidance, e-learning tools and training will also be promoted at EU institutional level and the mainstreaming of the Charter throughout the EU legislative process will be enhanced. The final strand of the strategy focuses on initiatives to promote people's awareness of their Charter rights and to citizen empowerment.

The 'third manual on constitutional essentials', namely, is the action plan on European democracy. This communication seeks to address key challenges to democracy and citizen participation arising from restrictions to freedom of expression and media pluralism, digitalisation, rising extremism, authoritarianism, election interference and the spread of manipulative information. It announces concrete measures (these will be reviewed in 2023) in order to: a) protect free and fair elections and democratic participation, b) strengthen media freedom and pluralism and c) counter disinformation irrespective of the geographical location of its source. More specifically, in order to protect the resilience of EU democracies, the Commission will propose legislation in the area of sponsored content in a political context ('political advertising') thereby addressing online campaigning and micro-targeting and behavioural profiling techniques. This proposal will complement the rules on online advertising which will be contained in the forthcoming [Digital Services Act](#). It will also propose a revision of the [Regulation on the funding of European political parties and European political](#)

[foundations](#). The Commission will also set up a new joint operational mechanism through the [European Cooperation Network on Elections](#) to support the deployment of joint expert teams and to work closely with the NIS (security of information systems) Cooperation Group to counter threats to electoral processes. It will continue to promote EU citizenship rights and inclusive, deliberative and participatory democracy in many ways including by funding research under Horizon 2020 and its successor, Horizon Europe programme, the forthcoming Conference on the Future of Europe, the EU youth strategy (2019-2027), and by mainstreaming equality and combatting hate crime and hate speech. To strengthen media freedom and media pluralism and to safeguard a safer work environment for journalists, the Commission will propose a recommendation on the safety of journalists and will present an initiative to combat the abusive use of lawsuits against public participation (SLAPPs). An effective tool towards the promotion of media pluralism will be the establishment of a new Media Ownership Monitor - a database on media ownership which is envisaged to apply to all 27 Member States. In countering disinformation and election interference, the action plan states that the Commission will enhance the EU's existing toolbox for countering foreign interference in our information space by including new instruments that envisage the imposition of sanctions on perpetrators, the framework of obligations and accountability for online platforms in line with the upcoming Digital Services Act and the review of the [Code of Practice on disinformation](#) in spring 2021. The [General Data Protection Regulation](#) will also be effectively enforced with respect to online platforms. In sum, the action plan does not deliver a blueprint for European democracy. That was not the European Commission's intention. It simply focuses attention to the undermining of democratic institutions and practices that has been observed during recent years and calls for the enhancement of citizen participation in the political process and for the upgrading of the functioning of democratic frameworks in the light of new challenges and digital realities.

Taking a combined view, the 2020 Rule of Law Report, the new Strategy for the implementation of the EU Charter of Fundamental Rights and the Action Plan on European democracy demonstrate the responsibilities of all institutions and organisations vertically as well as horizontally in this area and delineate four well-considered steps to values realignment; namely, step 1: reflect and correct; step 2: respond, liaise and solve; step 3: move forward with clarity and commitment and step 4: change and manifest, that is, undo the resistance to change and manifest an uncompromising approach to upholding the values of democratic constitutional societies and of the European Union (Article 2 TEU). After all, these values are both the foundation and the context for the flourishing of persons, organisations and institutions, societies and polities.