

# 2023 Rule of Law Report - targeted stakeholder consultation

Fields marked with \* are mandatory.

## Introduction

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The annual Rule of Law Report lies at the centre of the European rule of law mechanism, which acts as a preventive tool, deepening multilateral dialogue and joint awareness of rule of law issues. So far, three editions of the Rule of Law Report have been published in 2020, 2021 and 2022.

In the preparation of the first three editions of the Rule of Law Report, the Commission has relied on a diversity of relevant sources, including from Member States, country visits, and stakeholders' contributions collected through the targeted stakeholder consultation [1]. The information provided has informed the Commission's country-specific assessments in preparing the Report. Building on the positive experience from the first three editions of the Rule of Law Report, the Commission is now inviting stakeholders to provide written contributions for the preparation of the 2023 Rule of Law Report through this targeted consultation.

The contribution to be provided should include (1) information on measures taken to implement the recommendations addressed to the Member State in the 2022 Rule of Law report, as well as developments with regard to the points raised in the respective country chapter and (2) any other significant developments since January 2022 [2] falling under the 'type of information' outlined in the next section.

The input should be short and concise and summarise information related to one or more of the areas referred to in the template. You are invited to focus on the areas that relate to the scope of work and expertise of your organisation. Existing reports, statements, legislation or other documents may be referenced with a link (no need to provide the full text). Stakeholders are encouraged to make references to any contributions already provided in a different context or to Reports and documents already published. Contributions should focus on significant developments both as regards the legal framework and its implementation in practice.

**If you wish to submit information concerning several Member States, you will have to fill-in the questionnaire separately for each Member States (due to the size of the questionnaire). There is no limit to the number of contributions submitted by a single participant. In such cases, you are not required to repeat the information in the section "about you" that is non-mandatory nor the information on horizontal developments.**

Please provide your contribution by **20 January 2023**. Should you have any requests for clarifications or encounter difficulties in filling in the questionnaire, you can contact the Commission at the following email

address: rule-of-law-network@ec.europa.eu.

[1] For the consultation for the 2022 Report, see [https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation\\_en](https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation_en)

[2] Unless the information was already submitted in the consultation for the previous Rule of Law Reports.

## Type of information

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The topics are structured according to four pillars: I. Justice system; II. Anti-corruption framework; III. Media pluralism; and IV. Other institutional issues related to checks and balances. The replies could include aspects set out below under each pillar. This can include challenges, current work streams, positive developments and best practices:

### **Legislative developments**

- Newly adopted legislation
- Legislative drafts currently discussed in Parliament
- Legislative plans envisaged by the Government

### **Policy developments**

- Implementation of legislation
- Evaluations, impact assessment, surveys
- White papers/strategies/actions plans/consultation processes
- Follow-up to reports/recommendations of Council of Europe bodies or other international organisations
- Important administrative measures
- Generalised practices

### **Developments related to the judiciary / independent authorities**

- Important case law by national courts
- Important decision/opinions from independent bodies/authorities
- State of play on terms, nominations and expired mandates for high-level positions (e.g. Supreme Court, Constitutional Court, Council for the Judiciary, heads of independent authorities included in the scope of the questionnaire[1])

### **Any other relevant developments**

- Respondents are free to add any further information, which they deem relevant; however, this should be short and to the point.

If there are no changes, it is sufficient to indicate this and the information covered in the contributions for the previous Rule of Law Reports should not be repeated.

[1] Such as: media regulatory authorities and bodies, national human rights institutions, equality bodies, ombudsman institutions, supreme audit institutions and, where they exist, transparency authorities.

## About you

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\* I am giving my contribution as

- ☐ Academic/research institution
- ☐ Business association
- ☒ Civil society organisation/NGO
- ☐ International organisation
- ☐ Judicial association or network
- ☐ Media organisation or association
- ☐ Public authority or network of public authorities
- ☐ Other

\* Organisation name

*250 character(s) maximum*

Reporters Without Borders / Reporters sans frontières (RSF)

Main Areas of Work

- ☐ Justice System
- ☐ Anti-corruption
- ☒ Media Pluralism
- ☐ Other

Please insert an URL towards your organisation's main online presence or describe your organisation briefly:

*500 character(s) maximum*

<https://rsf.org/en>

Transparency register number

Check if your organisation is in the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making

612547127497-45

\* Country of origin

Please add the country of origin of your organisation

- ☐ Afghanistan
- ☐ Albania
- ☐ Algeria
- ☐ Andorra
- ☐ Angola
- ☐ Antigua and Barbuda

- ☐ Argentina
- ☐ Armenia
- ☐ Australia
- ☐ Austria
- ☐ Azerbaijan
- ☐ Bahamas
- ☐ Bahrain
- ☐ Bangladesh
- ☐ Barbados
- ☐ Belarus
- ☐ Belgium
- ☐ Belize
- ☐ Benin
- ☐ Bhutan
- ☐ Bolivia
- ☐ Bosnia and Herzegovina
- ☐ Botswana
- ☐ Brazil
- ☐ Brunei Darussalam
- ☐ Bulgaria
- ☐ Burkina Faso
- ☐ Burundi
- ☐ Cabo Verde
- ☐ Cambodia
- ☐ Cameroon
- ☐ Canada
- ☐ Central African Republic
- ☐ Chad
- ☐ Chile
- ☐ China
- ☐ Colombia
- ☐ Comoros
- ☐ Congo
- ☐ Costa Rica
- ☐ Côte D'Ivoire
- ☐ Croatia
- ☐ Cuba
- ☐ Cyprus
- ☐ Czechia
- ☐ Democratic Republic of the Congo
- ☐ Denmark
- ☐ Djibouti
- ☐ Dominica
- ☐ Dominican Republic
- ☐ Ecuador
- ☐ Egypt
- ☐ El Salvador

- ☐ Equatorial Guinea
- ☐ Eritrea
- ☐ Estonia
- ☐ Eswatini
- ☐ Ethiopia
- ☐ Fiji
- ☐ Finland
- ☒ France
- ☐ Gabon
- ☐ Gambia
- ☐ Georgia
- ☐ Germany
- ☐ Ghana
- ☐ Greece
- ☐ Grenada
- ☐ Guatemala
- ☐ Guinea
- ☐ Guinea Bissau
- ☐ Guyana
- ☐ Haiti
- ☐ Honduras
- ☐ Hungary
- ☐ Iceland
- ☐ India
- ☐ Indonesia
- ☐ Iran
- ☐ Iraq
- ☐ Ireland
- ☐ Israel
- ☐ Italy
- ☐ Jamaica
- ☐ Japan
- ☐ Jordan
- ☐ Kazakhstan
- ☐ Kenya
- ☐ Kiribati
- ☐ Kuwait
- ☐ Kyrgyzstan
- ☐ Laos
- ☐ Latvia
- ☐ Lebanon
- ☐ Lesotho
- ☐ Liberia
- ☐ Libya
- ☐ Liechtenstein
- ☐ Lithuania
- ☐ Luxembourg

- ☐ Madagascar
- ☐ Malawi
- ☐ Malaysia
- ☐ Maldives
- ☐ Mali
- ☐ Malta
- ☐ Marshall Islands
- ☐ Mauritania
- ☐ Mauritius
- ☐ Mexico
- ☐ Micronesia
- ☐ Monaco
- ☐ Mongolia
- ☐ Montenegro
- ☐ Morocco
- ☐ Mozambique
- ☐ Myanmar
- ☐ Namibia
- ☐ Nauru
- ☐ Nepal
- ☐ Netherlands
- ☐ New Zealand
- ☐ Nicaragua
- ☐ Niger
- ☐ Nigeria
- ☐ North Korea
- ☐ North Macedonia
- ☐ Norway
- ☐ Oman
- ☐ Pakistan
- ☐ Palau
- ☐ Panama
- ☐ Papua New Guinea
- ☐ Paraguay
- ☐ Peru
- ☐ Philippines
- ☐ Poland
- ☐ Portugal
- ☐ Qatar
- ☐ Republic of Moldova
- ☐ Romania
- ☐ Russian Federation
- ☐ Rwanda
- ☐ Saint Kitts and Nevis
- ☐ Saint Lucia
- ☐ Saint Vincent and the Grenadines
- ☐ Samoa

- ☐ San Marino
- ☐ Sao Tome and Principe
- ☐ Saudi Arabia
- ☐ Senegal
- ☐ Serbia
- ☐ Seychelles
- ☐ Sierra Leone
- ☐ Singapore
- ☐ Slovakia
- ☐ Slovenia
- ☐ Solomon Islands
- ☐ Somalia
- ☐ South Africa
- ☐ South Korea
- ☐ South Sudan
- ☐ Spain
- ☐ Sri Lanka
- ☐ Sudan
- ☐ Suriname
- ☐ Sweden
- ☐ Switzerland
- ☐ Syrian Arab Republic
- ☐ Tajikistan
- ☐ Tanzania
- ☐ Thailand
- ☐ Timor-Leste
- ☐ Togo
- ☐ Tonga
- ☐ Trinidad and Tobago
- ☐ Tunisia
- ☐ Turkey
- ☐ Turkmenistan
- ☐ Tuvalu
- ☐ Uganda
- ☐ Ukraine
- ☐ United Arab Emirates
- ☐ United Kingdom
- ☐ United States of America
- ☐ Uruguay
- ☐ Uzbekistan
- ☐ Vanuatu
- ☐ Venezuela
- ☐ Viet Nam
- ☐ Yemen
- ☐ Zambia
- ☐ Zimbabwe

First name

Julie

Surname

Majerczak

Email Address of the organisation (this information will not be published)

[REDACTED]

**\* Publication of your contribution and privacy settings**

You can choose whether you wish for your contribution to be published and whether you wish your details to be made public or to remain anonymous.

- ☐ Anonymous - Only your type of respondent, country of origin and contribution will be published. Organisation name, URL, transparency register number, first name and surname given above will not be published. **To maintain anonymity, please refrain from mentioning the name of your organisation and any details from which your organisation can be identified in the rest of your contribution.**
- ☒ Public - Your personal details (name, organisation name, transparency register number, country of origin) will be published with your contribution).
- ☐ No publication - Your contribution will not be published. Elements of your contribution may be referred to anonymously in documents produced by the Commission based on this consultation.

☒ I agree with the personal data protection provisions.

[Specific privacy statement targeted stakeholder consultation 2023 rule of law report.pdf](#)

## Questions on horizontal developments

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In this section, you are invited to provide information on general horizontal developments or trends, both positive and negative, covering all or several Member States. In particular, you could mention issues that are common to several Member States, as well as best practices identified in one Member State that could be replicated. Moreover, you could refer to your activities in the area of the four pillars and sub-topics (an overview of all sub-topics can be found below), and, if you represent a Network of national organisations, to the support you might have provided to one of your national members.

Overview topics for contribution

[list of topics 2023 Report.pdf](#)

Please provide any relevant information on horizontal developments here

*5000 character(s) maximum*

[REDACTED]

## Questions for contribution

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The following four pillars (I.-IV.) are sub-divided into topics (A., B., etc.) and sub-topics (1., 2., 3., etc.). For each of the topics and sub-topics, you are invited to provide (1) information on measures taken to implement the recommendations addressed to the Member States in the 2022 Rule of Law report, as well as developments with regard to the points raised in the respective country chapter of the 2022 Rule of Law Report and (2) any other significant developments since January 2022[1]. Please include a link to and reference relevant legislation/documents (in the national language and/or where available, in English) if relevant. Significant developments can include challenges, positive developments and best practices, covering both legislative developments or implementation and practices.

If there are developments you consider relevant under each of the four pillars that are not mentioned in the sub-topics, please add them under the section "other - please specify". Only significant developments should be covered.

Information provided in reply to the first question under each pillar, related to the follow-up to the recommendations, does not need to be repeated in subsequent parts of the questionnaire, but can be cross-referenced in the subsequent questions, where relevant. All other questions are not limited to the recommendations, but as in previous years, cover the entire scope of the Report.

[1] Unless already covered in the input for the previous Rule of Law Reports.

Member State covered in contribution [only one choice possible]

**If you wish to submit information concerning several Member States, please fill in the questionnaire separately for each Member State. There is no limit to the number of contributions submitted by a single participant.**

- ☐ Austria
- ☐ Belgium
- ☐ Bulgaria
- ☐ Croatia
- ☐ Cyprus
- ☐ Czechia
- ☐ Denmark
- ☐ Estonia
- ☐ Finland
- ☐ France
- ☒ Germany
- ☐ Greece
- ☐ Hungary
- ☐ Ireland
- ☐ Italy
- ☐ Latvia
- ☐ Lithuania
- ☐ Luxembourg
- ☐ Malta
- ☐ Netherlands
- ☐ Poland
- ☐ Portugal

- ☐ Romania
- ☐ Slovak Republic
- ☐ Slovenia
- ☐ Spain
- ☐ Sweden

## I. Justice System

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Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the justice system (if applicable)

*3000 character(s) maximum*

### A. Independence

Appointment and selection of judges, prosecutors and court presidents (incl. judicial review)

*(The reference to 'judges' concerns judges at all level and types of courts as well as judges at constitutional courts)*

*3000 character(s) maximum*

Irremovability of judges, including transfers, (incl. as part of judicial map reform), dismissal and retirement regime of judges, court presidents and prosecutors (incl. judicial review)

*3000 character(s) maximum*

Promotion of judges and prosecutors (incl. judicial review)

*3000 character(s) maximum*

Allocation of cases in courts

*3000 character(s) maximum*

Independence (including composition and nomination and dismissal of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

*3000 character(s) maximum*

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal/civil (where applicable) liability of judges (incl. judicial review)

3000 character(s) maximum

Remuneration/bonuses/rewards for judges and prosecutors, including observed changes (significant and targeted increase or decrease over the past year), transparency on the system and access to the information

3000 character(s) maximum

Independence/autonomy of the prosecution service

3000 character(s) maximum

Independence of the Bar (chamber/association of lawyers) and of lawyers

3000 character(s) maximum

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

3000 character(s) maximum

## B. Quality of justice

*(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under section 2)*

Accessibility of courts (e.g. court/legal fees, legal aid, language)

3000 character(s) maximum

Resources of the judiciary (human/financial/material)

*(Material resources refer e.g. to court buildings and other facilities)*

3000 character(s) maximum

Training of justice professionals (including judges, prosecutors, lawyers, court staff)

3000 character(s) maximum

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)

*3000 character(s) maximum*

Use of assessment tools and standards (e.g. ICT systems for case management, court statistics and their transparency, monitoring, evaluation, surveys among court users or legal professionals)

*3000 character(s) maximum*

Geographical distribution and number of courts/jurisdictions ("judicial map") and their specialization, in particular specific courts or chambers within courts to deal with fraud and corruption cases

*3000 character(s) maximum*

## C. Efficiency of the justice system

*(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under section 2)*

Length of proceedings

*3000 character(s) maximum*

Other - please specify

*3000 character(s) maximum*

## II. Anti-Corruption Framework

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Where previous specific reports, published in the framework of the review under the UN Convention against Corruption, of GRECO, and of the OECD address the issues below, please make a reference to the points you wish to bring to the Commission's attention in these documents, indicating any relevant updates, changes or measures introduced that have occurred since these documents were published.

Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the anti-corruption framework (if applicable)

*3000 character(s) maximum*

## A. The institutional framework capacity to fight against corruption (prevention and investigation / prosecution)

List any changes as regards relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption and the resources allocated to each of these authorities (the human, financial, legal, and technical resources as relevant), including the cooperation among domestic authorities. Indicate any relevant measure taken to effectively and timely cooperate with OLAF and EPPO (where applicable)

*3000 character(s) maximum*

Safeguards for the functional independence of the authorities tasked with the prevention and detection of corruption

*3000 character(s) maximum*

Information on the implementation of measures foreseen in the strategic anti-corruption framework (if applicable). If available, please provide relevant objectives and indicators

*3000 character(s) maximum*

## B. Prevention

Measures to enhance integrity in the public sector and their application (including as regards incompatibility rules, revolving doors, codes of conduct, ethics training). Please provide figures on their application

*3000 character(s) maximum*

General transparency of public decision-making, including rules on lobbying and their enforcement, asset disclosure rules and enforcement, gifts policy, transparency of political party financing

*3000 character(s) maximum*

Rules and measures to prevent conflict of interests in the public sector. Please specify the scope of their application (e.g. categories of officials concerned)

*3000 character(s) maximum*

Measures in place to ensure whistleblower protection and encourage reporting of corruption.

*3000 character(s) maximum*

List the sectors with high-risks of corruption in your Member State and list the relevant measures taken /envisaged for monitoring and preventing corruption and conflict of interest in these sectors (e.g. public procurement, healthcare, citizen investor schemes, risk or cases of corruption linked to the disbursement of EU funds, other), and, where applicable, list measures to prevent and address corruption committed by organised crime groups (e.g. to infiltrate the public sector)

*3000 character(s) maximum*

Any other relevant measures to prevent corruption in public and private sector

*3000 character(s) maximum*

## C. Repressive measures

Criminalisation, including the level of sanctions available by law, of corruption and related offences, including foreign bribery

*3000 character(s) maximum*

Data on investigation and application of sanctions for corruption offences, including for legal persons and high level and complex corruption cases and their transparency, including as regards to the implementation of EU funds

*(Please include, if available the number of (data since 2019): indictments; first instance convictions; first instance acquittals; final convictions; final acquittals; other outcomes (final) (i.e. excluding convictions and acquittals); cases adjudicated (final); imprisonment / custodial sentences through final convictions; suspended custodial sentences through final convictions; pending cases at the end of the reference year)*

*3000 character(s) maximum*

Potential obstacles to investigation and prosecution as well as to the effectiveness of criminal sanctions of high-level and complex corruption cases (e.g. political immunity regulation, procedural rules, statute of limitations, cross-border cooperation, pardoning)

*3000 character(s) maximum*

Information on effectiveness of non-criminal measures and of sanctions (e.g. recovery measures and administrative sanctions) on both public and private offenders

*3000 character(s) maximum*

Other - please specify

*3000 character(s) maximum*

### III. Media Freedom and Pluralism

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Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding media freedom and pluralism (if applicable)

*3000 character(s) maximum*

#### A. Media authorities and bodies

*(Cf. Article 30 of Directive 2018/1808)*

Measures taken to ensure the independence, enforcement powers and adequacy of resources (financial, human and technical) of media regulatory authorities and bodies

*3000 character(s) maximum*

Need for Reforms: The structure of media regulatory authorities and agencies has not changed since last year. Nor has there been an improvement in the comparability of the annual reports and the monitoring of the allocation of funds by the state media authorities (Landesmedienanstalten), which are responsible for the licensing and supervision of private media. However, a scandal involving Patricia Schlesinger, the former director of public broadcaster Berlin Brandenburg (RBB) and chairwoman of the Association of Public Service Broadcasters in the Federal Republic of Germany (ARD), massively increased the pressure to reform the supervisory and control mechanisms for public media in 2022. Criticism is primarily directed at the fact that there is a lack of capacity for self-regulation in the broadcasting and administrative councils and that the number of representatives on the councils who are close to the state has increased. Contributing to these problems is the fact that the tasks of the supervisory bodies have grown over the years - without any significant expansion of resources. For example, the Interstate Treaty on the Media (Medienstaatsvertrag) has made the supervisory authorities' mandate more flexible, and they are now also to decide which programs are broadcast on which playout channels and at what cost. In order to fulfil these tasks competently and with the necessary independence from the broadcasters, the councils actually need more personnel and financial resources than provided for in the Interstate Treaty on the Media.

EMFA: The EU Commission presented its proposal for a European Media Freedom Act (EMFA) in September 2022. The EMFA is an important step forward for media freedom and for the preservation of democracy and the rule of law throughout the EU. By addressing the challenges posed by the increasing complexity and interdependence of media dynamics between regional, national and supranational as well as analog and digital spheres, the draft represents an opportunity to update the German media regulation in need of reform. Because it is pursuing the goal of harmonising the so-called "internal market for media services", the EMFA in its present form challenges the federal structure of media regulation in Germany. Traditionally, the task of media regulation in Germany has rested with the Länder in accordance with the principle of subsidiarity. In a Bundesrat resolution in Nov. 25, 2022, the Bundesrat already formulated its concerns that the EU would exceed its competences and decided to raise the so-called "subsidiarity complaint. This instrument enables the Bundesrat to complain about certain infringements of the EU's powers. It would be advisable to work towards a mediation between subsidiarity concerns of the Länder and the capacity of the EMFA to regulate the new challenges already strongly affecting the media landscape in Germany.

Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media regulatory authorities and bodies

*3000 character(s) maximum*

No notable change compared to last year.

Existence and functions of media councils or other self-regulatory bodies

*3000 character(s) maximum*

No notable change compared to last year.

## B. Safeguards against government or political interference and transparency and concentration of media ownership

Measures taken to ensure the fair and transparent allocation of state advertising (including any rules regulating the matter)



3000 character(s) maximum

Public broadcasters in Germany are financed through the broadcasting contribution. According to the Interstate Broadcasting Treaty, the broadcasters operate on a public service basis (see A.1 from RoL Report for Germany 2022). Newspaper and magazine publishers have been calling for government help for years and complain about rising costs. Various approaches to press subsidies have already been discussed - and then rejected (see B.1 from RoL Report for Germany 2022). The federal government's current budget does not include any funds to support newspaper publishers. However, the coalition agreement of the government states: "We want to ensure the nationwide supply of periodical press products and examine which funding options are suitable for this purpose." A resolution of the Bundesrat from September. 16, 2022, took this commitment into account and emphasised that "due to the significant tightening of the economic situation of publishers foreseeable for the fall of 2022, the Bundesrat asks the federal government to submit a funding concept in a timely manner." [https://www.bundesrat.de/SharedDocs/drucksachen/2022/0301-0400/309-22\(B\).pdf;jsessionid=FE54E6ADC893DF4CA8FBCE7FC3763CCE.1\\_cid374?\\_\\_blob=publicationFile&v=1](https://www.bundesrat.de/SharedDocs/drucksachen/2022/0301-0400/309-22(B).pdf;jsessionid=FE54E6ADC893DF4CA8FBCE7FC3763CCE.1_cid374?__blob=publicationFile&v=1) However, no concept has yet been elaborated answering the relevant questions regarding media independence and equitable distribution of resources, e.g. between print and online media.

Safeguards against state / political interference, in particular:

- safeguards to ensure editorial independence of media (private and public)
- specific safeguards for the independence of heads of management and members of the governing boards of public service media (e.g. related to appointment, dismissal), safeguards for their operational independence (e.g. related to reporting obligations and the allocation of resources) and safeguards for plurality of information and opinions
- information on specific legal provisions and procedures applying to media service providers, including as regards granting/renewal/termination of licenses, company operation, capital entry requirements, concentration and corporate governance

3000 character(s) maximum

See above - No notable change compared to last year.

Transparency of media ownership and public availability of media ownership information, including on direct, indirect and beneficial owners, as well as any rules regulating the matter

With regard to ensuring transparency of ownership structures and public access to media by the Commission for the Determination of Concentration in the Media Sector (KEK), nothing has changed compared to the RoL Report on Germany for 2022. Even if there are examples of dwindling media diversity, such as that in January 2022 the publishing house of Stuttgarter Nachrichten and Stuttgarter Zeitung announced that it would cut around 50 editorial jobs, which amounts to about 20 percent of the total editorial staff, the German media landscape as a whole can be classified as pluralistic. But since media use is increasingly migrating to the less regulated area of digital media, new regulations are needed to address this change. In its seventh concentration report published in 2022, the KEK calls for an amendment to media concentration law that meets the requirements of the digital transformation. <https://www.kek-online.de/publikationen/medienkonzentrationsberichte/siebter-konzentrationsbericht-2021>

## C. Framework for journalists' protection, transparency and access to documents

## Rules and practices guaranteeing journalist's independence and safety, including as regards protection of journalistic sources and communications

*3000 character(s) maximum*

**Physical safety:** The situation of press freedom in Germany slightly deteriorated in 2021 due to violent attacks on journalists: RSF noted as many as 80 attacks on journalists in 2021. A higher number of unreported cases were assumed, as many incidents were not reported or filed. There are signs of a decrease in violent attacks in 2022, as fewer corona protests took place. However, an increase in attacks by right-wing politicians on journalists is already becoming apparent: The mayor of the small Thuringian town of Bad Lobenstein, Thomas Weigelt, wrestled a journalist to the ground, AfD politician Oliver Kirchner attacked two reporters from MDR and the CSU Secretary General Stephan Mayer attacked the editor of the magazine Bunte.

**Code of Protection:** To respond to the increasing violence against journalists in Germany, an alliance of journalists' organisations, media unions and consulting institutions launched an initiative for a Protection Code for Media Professionals in Threat Situations. At the beginning of 2022, the Protection Code was finalized. Media professionals can now claim the Code's protection and find out if their employer or client has signed up to the Protection Code.

**Online Threats:** Hacker attacks are an increasing security risk for journalists and media outlets: In 2022 the German Press Agency (dpa) and the newspaper Heilbronner Stimme were attacked. In response to this situation, RSF launched the Digital Security Lab, which uses forensic analysis to identify hacking attacks on journalists.

**Whistleblowing:** The German Whistleblower Protection Act, passed in December in response to the European Whistleblowing Directive, represents an attempt to create more legal security for whistleblowers. However, it raises the hurdles to disclosing information to the media by introducing high requirements as to when whistleblowers may approach the media and making it more difficult to disclose classified information even in justified cases.

**Data theft:** A data theft paragraph in the German Criminal Code (202d) criminalises the handling of data that was previously obtained unlawfully. Due to vague wording, the paragraph also covered the acquisition, transfer and dissemination of data passed on by whistleblowers to journalists. In June 2022, the Federal Constitutional Court ruled that journalists must not be criminalised by 202d. However, the court did not accept a constitutional complaint against the criminal offence of data theft as such.

## Law enforcement capacity, including during protests and demonstrations, to ensure journalists' safety and to investigate attacks on journalists

*3000 character(s) maximum*

The increase in attacks on journalists by the police indicates that there is a need for police training with regards to press freedom and clarifications on the role of the press. In August 2022, federal funds were made available to the German Press Council for a broad-based training project with the police to protect free reporting.[1]

A revision to the code of conduct between the media and the police is intended to again regulate the rights and obligations of both sides, but it was not completed in 2022.

**Criminal prosecution of attacks against journalists:** The verdict in the so-called "Fretterode" trial is an

example of the lack of criminal prosecution of anti-press violence by the judiciary. Two neo-Nazis persecuted, abused and robbed two journalists in Thuringia's Fretterode in 2018. It took more than three years before charges were brought. In September 2022, the Mühlhausen Regional Court delivered a very lenient sentence (200 hours of community service as a youth sentence and one year's suspended sentence, no prison), which was widely seen as carte blanche to use violence against journalists. The public prosecutor's office and the private prosecutor immediately appealed.[2]

[1] <https://www.presserat.de/presse-nachrichten-details/f%C3%B6rderung-vom-bund-f%C3%BCr-schulungen-mit-der-polizei.html>

[2] <https://taz.de/Revision-zu-Fretterode-Urteil-eingelegt/!5881989/>

Access to information and public documents (incl. transparency authorities where they exist, procedures, costs/fees, timeframes, administrative/judicial review of decisions, execution of decisions by public authorities, possible obstacles related to the classification of information)

*3000 character(s) maximum*

As early as 2013, the Federal Administrative Court ruled that the legislature is obliged to "shape the legal system in a way that does justice to the special constitutional importance of the press and enables it to function in accordance with its function". This also includes the creation of official information obligations. The coalition treaty of the government agreed to create "a legal basis for the right of the press to obtain information from federal authorities". However, no regulation has been changed so far.  
<https://verfassungsblog.de/dieser-blogbeitrag-ist-nicht-von-der-pressefreiheit-geschutzt/>

Lawsuits (incl. SLAPPs - strategic lawsuits against public participation) and convictions against journalists (incl. defamation cases) and measures taken to safeguard against manifestly unfounded and abusive lawsuits

*3000 character(s) maximum*

There are repeated reports of suspected SLAPPs, even if these are usually not reported using the concept of SLAPPs. <https://www.br.de/nachrichten/bayern/suedtiroler-apfelstreit-teilgewinn-fuer-pesticide-critic,Svq05i3>

On April 27, 2022, the EU Commission presented its initiative to combat SLAPPs. In order to counter the threat posed by SLAPPs, the directive provides for a whole range of procedural guarantees that strengthen the procedural position of those affected without disproportionately restricting the guarantee of effective legal protection. In the coalition treaty, the government announced that it would support EU measures against SLAPPs.

Other - please specify

*3000 character(s) maximum*

Surveillance:

- BND: In 2021 the Bundestag passed a reform of the existing BND law, which leaves foreign media professionals and their sources vulnerable to digital surveillance and misuse of the information obtained in this way. At the end of 2022, RSF submitted another complaint to the Federal Constitutional Court against the amendment to the BND Act.
- Data retention: In Sept. 2022, the Court of Justice of the European Union announced its decision that the German regulation on data retention violates EU law. The storage of traffic and location data from digital communications means a serious encroachment on freedom of the press and fundamental rights. The ruling

is welcome, but the court did not object to IP data retention for a period of time when national security is at stake. This leaves a serious gap for mass government data retention. <https://www.reporter-ohne-grenzen.de/pressemitteilungen/meldung/eugh-judgement-deutsche-vorratsdatenspeicherung-rechtswider>

· Biometric surveillance: The Council of the European Union presented its position on the Artificial Intelligence Act Dec. 2022. <https://netzpolitik.org/2022/ai-act-der-europaeischen-union-ampel-verpasst-grundrechtsschutz-bei-der-gulung-kuenstlicher-intelligenz/> With the AI Act, the EU work on a regulatory framework for the use of artificial intelligence, which includes biometric facial recognition. It is problematic that the current draft law contains numerous exceptions (particularly in Article 5d), which de facto enable biometric mass surveillance and thus massively worsen the working conditions of journalists. <https://www.reporter-ohne-grenzen.de/pressemitteilungen/meldung/rsf-fordt-verbot-biometric-identification-procedure>

Access to fundamental rights of vulnerable journalists from abroad:

Long delays and the suspension of procedures in the granting of residence permits even in the case of a legitimate legal claim restrict the exercise of the right to protection and asylum. The slow work of the competent authorities leads to severe delays in the admission procedures of threatened journalists from abroad - even in cases, where promises have been made on the political level, as for the case of threatened journalists from Russia. Equally, many journalists at risk from Afghanistan have not been granted residence permits to date, despite their legitimate claims and respective political promises.

Application of the principle of universal jurisdiction in Germany:

The trial in the murder of journalist and RSF correspondent Deyde Hydara is taking place in Germany according to the principle of universal jurisdiction. Although universal jurisdiction is firmly anchored in German law, the principle has only recently been applied more widely. This is to be welcomed in the fight against impunity for crimes against journalists. <https://www.reporter-ohne-grenzen.de/pressemitteilungen/meldung/prozess-nach-mord-an-rsf-korrespondent-1>

## IV. Other institutional issues related to checks and balances

Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the system of checks and balances (if applicable)

*3000 character(s) maximum*

### A. The process for preparing and enacting laws

Framework, policy and use of impact assessments and evidence based policy-making, stakeholders'[1] /public consultations (particularly consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process

[1] *This includes also the consultation of social partners*

*3000 character(s) maximum*

Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

3000 character(s) maximum

Regime for constitutional review of laws

3000 character(s) maximum

COVID-19: provide update on significant developments with regard to emergency regimes/measures in the context of the COVID-19 pandemic

- judicial review (including constitutional review) of emergency regimes and measures in the context of COVID-19 pandemic
- oversight (incl. ex-post reporting/investigation) by Parliament of emergency regimes and measures in the context of COVID-19 pandemic
- processes related to lessons learned/crisis preparedness in terms of the functioning of checks and balances

3000 character(s) maximum

## B. Independent authorities

Independence, resources, capacity and powers of national human rights institutions ('NHRIs'), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions

(Cf. the website of the European Court of Auditors: <https://www.eca.europa.eu/en/Pages/SupremeAuditInstitutions.aspx#>)

3000 character(s) maximum

Statistics/reports concerning the follow-up of recommendations by National Human Rights Institutions, ombudsman institutions, equality bodies and supreme audit institutions in the past two years

3000 character(s) maximum

## C. Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data)

3000 character(s) maximum

Judicial review of administrative decisions:

- short description of the general regime (in particular competent court, scope, suspensive effect, interim measures, and any applicable specific rules or derogations from the general regime of judicial review)

*3000 character(s) maximum*

Follow-up by the public administration and State institutions to final (national/supranational) court decisions, as well as available remedies in case of non-implementation

*3000 character(s) maximum*

## D. The enabling framework for civil society

Measures regarding the framework for civil society organisations and human rights defenders (e.g. legal framework and its application in practice incl. registration and dissolution rules)

*3000 character(s) maximum*

Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures for protection from attacks – verbal, physical or on-line –, intimidation, legal threats incl. SLAPPs, negative narratives or smear campaigns, measures capable of affecting the public perception of civil society organisations, etc. It also includes measures to monitor threats or attacks and dedicated support services.

*3000 character(s) maximum*

Organisation of financial support for civil society organisations and human rights defenders (e.g. framework to ensure access to funding, and for financial viability, taxation/incentive/donation systems, measures to ensure a fair distribution of funding)

*3000 character(s) maximum*

Rules and practices on the participation of civil society organisations and human rights defenders to the decision-making process (e.g. measures related to dialogue between authorities and civil society, participation of civil society in policy development and decision-making, consultation, dialogues, etc.)

*3000 character(s) maximum*

## E. Initiatives to foster a rule of law culture

Measures to foster a rule of law culture (e.g. debates in national parliaments on the rule of law, public information campaigns on rule of law issues, contributions from civil society etc.)

*3000 character(s) maximum*

Other - please specify

*3000 character(s) maximum*

### Contact

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