

2023 Rule of Law Report - targeted stakeholder consultation

Fields marked with * are mandatory.

Introduction

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

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

Type of information

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

* 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

ClientEarth Prawnicy dla Ziemi

Main Areas of Work

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

If "Other", please specify

environmental protection

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

500 character(s) maximum

ClientEarth Prawnicy dla Ziemi is a foundation located in Warsaw (Poland) consisting of lawyers and environmental experts, which uses law to hold governments and businesses to account over climate change, nature loss and pollution. For the purpose of this contribution, we will focus mainly on environmental democracy matters, that is access to information, public participation and access to justice in environmental matters. <https://www.clientearth.pl/>

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

96645517357-19

* 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

Julia

Surname

Kozakiewicz

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

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

Please provide any relevant information on horizontal developments here

5000 character(s) maximum

Questions for contribution

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

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

We uphold our previous submissions. The Act on the Ordinary Courts (ustawa o ustroju sądów powszechnych) of 19 December 2019, so-called “Muzzle Act” (“ustawa kagańcowa”), which entered into force on 14 February 2020 is still in force. This Act introduced a provision (Article 107, paragraph 1, item 3), which prohibits judges from examining the status of neo-judges and the legality of institutions in the judiciary appointed or staffed by the ruling party. This provision was suspended by the CJEU in an interim measure on 14 July 2021 and should not be applied. While the Lower Chamber of the Polish Parliament (the Sejm) enacted the amendments to the Act on the Ordinary Courts on 13 January 2023, it simultaneously left this provision in place. Thus, the judges are still prosecuted based on this provision. There are currently, for example, at least two proceedings that could end with judge Pawel Juszczyzyn of the District Court in Olsztyn (one of the symbols of the free courts, the first judge in Poland suspended by the illegal Disciplinary Chamber and for the longest time) facing disciplinary charges.

In December 2022, the Advocate General of the CJEU delivered an opinion stating that the “Muzzle Act” violates numerous provisions of EU law (Case C-204/22, Commission v Poland).

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

A particular characteristic of the prosecution system in Poland is that the Prosecutor General and the Minister of Justice are the same person. This regulation gives a politician the tools which could be used to influence specific procedural decisions of prosecutors - more details can be found in the report by the Helsinki Foundation for Human Rights: <https://hfhr.pl/upload/2022/03/staproceedinga-hfpc.pdf> .

In environmental matters, these tools were not used to protect the environment. On the contrary, in September 2022, the Prosecutor General filed an extraordinary complaint to the Supreme Court (case no. III WSNc 1/22) against the judgment of the Regional Court in Gliwice (case no. III Ca 1548/18), which ordered the State Treasury to pay the amount of 30.000 PLN to a resident of Rybnik, Oliwer Palarz, for violation of his personal rights due to air pollution. The Prosecutor General sought to overturn this judgment; the proceedings are still pending.

Moreover, on 12 December 2022, the National Public Prosecutor's Office (Prokuratura Krajowa) challenged the anti-smog regulation in Mazovia province, which requires all non-class coal and wood boilers to be removed by the end of 2022. The prosecutor's office filed a complaint to the Warsaw Regional Administrative Court to invalidate the smog resolution, based on the violation of the regulations on public consultations with residents.

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

The rule of law crisis in Poland is still ongoing. In the last 12 months, 80 complaints relating to the rule of law crisis have been filed to the European Court of Human Rights (ECtHR). In February 2022, in the case *Wróbel v Poland* (application no. 6904/22), the ECtHR ordered Poland, by way of an interim measure, to ensure that the Disciplinary Chamber of the Polish Supreme Court does not decide on the waiver of immunity of a Polish judge (the applicant) until the final determination of the complaint by the ECtHR. Although the Disciplinary Chamber was abolished, in September 2022 the President of the Republic of Poland appointed a new Chamber of the Supreme Court, which replaced the liquidated Disciplinary Chamber. This new Chamber is already adjudicating cases for the suspension of judges for issuing judgments and applying judgments of the ECtHR and the CJEU. The motions to suspend a judge had been made by i.a. Minister of Justice Prosecutor General Zbigniew Ziobro.

Moreover, the Polish Constitutional Court confirmed the interpretation of the Polish Prosecutor General and Minister of Justice Zbigniew Ziobro that certain ways the ECtHR had interpreted Article 6(1) of the European Convention on Human Rights (right to a fair trial) in cases against the judicial reform in Poland are unconstitutional (case no. K 7/21). This precedent lowers human rights standards in Poland, as well, as it might be used by the government as a justification for not implementing ECtHR rulings which call on the Polish government to remedy irregularities in the judicial appointment process.

More details on the judicial crisis in Poland can be found in the report by Wolne Sąd Foundation: <https://wolnesady.org/files/2500-dni-bezprawia-update-raportu-2000-dni-PL-.pdf>

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

We uphold our previous submissions as access to justice and judicial review in environmental matters has been facing difficulties for years. The environmental NGOs (ENGOS) and members of the public concerned do not have standing to go to court to enforce environmental laws, in clear violation of Article 47 of the EU Charter of Fundamental Rights and the Aarhus Convention, with regards to inter alia local laws (such as air quality plans), forest management plans, water permits, defective final mining licenses, or negative screening decisions (decisions to not carry out an environmental impact assessment and the decisions to not carry out an appropriate assessment).

ClientEarth has already pointed out in the complaint to the European Commission the lack of possibility to challenge negative screening decisions for NGOs if they did not participate in the proceedings before the administrative authority of the first instance. Without that prior participation, NGOs can challenge negative screening decisions neither before the authority of the second instance in the administrative set of proceedings nor at the judicial stage of the proceedings. There is a possibility to join the judicial stage of the proceedings initiated by another person, however, this does not ensure effective access to justice for NGOs. The requirement for NGOs to participate in the administrative proceedings before the authority of first instance to subsequently challenge them is therefore in a clear violation of the CJEU's case law (C-263/08, C-826/18, C-243/15), which confirms that legal challenges to EIA negative screening decisions must not be conditioned on prior public participation.

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

We uphold our previous input to preceding Rule of Law reports. The excessive length of proceedings – resulting from the number of incoming cases and the random allocation system combined with the insufficient number of judges and administrative staff – is still a systemic problem in Poland. It clearly also touches upon the proceedings in environmental matters.

In 2015 Poland adopted a law amending the law on complaint about breach of the right to have a case examined in judicial proceedings without undue delay (ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu sądowym bez nieuzasadnionej zwłoki), in order to ensure the execution of the ECtHR's judgment issued on 7 July 2015 in Rutkowski and Others v. Poland (application nos. 72287/10, 13927/11 and 46187/11). Unfortunately, this hasn't been achieved, the law doesn't guarantee sufficient monetary compensation for an excessive length of proceedings. Subsequent legislative changes introduced in recent years have also not significantly increased the effectiveness of the complaints on excessive length. Moreover, after seven years of judicial reform in Poland, the length of the proceedings has been extended by 66 percent. In 2015, it took a court 10 months to issue a verdict in a civil case, in 2021 - 17 months. More details can be found in the report by the Helsinki Foundation for Human Rights: <https://hfhr.pl/upload/2022/11/koszty-reformy-raport.pdf>

Other - please specify

3000 character(s) maximum

II. Anti-Corruption Framework

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

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

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

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

3000 character(s) maximum

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

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

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

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

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

3000 character(s) maximum

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

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

Other - please specify

3000 character(s) maximum

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

We uphold our previous input to previous Rule of Law reports. Recently, we notice that the Lower Chamber of the Parliament (Sejm) is “freezing” pro-environmental projects. The most visible example concerns the so-called “10H law”. This law adopted in 2016 introduced a “10H rule” forbidding the construction of onshore wind farms within a distance of ten times the height of a turbine from residential buildings. Consequently, it practically stopped the development of wind energy in Poland as it excludes 99,7% of Poland’s territory from wind investments (source: <https://instrat.pl/wp-content/uploads/2021/05/Instrat-Wiatr-w-z%C4%87agle.pdf>, p. 10). The governmental project amending the “10H rule” was submitted to the Sejm in July 2022. It provides that the decision on the possibility of locating new onshore wind power plants and unlocking the possibility of residential development in the vicinity of these plants will depend on municipalities. However, it got stuck in the “freezer” for many months. At the time of our submission, the law has not been changed, although the government’s proposal is planned to be discussed in the Sejm next week.

The second example is the draft legislative amendment of the Law on Forests enabling ENGOs and individuals to challenge forest management plans. This amendment was proposed by the Senat (the upper Chamber of the Parliament) and on 24 March 2022 submitted to the Sejm. The draft is currently pending before the Sejm. However, there is no public information about when it would be discussed. The draft has also no official file number yet.

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

We uphold our previous input to preceding Rule of Law reports. We face a constitutional crisis in Poland. The Constitutional Court has lost its independence and ceased to fulfill its function, namely, to ensure compliance of the law with the Constitution. More details can be found in the report by the Helsinki Foundation for Human Rights: https://hfhr.pl/upload/2022/01/a-tool-of-the-government_-the-functioning-of-the-polish-constitutional-court-in-2016-2021.pdf).

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

We uphold our previous input to preceding Rule of Law Reports. The amendment of the EIA law from 2021 still does not ensure full compliance with the relevant provisions of the EIA Directive on access to justice. Firstly, even if an ENGO obtains a suspension of enforceability regarding the EIA decision, the investor can still obtain certain decisions/permits, for example, the location decisions. These decisions while not authorising construction, authorise certain works (which can irrevocably harm the environment) and, potentially, start the works. The decision on the location of railroads already approves the cutting of trees for the planned line, so after it is obtained, it is not necessary to get a permit for the removal of trees located outside forests, normally required under the Law on Nature Protection. Moreover, the immediate enforceability of these decisions themselves cannot be suspended. Secondly, as noted above, under Polish law, ENGOs cannot challenge negative EIA screening decisions so in case such a decision has been issued, ENGOs have no possibility to obtain injunctive relief. Thirdly, the amendment enabled the court to annul the final permit or declare its invalidity when the permit does not comply with the EIA decision. However, the such limited scope of review does not comply with the CJEU case law. Lastly, even if ENGOs can now challenge water permits, construction permits, and geological and mining licenses, this challenge is limited to the permit's compliance with the EIA decision, contrary to the CJEU case law. Still, ENGOs cannot challenge water permits for not complying with the Water Law, which derives from the EU Water Framework Directive.

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

The idea of introducing a law negatively affecting the activity of NGOs in Poland is still alive. It first started in 2020 with a plan to introduce a law on transparency of funding of NGOs. This project has never entered into force. Then in 2021, the Government announced the draft law on the financial reporting of NGOs. It was widely criticized by more than 40 NGOs during the public consultation. As of the 19th of January 2023, the draft law is subjected to consultation by other state institutions: Projekt (legislacja.gov.pl)

In March 2022, the Vice-Minister of Justice Michał Woś announced that the MPs from Solidarna Polska political party submitted a draft Act on the transparency of financing NGOs to the Sejm. This is the second attempt of this political party (especially Minister Woś) to regulate this issue, this new proposal is different from the one from 2020. The draft announced in 2020 was focused on marking NGOs financed from abroad. The new one goes even further, introducing new financial reporting obligations. Furthermore, it introduces a broad definition of "foreign funding" covering subsidies for Polish organizations whose revenues come to 33% from abroad, as well as legal persons and their subsidiaries, in which the percentage of foreign shares exceeds 50%. The fulfillment of the obligations by NGOs would be overseen by the Director of the National Freedom Institute who would be appointed by the government, which raises doubts in terms of its

independence. Moreover, the draft introduces disproportionate sanctions for the failure to fulfill these obligations – fines of up to PLN 50.000 and other penalties (e.g. imprisonment for up to 2 years).

The proposed regulation is complex, and inconsistent and creates many new obligations for all NGOs, in particular with regard to accounting. If adopted, it would pose a risk to civil society and could limit the activities of NGOs.

On the 25th of May 2022, the draft was sent to the Sejm's Commissions for the first reading (the Commission of Public Finances and the Commission of Culture and Mass Media). The Commissions have not yet started working on the draft: Druk nr 2299 - Sejm Rzeczypospolitej Polskiej

Lastly, the proposals in the draft law make it similar to the Hungarian law on transparency of NGOs, which was found contrary to the EU law (CJEU judgment of 18 July 2020, C-78/18). Link to the draft law: <http://orka.sejm.gov.pl/Druki9ka.nsf/dok?OpenAgent&9-020-860-2022>

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

In Poland, which is experiencing democratic backsliding, SLAPPs are a tool for targeting the government's political opponents, including the media, NGOs, and activists. Moreover, the politicization of the prosecution system, including through the Minister of Justice acting as Prosecutor General, and the abolition of systemic safeguards for judicial independence, are creating a conducive environment for SLAPPs.

Under Polish law, SLAPPS are submitted not only on a basis of civil law or criminal law but also for example based on the hunting law. There are cases where environmental activists are accused of acts they did not commit while protecting nature, which can be seen as a form of SLAPP. One such situation took place in 2020 when the activists were trying to protect birds and their fledglings from hunters. In 2022 they were convicted on the basis of the so-called "lex Ardanowski" (from the name of the former Minister of Agriculture), i.e. point 8 of Article 52 of the Hunting Law: "[Who:] deliberately hinders or prevents hunting – shall be subject to a fine, restriction of liberty or imprisonment for up to one year". They were found guilty of hindering the hunt. During the proceedings, the activists provided evidence that hunters were shooting near the flightless young grebes, which are under protection and in addition during the breeding season. They highlighted that shooting in their proximity is against Polish and EU legislation. Moreover, activists were standing 60 meters from the built-up areas, therefore too close to be in the hunting area. They also proved that the hunters did not keep a distance of 500 m from the place of public gatherings required by the hunting law. Regardless, the activists were found guilty and the case was conditionally discontinued for a probation period of one year. In addition, the activists were ordered to pay 300 PLN in damages and a 2016 PLN for the appointment of an attorney for the hunter. Another case brought against the activists on the same legal basis (the hunting law) is currently pending before the District Court in Lubliniec. The judge excluded the public from the proceedings.

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

As a coalition of NGOs (Foundation ClientEarth Prawnicy dla Ziemi, Helsinki Foundation for Human Rights, WWF Poland, and Frank Bold Foundation), we engaged for the first time in the Universal Periodic Review process before the UN Human Rights Council. Our shadow report includes inter alia the chapter on the rule of law crisis. It was presented in Geneva and Warsaw at the UPR pre-sessions. This report is available at: <https://www.clientearth.pl/najnowsze-dzialania/dokumenty/universal-periodic-review-joint-submission-of-four-civil-organizations/>

Other - please specify

3000 character(s) maximum

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