

# 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*

## 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*

Although it has been repeatedly stated that the institution ordering the media market should be independent, sufficient barriers to achieve this have never been erected in Poland. The current composition of the National Broadcasting Council (KRRIT) is mostly made up of people who are in various ways linked to the ruling party. The Council is shirking from the responsibility for monitoring subsequent elections. Given the government propaganda broadcast by the public media since the right wing took over governance in 2015, it is difficult to regard these elections as equal for all. The huge disproportion in the allocation of air time and the lack of equality in the portrayal of politicians from the ruling camp and the opposition are of no interest to the Council. None of the many complaints have resulted in reduction in the intensity of propaganda. The ruling party politicians have also full power in the new (since 2016) National Media Council. Members of the Council, which deals only with public media, are able to interfere in programming decisions of the public media by freely influencing the composition of the management and supervisory boards of TVP, Polskie Radio and the Polish Press Agency at any time and without indicating reasons. Internal procedures and practices are non-transparent, which facilitates control and complete marginalisation of 2 (out of 5 ) National Media Council members proposed by the opposition and, according to the law, subsequently appointed by the president.

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*

The scope of freedom in the implementation of the powers granted to the National Broadcasting Council (KRRiT) by the Constitution is still significantly limited. Their 5 members were appointed by the lower house of the Parliament (Sejm), the upper house (Senate) and the Polish President. The term of office of KRRiT members is 6 years. The current composition of the Council was selected in the fall of 2022. Until January 2016, the KRRiT had the responsibility for the appointment of supervisory boards of public radio and television. The fast changes made by the Law and Justice (PiS) party in power since 2015 shifted the whole system of appointments in public media to a partisan direction. The appointment competence was given to the newly created National Media Council (RMN) which is directly dependent on the parliamentary majority. It is the Sejm that appoints and dismisses three of the five members of the National Media Council in a simple majority vote (and the remaining two members put forward by the opposition are appointed by the President). The 2016 judgement of the Constitutional Tribunal (then still in its correct composition), which ruled that depriving the KRRiT of competence over public media is unconstitutional, was never implemented. In February 2020, in a letter to the Speaker of the Senate, the then Polish Ombudsman Adam Bodnar called for a new law which would restore the KRRiT's competence of appointing supervisory boards of the public media.

It is known for many years that the system of appointments of public media management needs a reform to achieve more independence from the state. The new bill on the public media which aims to depoliticize them is already prepared by the so called "Civic Committee for the Public Media", but has so far not been proposed by any party (<http://www.mediapubliczne.org.pl/>). This is also what another draft presented in October 2022 in the Polish Senate (where the opposition has majority) in a public hearing is aiming for. It was prepared by a group of media experts.

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

*3000 character(s) maximum*



The Polish journalistic community does not have a common self-regulatory body with the authority of all those working in the profession. The divisions have deepened in recent years due to polarisation on the political scene and politicisation of the public media. Thus two centres function: The Media Ethics Council created on the basis of the Council established in 1995, and the Centre for Monitoring and Freedom of the Press at the Polish Journalists' Association. Both bodies evaluate professional dilemmas in radically different ways, and the dividing line runs between those distancing themselves from the current government and critical of the current public media political rhetoric (the Media Ethics Council ) and those sympathising with government policies (the Polish Journalists' Association with its Centre for Monitoring and Freedom of the Press). However, there are general rules of the profession adopted in 1995: the Ethical charter of the media and the Journalistic code of responsibilities. A good illustration of this problem is the situation in February 2019, when the Media Ethics Council gave its opinion on Polish Television's 2018 material on the mayor of Gdańsk, Paweł Adamowicz, in response to an appeal by the mayors of five cities. After his death in mid-January 2019, (he was attacked and killed by a man in a public place), many publicists stressed that he had previously been harshly attacked by TVP. Based on an analysis of more than a dozen TVP materials about Adamowicz, the Media Ethics Council assessed that five of the seven principles of the Media Ethics Charter were violated. He was subjected to slander, but was not given the right to defend himself, the Council wrote. Criticising this opinion, the main board of the Polish Journalists' Association stated that "the Council does not represent the journalistic community in Poland, and its 'position' is a presentation of subjective evaluations of a narrow group of people". In turn, the spokeswoman of the National Broadcasting Council (KRRiTV) considered the case as a politicisation of the death of mayor Adamowicz, attributing hate speech to only one side of the dispute. The National Broadcasting Council (KRRiTV) interprets its role as that of an advocate for viewers and users of media services. Any complaints about a programme can be submitted to the Council. It also controls the fulfilment of statutory requirements which apply to both public and licensed broadcasters, e. g. compliance by broadcasters with the Broadcasting Act (prohibition of discrimination, protection of minors, obligation to respect the religious beliefs of the audience, "in particular the Christian system of values" as written in Broadcasting Act). However, many experts, journalists or lawyers believe that the National Broadcasting Council is not fulfilling its role because it hardly reacts to the propaganda content of the public media.

## 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*

A 2018 audit by the Supreme Audit Office shows that state-owned companies have their own corporate procedures for purchasing services of which sponsorship and advertising expenditure. It is the Supreme Audit Office that can check whether SOEs spend money in a cost-effective manner. Members of management boards of SOEs are held accountable under the rules of proper management. Staffing supervisory boards with people loyal to the authorities but unprepared for such roles has been a phenomenon which the state has failed to tackle for many years. Politicians have used companies to build their spheres of influence. Despite the possibility to use the Polish Act on Access to Public Information, it can still be hard if not impossible to get information on state advertising under the pretext of protecting trade secrets.

Since the Law and Justice party took power in 2015, the issue of advertising expenditure by companies with State Treasury shareholding has been purely political. Some media opposing the authorities are completely excluded from advertising expenditure (e.g. Newsweek, Polityka, TVN, Gazeta Wyborcza), while others enjoy a much higher share in the budgets of state-owned companies than their market share (such as Gazeta Polska, Do Rzeczy, W Sieci). See RSF's 2021 contribution for more details.

The favouring of pro-government media by directing advertisements to them is noted by Prof. Tadeusz Kowalski, a media expert from Warsaw University, in his study published in March 2022. According to his analysis based on Kantar's pricing data,

In 2021, state-owned companies spent 7 percent more on media advertising than in 2020. The analysis covers advertising expenditures of 122 SOEs (or companies with dominant Treasury shareholding) and 70 ministries and central offices. The titles of Polska Press - a publishing house that was bought by the state-owned fuel company PKN Orlen, and which publishes more than 20 regional dailies - began earning heavily on advertising from state-owned companies, Kowalski noted. At the same time, according to the company Polskie Badania Czytelnictwa (Polish Readership Survey), the average sales of regional dailies in 2021 - most of which are owned by Polska Press - fell by 17.5 percent compared to 2020. "During the period of the United Right government, there has been a strong intensification of propaganda and promotional efforts in favour of party and state interests. However, the huge amounts of public spending did not serve to create social cohesion; rather, they were an instrument of manipulation, served to polarise attitudes in society and were largely economically ineffective." - Prof. Tadeusz Kowalski concludes.

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*

The key regulations on the issues related to editorial independence are in the following legal acts: the Press Law, the Broadcasting Act, and the statutes of individual media. Significant provisions in this area are also in documents on journalistic ethics. However these principles don't prevent the public media from conveying a biased view of the world in line with government propaganda. A similar process began at the publishing house Polska Press, which in March 2021

was taken over by the state-owned company Orlen. A staff reshuffle is taking place there -journalists with many years of experience are leaving and being replaced by people from conservative circles. Reports from journalists indicate that Orlen CEO Daniel Obajtek's promises to maintain editorial independence have not been kept. There is no prohibition on combining the function of a member of the National Media Council with the function of MP. Meanwhile, for active politicians, participation in the old institution - National Broadcasting Council (KRRiTV)- is prohibited by the Constitution. According to the Broadcasting Act, public broadcasting units are required to prepare and submit to the National Broadcasting Council, by April 30 of a given calendar year, a report for the previous calendar year on the implementation of the public mission.

Applications for a licence to distribute radio or television programs for the next period, must be submitted to the state regulator (KRRiTV) no later than 12 months before the expiration of the licence held. A licence may be denied only if any of the circumstances indicated in the law apply to the broadcaster. The private TVN24 news channel had to wait 19 months for a decision on the matter. In 2 judgments during 2022, the Provincial Administrative Court in Warsaw found "inaction" on the part of the National Broadcasting Council (KRRiTV) in renewing TVN24's licence and a "gross violation of the law" in the case of TVN7's licence. Both channels are part of TVN, which is controlled by the U.S.-based Discovery. TVN is inconvenienced by the authorities it dares to criticise. Had the president not vetoed in December 2021 a law passed by the ruling majority known as "lex TVN" and resulting in protests in defence of freedom of expression, Discovery would have been forced to sell most of its shares on the station.

The renewal of the current terrestrial licence of the main TVN channel ( in effect until April 2024) will be decided by the current KRRiT, which has been in operation since September 2022. The chairman of this body, Maciej Świrski (appointed as a candidate of the ruling party), in 2018 called on ruling party politicians to boycott TVN, which, in his opinion, does not tell the truth.

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

There is no legal obligation on any authority to inform the public about media ownership and there is no official database available to the public regarding media ownership. The conclusions of ownership are drawn, for example, on the basis of readership surveys published by the Związek Kontroli Dystrybucji Prasy (Press Distribution Control Union). Information on the ownership structure can be found in the annual reports of the National Broadcasting Council. The business names can be traced by analysing the data available in the National Court Register. But this assumes that we know what name we are looking for. It can therefore be said that it is difficult to obtain quick and comprehensive information on media ownership in Poland. The National Radio and Television Council (KRRiT) and the Office for Competition and Consumer Protection (UOKiK) are responsible for protecting media pluralism. The ruling Law and Justice party (PiS) has long suggested that it would try to bring foreign owned media outlets under national control. It did so in the end of 2020 when the state controlled oil company Orlen announced that it bought 20 out of 24 regional titles published by Polska Press belonging to German Passauer capital group. The Office for Competition and Consumer Protection gave its approval for this transaction. On the other hand, it did not agree to the takeover of Eurozet by Agora, the publisher of, inter alia, "Gazeta Wyborcza", often critical of the government. The case is not yet resolved and is challenged by Agora in court.

The Ombudsman challenged Orlen's acquisition of regional press citing, among other things, that the state-controlled media, failing to provide citizens with objective information, present a one-sided picture. In June 2022, however, the Court of Competition and Consumer Protection in Warsaw ruled that it would be up to consumers to decide whether or not they would continue to use the media taken over by state companies. The Ombudsman has appealed to the Prime Minister to amend the Competition Law to ensure that media freedom is protected. The ombudsman stresses that at present no public authority has the authority to assess press market concentration from the point of view of media pluralism and freedom of obtaining and disseminating information. In his opinion, this is a serious gap in the legal order.

Serious competition for the independent press also comes from publications issued directly by local governments. For several decades article 10 of the Act on Communal Economy has been used for this purpose. According to it, a municipality may, outside the sphere of public utility, engage in "advisory, promotional, educational and publishing activities for the benefit of local government". Additionally under Art. 7 of the Act on Municipal Self-Government, the commune's own tasks include matters related to "promotion of the commune" and "support and dissemination of the idea of self-government". In practice, hundreds of publications are in competition with the regular press and sometimes publish advertisements. There is no official register of these "newspapers" and few studies on the subject. According to National Library's data from 2021, there are 860 titles of local government press in Poland.

## 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*

Poland has robust laws to protect journalistic sources. However, the United Right, which has been in power since 2015, regularly puts them to the test.

A journalist can be exempted from secrecy through litigation - with the possibility of appeal to the court - only in exceptional cases. However, this may not apply to data identifying the journalist's informants. The prosecutor's office has consistently demanded that Gazeta Wyborcza journalist Katarzyna Włodkowska reveal the name of an informant in the case she described about the background of the murder of former Gdańsk mayor Paweł Adamowicz. In October 2022, the Court of Appeals in Gdańsk legally removed her obligation of journalistic secrecy on the grounds of "the good of the administration of justice." However, the journalist refused to name the informant. She faces a fine.

The District Prosecutor's Office in Zielona Góra discontinued in the spring of 2022 the investigation of Gazeta Wyborcza journalist Piotr Bakselerowicz, whose laptop computer was seized by police under journalistic secrecy. He was suspected of sending criminal threats aimed at a Law and Justice politician. On October 2, 2021, police entered the journalist's apartment without a court order. The court rejected the newspaper's complaint against this action because the taking of the official laptop was authorised, admittedly after the fact, by the prosecutor.

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

*3000 character(s) maximum*

In recent years, journalists have drawn attention to the inadequate police protection during demonstrations. At the end of 2020 (23 November 2020), 668 journalists and photojournalists from 189 media outlets have appealed to the police to stop actions that impede the work of the media and thus restrict press freedom. In November 2021 police issued the instruction in connection with the upcoming Independence Day celebrations and "with a view to the safety of journalists and photojournalists". The instruction was drafted without prior consultation with journalists. Some points in this instruction are questionable, in particular: - Equip yourself with a reflective vest that says PRESS (some journalists may not want to wear it to avoid becoming a target of attacks); - Position yourself at the edge of the crowd and try not to get in the middle of the action. If you find yourself in the middle of two sides, back off immediately (journalists are not protesters and should enjoy the right to cover police operations and for this reason work in places inaccessible to protesters - the police have to ensure their security). The police often explain their actions with the desire to ensure safety. Only that the balance between this task and creating a safe environment for journalists has not been achieved. An example is an incident last year after which the ombudsman demanded an explanation from the police. A police officer, under Article 19(5) of the Law on Assemblies, ordered a TVN24 journalist to leave the demonstration only on the basis of a request from the demonstration organiser, to whom the journalist was trying to ask questions while accompanying him on his march. The ombudsman wrote to the police that, according to the law, an organiser can remove a participant only in 3 cases: if he or she violates the law with his or her behaviour, if he or she prevents the assembly, if he or she attempts to thwart the assembly. Not so for simply asking questions. The police response had not arrived by the time of writing this text.

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*

A lot of controversy has been stirred up by the restrictions introduced by the Polish authorities along the border with Belarus. Groups of refugees regularly try to enter Poland, but many are pushed out. Dead have been found in the forest. TOK FM Radio journalist Piotr Maślak was charged with defamation (art. 212 of penal code) after criticising online border guards' conduct towards refugees, he now risks up to 1 year in jail. Journalists have been unable to report on the situation after a ban on entry to the border strip, introduced through a state of emergency on September 2, 2021, and lasting until early December 2021. After that the ruling party subsequently amended the Law on State Border Protection, so that the interior minister imposed a ban on staying in the border area until the end of 2022. However, as reported by the Polish Press Agency in the last days of 2022, this ban will no longer be extended from 1 January 2023. This means that from 1 January, the restrictions will be regulated by another governor's decree - issued in September 2021, on the prohibition of staying in the entire section of the "border road strip" on the border with Belarus, i.e. on the external EU border. This ban does not apply only to owners of land lying in the border road lane. The Law on State Border Protection defines the 'border road strip' as an area 15 metres wide, counting inland from the state border line.

The first president of the Supreme Court, whose appointment is being questioned for formal reasons, wants to try to limit access to information. Małgorzata Manowska wants the Constitutional Tribunal to review the constitutionality of the Act on Access to Public Information. The proposal strikes at the foundations of this law. The mere fact that it has been filed may mean that courts may delay in issuing their rulings pending the resolution of a legal question. Seventeen news outlets protested against her application to the tribunal filed in February 2021. The hearing was adjourned twice. By the time of writing this, no new date had been set. In October 2022, more than a dozen NGOs submitted proposals (<https://siecobywatelska.pl/pakt-dla-jawnosci/>) to politicians to amend the Access to Information Law. They propose, for example: real sanctions for avoiding openness, removing from laws provisions indicating that any information is not public information, eliminating the definition of public information which, in their view, leads to a narrowing of openness.

The polarisation advancing in Poland is also manifested in the restriction of journalists' work. There are cases of public media workers (accused of passing government propaganda) not being allowed to attend meetings. There are also cases of private media being excluded from press meetings held by state-owned companies.

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*

Both civil and criminal law are used, by public officials as well as private companies and individuals, to target the media. Defamation is a criminal offence, punishable with fines, restriction of liberty and up to one year in prison. Higher penalties are applicable under certain conditions, including defamation of a head of state or the Polish nation. Defamation hearings are closed to the public unless the plaintiff requests otherwise. In 2021, Coalition Against SLAPPs in Europe

documented 29 SLAPP cases in Poland. As the report's authors point out, "Gazeta Wyborcza" daily alone is currently involved in some 75 lawsuits, many of which have been brought by individuals affiliated with the ruling Law and Justice party. According to a report published in 2021 by the journalism organisation Society of Journalists, there were 66 SLAPP attacks against journalists in Poland from 2015 to 2021. Cases of this type are usually lawsuits under Article 212 of the Criminal Code, the so-called defamation or infringement of personal rights. Examples include indictments against journalists of "Tygodnik Zamojski" or "Wspólnota Łęczyńska".

A Polish working group on the problem of SLAPP legal actions was formed in September 2022. The goal of the group is to support those affected by SLAPPs, work to change the practice and laws in Poland, and analyse the phenomenon itself. The group is formed by the Watchdog Polska Civic Network together with ARTICLE 19 Europe, the Helsinki Foundation for Human Rights, the All-Poland Federation of Non-Governmental Organisations and the ClientEarth Lawyers for the Earth Foundation.

(<https://siecobywatelska.pl/powstala-polska-grupa-robocza-przeciw-slapp/>).

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

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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