

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

Centre for Public Innovation

Main Areas of Work

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

If "Other", please specify

democratic institutions and human rights

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

500 character(s) maximum

<https://www.inovarepublica.ro/>

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

* 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

Ovidiu

Surname

Voicu

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

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

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

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

Romania has done little to address the issue of excessive length of court proceedings, for example by allocating the necessary resources or improving the normative framework.

The lengths of proceedings make useless some important civic tools, for example the access to public information law. We will offer an example.

- In April 2021, we have initiated a court action against a subject of the access to public information law (political party), who refused to release information on how they are spending public money;
- We have won the case in first Court (Bucharest Tribunal) in December 2021;
- The Court sent the motivated decision in May 2022;
- The political party appealed in June 2022;
- The higher court (Bucharest Appealed Court) informed us about the case in September 2022. We've sent our position in due time (15 days);
- The Court set the date of the first hearing for April 2023 (!!!).

In the (likely) case that we will win, we will probably get a decision around December 2023, concerning information related to the year 2020, making the information itself of little relevance.

In short, the access to public information is hindered by the lack of capacity of the judiciary to respond in a reasonable time when necessary.

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

1. Transparency in decision-making

In March 2022, the Government of Romania adopted the Emergency Ordinance no. 16/2022, amending the Law no. 52/2003, on transparency in decision-making. The Ordinance itself was adopted without any public consultation. The Ordinance is greatly expanding the exception to the general procedures on transparency when adopting new legislation, for „emergency situation”. By modifying the definition of the emergency, the Ordinance is giving arbitrary power to any public institution to classify new legislation as „urgent”, thus avoiding the public consultation process.

The Ombuds institution (Avocatul Poporului), at the request of civil society organizations, has challenged the Ordinance to the Constitutional Court, in March 2022. Sadly, by November 2022, the Court hasn't progressed in anyway with the case.

Between March-November 2022, we have identified dozens of cases when public institutions are using the exception, most of them without a proper fundament for the „emergency”. Among other, everything related to the EU funding from the Resilience and Recovery Plan, legislation initiated by the Ministry of European Investments and Projects, was passed without proper public consultations.

Another example, the National House of Health Insurance is constantly initiating and passing legislation related to the functioning of the public health system, without public consultation, using the same exception. Some of this legislation is directly impacting the right to health services.

2. Transparency of Political parties financing

Romania hasn't made any progress on improving the transparency of public funding for political parties, despite concerns and recommendations of international institutions and civil society organizations.

The political parties represented in the Parliament receive consistent subventions from the public budget, around €50mIn yearly. A large part of this money is used for influencing mass-media, without any public oversight of the spending.

The major political parties are refusing to release information on how they use the (public) money. In 2021, we have initiated Court actions, based on the law on access to public information, against all major political parties. In all cases, we have won in the first Court, but, at the end of 2022, we still don't have a final decision, because of the lengths of proceedings (please see the example we gave in the previous section).

In November 2022, the Permanent Electoral Authority (PEA) initiated legislation amending the existing framework for political parties financing. The initial proposal was not addressing the problem of transparency. We have made many proposals during the public consultation period (<https://www.inovarepublica.ro/dezbatare-finantare-partide/>), but PEA ignored almost everything related to transparency. The updated proposal was sent to the Government, and, eventually, will get to the Parliament for debate in Spring 2023.

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

Inadequate legislation on whistleblowers protection

In June 2022, the Parliament adopted a draft law on whistleblowers protection (registered at the Chamber of Deputies with no. PL-x 219/2022), transposing the relevant EU legislation (DIRECTIVE (EU) 2019/1937).

Despite the numerous recommendations made by civil society organizations and EU institutions, the bill passed by the Parliament is far from the required standards. Among others, anonymous reporting is excluded from the law, and anonymous whistleblowers do not enjoy any protection.

Please see the full list of civil society grievances here (in English): <https://www.stareademocratiei.ro/2022/06/29/whistleblowers-a-threat-to-the-ruling-coalition/>

In July, the President of Romania used its limited veto powers and sent the bill back to the Parliament for review. In September, the Senate, as the first chamber, adopted the updated bill, with insufficient changes. In November, the bill was still under review at the Chamber of Deputies, the deciding Chamber.

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

Influence of political parties on media content

According to official data, in 2019-2021, the political parties have spent over 300mln lei (60mln euro), from public money, on „mass-media and propaganda”. In the first half of 2022, the political parties expenses on the same chapter were 47mln lei (8.35mln euro).

With the exception of one (opposition) party, there is no information on how the parties are actually spending this money, for example, which media outlets are getting it.

Our estimation is that the political parties are likely the largest buyer on the social and political advertising niche, putting them in a power position against the media outlets specialized on these issues, for example news televisions.

In 2022, journalist investigations (Recorder.ro, Europa Liberă) have raised concerns on the shady relationship between political parties and mass media, relationship forged on public money. Other investigations (G4Media.ro, Libertatea.ro) have shown that important political issues, with the potential to upset the government, were ignored by a large part of the mainstream media (examples: anti-corruption, plagiarism cases against the prime-minister and other ministers, or the controversial national security laws).

The political parties are refusing to release information on how they are spending the public money, even when challenged in Court (please see our examples in the previous sections).

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

Outdated legislation on access to public information

The Law no. 544/2001 on access to public information, while generous in scope, it is lacking efficient administrative and enforcing mechanisms.

The list of information published by default remains limited and outdated, and does not take into consideration the usage of big, tabular data (for example, related to budgets and spending).

The litigation mechanism, through the Courts, is lengthy. Often, it takes up to two years to get a final decision from Court (please see our example from the previous section, on length of proceedings).

There is no effective sanction for refusing to release the information, or even for refusing to obey Court decision.

There is no effective mechanism actually to obtain the information, after a final Court decision. The only legal mechanism available is to initiate another Court action, for fining the head of the relevant institutions or organization, which does not guarantee the access to information.

The law should address the (sometimes artificial) conflict with GDPR, which is increasingly becoming a reason to refuse the release of information.

Some of these problems may be corrected by a legislative proposal pending in the Parliament (registered at the Chamber of Deputies with no. PL-x 529/2020). The bill was adopted by the Parliament in December 2020, and it has a positive report from the relevant Committee of the Chamber of Deputies since May 2022. According to the official recordings of the Leaders Committee (an institution of the Chamber of Deputies), the

bill was arbitrarily kept out of the final vote, due to the request of the representative of the National Liberal Party, the ruling party. In November 2022, the Government issued a negative opinion on the bill, which is another attempt to block its adoption.

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

Disregarding the role of the Social and Economic Council

The Social and Economic Council (SEC) is designed, by the Constitution, as a consultative body of the Parliament and the Government, in key areas of decision-making. Trade Unions, Business Unions, and civil society organizations are equally represented in the Council.

The law requires that SEC gives opinions on all new acts in these areas, prior to adoption. However, the Government is often disregarding the role of the Council. The Government is sending very late the draft legislation to SEC, leaving it very little time to give an opinion. The Government seems to regard SEC's opinion as merely formal, and not a basis for improving the legislation.

Usually, the Government simply ignores the negative opinions, and it is not trying to reconcile the legislation with the feedback received.

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

Excessive use of emergency ordinances by the Government

The emergency ordinance is an alternative legislative process, stipulated by the Constitution, allowing the Government to bypass the Parliament in emergencies.

In January-November 2022, the Government of Romania adopted 167 emergency ordinance. Many of them are regulating more than one issue, raising to almost 200 the situation where the Government used its alternative legislative powers to bypass the Parliament. It is completely unreasonable to accept that so many emergencies are happening in the period of one year.

In most cases, the public consultation process is shortened, or even disregarded, because... it's an emergency.

After adoption by the Government, the Ordinances are sent to the Parliament for review and approval. The Parliament may amend them or even repeal them entirely. However, the process takes months, and the Ordinances are producing effects from the moment they are adopted.

The Ordinances are also bypassing the ex-ante Constitutional check. The Ombudsman has the power to challenge them to the Constitutional Court but only after they were enacted and producing effects. The Opposition or the High Court do not have any means to ask for a constitutional review.

By abusing the use of emergency ordinances, the government is avoiding both public consultations and the constitutional safeguards.

Regime for constitutional review of laws

3000 character(s) maximum

Uneven practices of the Constitutional Court

The Constitutional Court procedures do not provide for a reasonable term to respond to requests of the Constitutional review of emergency ordinances (please also see the comment on excessive use of emergency ordinances).

For example, in March 2022, the Government of Romania adopted the Emergency Ordinance no. 16/2022, amending the Law no. 52/2003, on transparency in decision-making. Also in March, the Ombudsman challenged the Ordinance to the Constitutional Court. By November 2022, the Court has not made any progress on the case, while the Ordinance is producing effects. All the other cases from the same period have at least a report, if not a decision.

It is not the first time that the Constitutional Court is unreasonably delaying a decision on politically sensible issues. Our concern is that the Court is influenced politically, and it is delaying the constitutional review to allow more space for the Government to benefit from the potentially unconstitutional legislation.

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

Draft legislation targeting NGOs' access to justice

In November 2022, a group of MPs from the governing coalition initiated draft legislation (registered at the Senate with no. B758/2022) to amend the general operating framework for associations and foundations (Government Ordinance no. 26/2000). The legislative proposal would prevent or make it significantly more difficult the process by which any non-governmental organization can notify the courts of any possible illegality of acts issued by public institutions.

The proposed changes are an attempt to weaken the ability of civil society to exercise its mission to protect the public interest and are in line with illiberal trends in other European countries.

The Parliament has passed, in October, another legislative proposal (registered at the Senate with no. B679 /2022) that restricts the right of non-governmental organizations to challenge construction permits in Court (for reasons related, for example, to the potential negative impact on the environment).

These initiatives can bring us to a situation where the mechanisms for exercising citizen rights to participate in the public decision and to protect the interests of the communities are almost impossible to use.

The supporting texts of the two legislative proposals are, by themselves, a virulent attack against the civil society. They describe a social climate in which non-governmental organizations are enemies of the public interest, using accusatory language deeply inappropriate for a democratic society.

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

Weakening the legislation on transparency in decision-making

In March 2022, the Government of Romania adopted the Emergency Ordinance no. 16/2022, amending the Law no. 52/2003, on transparency in decision-making. The Ordinance itself was adopted without any public consultation. The Ordinance is greatly expanding the exception to the general procedures on transparency when adopting new legislation, for „emergency situation”. By modifying the definition of the emergency, the Ordinance is giving arbitrary power to any public institution to classify new legislation as „urgent”, thus avoiding the public consultation process.

The Ombudsman, at the request of civil society organizations, has challenged the Ordinance to the Constitutional Court, in March 2022. Sadly, by November 2022, the Court hasn't progressed in anyway with the case.

Between March-November 2022, we have identified dozens of cases when public institutions are using the exception, most of them without a proper fundament for the „emergency”. Among other, everything related to the EU funding from the Resilience and Recovery Plan, legislation initiated by the Ministry of European Investments and Projects, was passed without proper public consultations.

Another example, the National House of Health Insurance is constantly initiating and passing legislation related to the functioning of the public health system, without public consultation, using the same exception. Some of this legislation is directly impacting the right to health services.

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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