

2021 Rule of Law Report - targeted stakeholder consultation

Fields marked with * are mandatory.

Introduction

The first annual Rule of Law Report was published on 30 September 2020. It is the core of the new European rule of law mechanism, which acts as a preventive tool, deepening multilateral dialogue and joint awareness of rule of law issues.

In the preparation of the first annual Rule of Law Report, the Commission relied on a diversity of relevant sources, including from Member States, country visits, and stakeholders' contributions collected through a targeted stakeholder consultation[1]. The information provided has informed the Member State-specific assessments of the Commission in preparing the Report. Building on the positive experience from the first Rule of Law Report, the Commission is inviting stakeholders to provide written contributions for the preparation of the 2021 Rule of Law Report through this targeted consultation.

The contributions should cover in particular (1) feedback and developments with regard to the points raised in the country chapters of the 2020 Rule of Law Report and (2) any other significant developments since January 2020[2] falling under the 'type of information' outlined in next section. This would also include significant rule of law developments in relation to the COVID-19 pandemic falling under the scope of the four pillars covered by the report.

The input should be short and concise, if possible in English, 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.

Please provide your contribution by 8 March. Should you have any requests for clarifications, you can contact the Commission at the following email address: rule-of-law-network@ec.europa.eu.

[1] https://ec.europa.eu/info/publications/2020-rule-law-report-targeted-stakeholder-consultation_en

[2] Unless the information was already submitted in the consultation for the 2020 Rule of Law Report.

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 and nominations for high-level positions (e.g. Supreme Court, Constitutional Court, Council for the Judiciary, heads of independent authorities included in the scope of the request for input^[1])

Any other relevant developments

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

Please include, where relevant, information related to measures taken in the context of the COVID-19 pandemic under the relevant topics.

If there are no changes, it is sufficient to indicate this and the information covered in the 2020 Rule of Law Report should not be repeated.

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

About you

* I am giving my contribution as

Public authority or network of public authorities

* Organisation name

250 character(s) maximum

[REDACTED]

* 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

[REDACTED]

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

Austria

* First Name

[REDACTED]

* Surname

[REDACTED]

* 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](#).

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

[overview_topics_for_contribution.pdf](#)

Please provide any relevant information on horizontal developments here

5000 character(s) maximum

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Questions on developments in Member States

The following four pillars are sub-divided into topics and sub-topics. You are invited to provide concrete information on significant developments, focusing primarily on developments since January 2020, for each of the sub-topics which are relevant for your work. Please feel free to provide a link to and reference relevant legislation/documents. Significant developments can include challenges, positive developments and best practices, covering both legislative developments or implementation and practices (as outlined under "type of information").

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.

Please note that, due to the size of the questionnaire, certain elements may be slow to load, especially if selecting many Member States at once. In such cases, it is recommended to wait a few minutes to let the page load correctly.

Member States covered in contribution [several choices possible]

Please select all Member States for which you wish to contribute information. For each Member State, a separate template for providing information will open. This may take several minutes to fully load.

- ☒ 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

Justice System - Austria

Independence

Appointment and selection of judges, prosecutors and court presidents

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

3000 character(s) maximum

In general, the Plenary Assembly swears in new members - apart from the President and the Vice President - of the Supreme Administrative Court. If the gathering of the Plenary Assembly is not possible or not advisable, in particular to prevent the spread of COVID-19, the swearing-in of the new members takes place before the President of the Supreme Administrative Court (sec. 2a Supreme Administrative Court Act - Verwaltungsgerichtshofgesetz - VwGG, only available in German: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000795>).

Irremovability of judges, including transfers, dismissal and retirement regime of judges, court presidents and prosecutors

3000 character(s) maximum

There was no question concerning the retirement age of justices in last year's questionnaire. Justices at the Supreme Administrative Court retire at the end of the month in which they reach the age of 65 (sec. 99 Judges- and Prosecutors Service Law Act - Richter- und Staatsanwaltschaftsdienstgesetz - RStDG, <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008187>, applicable to justices at the Supreme Administrative Court due to sec. 9 VwGG).

Promotion of judges and prosecutors

3000 character(s) maximum

No changes.

Allocation of cases in courts

3000 character(s) maximum

Due to the special circumstances created by the COVID-19 pandemic, the allocation of business may be enacted via circulating letter by the Plenary Assembly of the Supreme Administrative Court (sec. 10 para. 1a et seq. VwGG).

Independence (including composition and nomination 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

No changes.

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal liability of judges

3000 character(s) maximum

There have been no changes to the rules concerning the accountability of judges. The question concerning judicial immunity and criminal liability was not in last year's questionnaire.

The Criminal Code (StGB) includes several criminal offences which could apply to judges.

In addition to "general" corruption offences regulated in the StGB, the RStDG provides for disciplinary consequences for violating professional and official duties. The result of disciplinary proceedings is decided upon by an independent disciplinary tribunal - at the Supreme Administrative Court this is the Plenary Assembly.

Due to the responsibility of judges under disciplinary law, disciplinary penalties may be imposed in addition to punishment under criminal law. However, the biggest difference between criminal and disciplinary action is the fact, that it is possible to commit a violation of disciplinary law through negligence while a violation of the corresponding criminal law can only be committed with criminal intent.

Indemnity is possible under the Public Officers Liability Act. Public officers are liable for damages caused directly by their own culpable and unlawful conduct to the legal entity as whose bodies they acted in execution of the law. The damage is to be compensated in money. A claim for damages does not exist if the legal entity could have averted the damage by means of an appeal or by filing a complaint with an administrative court, the Supreme Administrative Court or by any other legally justified measures.

In the judgement from 2nd November 2020, Ro 2020/09/0014, the Supreme Administrative Court stated that judges, within the framework of the independence granted to them, should close proceedings assigned to them by the allocation of business within a reasonable period. It is intrinsic to the judicial professionalism and personal responsibility to independently devote the necessary case-related effort to the closing of the respective cases in the most efficient and structured manner. In order to ensure judicial independence and keep the length of the proceedings short the allocation of business shall aim to evenly distribute the workload as far as possible between the judges and adjust the workload in the event of significant shifts. The reallocation of cases already pending is only possible under very limited conditions. Moreover, it is the duty of the president of the court to ensure that additional support for judges in the performance of their activities (such as the provision of sufficient material and other personnel resources) is distributed adequately and, if necessary, focussed on specific areas. Finally, this complex structure of (co-)responsibilities for the backlog-free management of a court department or the entire court operation also includes the competent legislator in the sense of providing sufficient resources for the fulfilment of judicial tasks within reasonable time.

Remuneration/bonuses for judges and prosecutors

3000 character(s) maximum

As part of the general salary negotiations for the public sector the remuneration for judges increased by 1.45% from January 2021.

Independence/autonomy of the prosecution service

3000 character(s) maximum

N.a.

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

3000 character(s) maximum

N.a.

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

3000 character(s) maximum

N.a.

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 "type of information".)

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

3000 character(s) maximum

No changes.

Resources of the judiciary (human/financial/material)

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

3000 character(s) maximum

- 68 justices (President, Vice President, 12 Panel Presidents, 54 Justices)
- 45 research associates
- 130 administrative staff

Budget 2020: 21.661.000

In order to prevent the spread of COVID-19, all justices and most of the administrative staff (as far as feasible) have been equipped with laptops to enable working from home.

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

3000 character(s) maximum

The Supreme Administrative Court itself organizes in-house trainings for justices as well as administrative staff (including legal assistants/research associates). Trainings for administrative staff are also organized by the Federal Academy of Administration (Verwaltungsakademie des Bundes, VAB). Furthermore, the Austrian Academy of Administrative Jurisprudence (Österreichische Akademie der Verwaltungsgerichtsbarkeit, ÖAVG) organizes trainings for administrative judges. Due to the COVID-19 pandemic, the trainings are now taking place online via webinar tools, such as Big blue button, Zoom or Microsoft Teams.

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)

(Factual information presented in Commission Staff Working Document of 2 December 2020, SWD(2020) 540 final, does not need to be repeated)

3000 character(s) maximum

The Supreme Administrative Court is now using Microsoft Teams for deliberations. Internal meetings are held via Jitsi.

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

No changes.

Geographical distribution and number of courts/jurisdictions ("judicial map") and their specialization

3000 character(s) maximum

There is only one Supreme Administrative Court in Austria. Pursuant to Article 5 of the Federal Constitutional Law (Bundes-Verfassungsgesetz - B-VG, https://www.ris.bka.gv.at/Dokumente/ErV/ERV_1930_1/ERV_1930_1.pdf), it is seated in Vienna.

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 "type of information".)

Length of proceedings

3000 character(s) maximum

The average length of proceedings at the Supreme Administrative Court in the year 2020 was 4,1 months. The increase is due to the COVID-19 pandemic.

Other - please specify

3000 character(s) maximum

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Anti-Corruption Framework - Austria

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

List of relevant authorities (e.g. national agencies, bodies) in charge of prevention, detection, investigation and prosecution of corruption. Please indicate the resources allocated to these (the human, financial, legal and practical resources as relevant)

3000 character(s) maximum

N.a.

Prevention

Integrity framework including incompatibility rules (e.g.: revolving doors)

3000 character(s) maximum

N.a.

General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

3000 character(s) maximum

N.a.

Rules on preventing conflict of interests in the public sector.

3000 character(s) maximum

N.a.

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

3000 character(s) maximum

N.a.

List the sectors with high-risks of corruption in your Member State and list the relevant measures taken /envisaged for preventing corruption and conflict of interest in these sectors. (e.g. public procurement, healthcare, other).

3000 character(s) maximum

N.a.

Measures taken to address corruption risks in the context of the COVID-19 pandemic

3000 character(s) maximum

N.a.

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

3000 character(s) maximum

N.a.

Repressive measures

Criminalisation of corruption and related offences

3000 character(s) maximum

N.a.

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 the implementation of EU funds

3000 character(s) maximum

N.a.

Potential obstacles to investigation and prosecution of high-level and complex corruption cases(e.g. political immunity regulation).

3000 character(s) maximum

N.a.

Other – please specify

3000 character(s) maximum

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Media Pluralism - Austria

Media authorities and bodies

(Cf. Article 30 of Directive 2018/1808)

Independence, enforcement powers and adequacy of resources of media regulatory authorities and bodies

3000 character(s) maximum

N.a.

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

N.a.

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

3000 character(s) maximum

N.a.

Transparency of media ownership and government interference

The transparent allocation of state advertising (including any rules regulating the matter); other safeguards against state / political interference

3000 character(s) maximum

N.a.

Rules governing transparency of media ownership and public availability of media ownership information

3000 character(s) maximum

N.a.

Framework for journalists' protection

Rules and practices guaranteeing journalist's independence and safety

3000 character(s) maximum

N.a.

Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists

3000 character(s) maximum

N.a.

Access to information and public documents

3000 character(s) maximum

N.a.

Lawsuits and convictions against journalists (incl. defamation cases) and safeguards against abuse

3000 character(s) maximum

N.a.

Other - please specify

3000 character(s) maximum

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Other institutional issues related to checks and balances - Austria

The process for preparing and enacting laws

Framework, policy and use of impact assessments, stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms), and transparency and quality of the legislative process

3000 character(s) maximum

N.a.

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

N.a.

Regime for constitutional review of laws.

3000 character(s) maximum

N.a.

COVID-19: provide update on significant developments with regard to emergency regimes 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 by Parliament of emergency regimes and measures in the context of COVID-19 pandemic
- measures taken to ensure the continued activity of Parliament (including possible best practices)

3000 character(s) maximum

So far, the Supreme Administrative Court has issued only one judgement on COVID-19 measures concerning the enforcement of measures taken based on the Law on COVID-19 measures (sec. 2a Law on COVID-19 measures - COVID-19-Maßnahmengesetz, only available in German: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20011073>; judgement from 23rd November 2020, Ra 2020/03/0106, only available in German: https://www.ris.bka.gv.at/Dokumente/Vwgh/JWT_2020030106_20201123L00/JWT_2020030106_20201123L00.pdf). This decision however mainly deals with procedural issues.

Independent authorities

Independence, 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

N.a.

Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data) and judicial review (incl. scope, suspensive effect)

3000 character(s) maximum

N.a.

Implementation by the public administration and State institutions of final court decisions

3000 character(s) maximum

N.a.

The enabling framework for civil society

Measures regarding the framework for civil society organisations (e.g. access to funding, registration rules, measures capable of affecting the public perception of civil society organisations, etc.)

3000 character(s) maximum

N.a.

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, etc.)

3000 character(s) maximum

N.a.

Other – please specify

3000 character(s) maximum

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Contact

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