

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

Judicial association or network

* Organisation name

250 character(s) maximum

Deutscher Richterbund

* 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

www.drb.de

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

3644916703-20

* Country of origin

Please add the country of origin of your organisation

Germany

* First Name

Hans Jörg

* Surname

Städtler-Pernice

* Email Address of the organisation (this information will not be published)

info@drb.de

* 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

The German Judges Association is extremely concerned about the development of the Rule of Law especially in Poland, but also in Romania and Hungary. In this context the German Judges Association points out to the statement of the European Association of Judges (EAJ) within this consultation. In addition, it cannot be stated clearly enough that judicial independence in Poland seems to be significantly threatened due to several of the so-called legal “reforms” of the judiciary by the current Polish government. The European Court of Justice ordered at 8 April 2020 (C-791/19 R) that “Poland must immediately suspend the application of the national provisions on the powers of the Disciplinary Chamber of the Supreme Court with regard to disciplinary cases concerning judges” (cited from ECJ, press release of 8 April 2020). However, Poland did not comply with this order, the Disciplinary Chamber is continuing to persecute individual judges. So far, this did not have any consequences at all. The European Commission is silent on this issue, which does not only put individual Polish judges in danger of political persecution in Poland, but more than that, puts the independence of the Polish judiciary as such at stake. The German Judges Association urges the Commission to take all necessary steps to safeguard the rule of law in Poland including the application of penalty fines for the non-observance of the ECJ’s order as the next logical and overdue step. We must reiterate our statement of the consultation of 2020 that the European Commission is responsible for upholding the Union’s treaties that include judicial independence as one of the pillars on which the EU was founded.

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

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 2016, the Federal Minister of Justice and the presidents of the Federal Courts had agreed on guiding principles for the selection of presiding judges of Federal Courts, which required - amongst others - at least five years of practical experience as a judge at the respective Federal Court. In a current process regarding the selection of the president and the vice president of the Federal Finance Court, the Federal Minister of Justice decided to set aside this proven principle for the nominees. The German Judges Association criticises that decision as detrimental for the public trust in the independence of the judiciary, as the public could get the impression that judicial top positions are filled with respect to political considerations instead of judicial competence.

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

3000 character(s) maximum

No relevant changes since last consultation.

Promotion of judges and prosecutors

3000 character(s) maximum

No relevant changes since last consultation.

Allocation of cases in courts

3000 character(s) maximum

No relevant changes since last consultation.

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 relevant changes since last consultation.

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

3000 character(s) maximum

No relevant changes since last consultation.

Remuneration/bonuses for judges and prosecutors

Within the last consultation the German Judges Association already pointed out the insufficiency of the remuneration of judges and prosecutors in general. In two decisions on 4th of May 2020, the Federal Constitutional Court found the remuneration of judges to be unconstitutional. In one decision (2 BvL 4/18) it declared the remuneration of judges and prosecutors in Berlin between the years 2009 and 2015 “evidently insufficient” and therefore unconstitutional. It found that the remuneration within that time did not provide sufficient subsistence to judges and prosecutors in relation to general economic and financial developments and the general living standard, taking into account the specific responsibilities inherent to their function and their significance for the general public. In another decision of the same day (2 BvL 6/17, 7/17, 8/17), the Federal Constitutional Court found the remuneration of judges and prosecutors with many children in the state of Nordrhein-Westfalen to be unconstitutional. The Constitutional Court found that judges and prosecutors needed to have such an income after tax that they would have at their disposal per child at least 15% more than what is foreseen by the basic security benefits for job seekers, which the Constitutional Court found was not the case in Nordrhein-Westfalen.

While the latter has meanwhile been taken into account at least for Federal Civil Service, certainly the overall exceptionally low remuneration of judges and prosecutors in Germany in comparison with other European countries has not changed significantly. The German Judges Association published an overview of the differences of the remuneration of judges and prosecutors of the German states (“Länder”) at <https://www.richterbesoldung.de/besoldung-versorgung/musterberechnungen> (Musterberechnungen - Richterbesoldung (DRB)).

Independence/autonomy of the prosecution service

3000 character(s) maximum

In January 2021, the Federal Ministry of Justice opened the stakeholders' consultation on a draft law that is aimed at granting the prosecution service a higher level of independence. The draft law was initiated due to the judgements of the European Court of Justice of 27 May 2019 (C-508/18 and C 82/19 PPU) and of 24 November 2020 (C-510/19).

The draft is aimed at “securing the ability of the German public prosecutor's offices to act as independent actors in the area of issuing and executing European arrest warrants as well as all other instruments of judicial cooperation in criminal matters within the European Union, by exempting the public prosecutor's offices from the ministerial right to give individual instructions in the sector of criminal judicial cooperation within the European Union and in the extradition and transit with the Schengen-associated States of Iceland and Norway. It also proposes that in § 147 GVG the narrow legal limits of the right to issue instructions be clarified. Furthermore, a requirement for all external instructions to be in writing and reasoned is introduced”. This is aimed at “increasing transparency in cases where ministerial instructions are given to the public prosecutors' offices ” (cited from the draft law, published at https://www.bmjv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/RefE_Unabhaengigkeit_Staatsanwaltschaften.pdf?__blob=publicationFile&v=1).

The German Judges Association supports this draft law in general but criticizes that it should not be limited to the field of European judicial cooperation (see <https://www.drb.de/positionen/stellungnahmen/stellungnahme/news/2-21>).

The Ministers of Justice of the German states (“Länder”) of Hessen, Brandenburg, Bayern, Nordrhein-Westfalen, Mecklenburg-Vorpommern, Saarland, Niedersachsen and Schleswig-Holstein, however, opposed to this draft law in a letter of 3 February 2021 to the Federal Ministry of Justice. They are committed to keeping the right of individual ministerial instructions as it is.

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

3000 character(s) maximum

No relevant changes since last consultation.

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

3000 character(s) maximum

No relevant changes since last consultation.

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 relevant changes since last consultation.

Resources of the judiciary (human/financial/material)

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

3000 character(s) maximum

There were no general changes regarding human and financial resources of the judiciary. The „pact for the rule of law“ mentioned in the consultation of 2020 caused the recruitment of different numbers of additional judges and prosecutors in many of the German states (“Länder”). However, due to fact that the additional human resources in many Länder only closed existing gaps and due to new and newly planned legislation especially in the field of criminal law that requires many more human resources in the judiciary (asset recovery and confiscation, money laundering, fight against hate crime, child sexual abuse etc.), the situation has not improved sufficiently in most of the Länder. Therefore the German Judges Association is demanding the renewal of the pact including a digital pact for the justice sector. Some justice ministers of the Länder expressed their support for this view.

The Covid-19 pandemic required all German courts, like in other countries, to evaluate possibilities to reduce the risk of infection at court, such as by installing plexiglass walls and/or air filters within court rooms, or other technical means. The material resources for these changes were largely made available, although a general answer cannot be given due to the federal structure of the German judiciary.

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

3000 character(s) maximum

While the Covid-19 pandemic initially led to lots of training sessions being cancelled due to the risk of infection, online training capacities were significantly improved since March 2020.

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 use of video conference tools in civil court sessions was significantly put into practice during the Covid-19 pandemic. While the German Code of Civil Procedure had already foreseen the possibility to hold a court session via video conference before the pandemic, this provision was actually put into practice due to the pandemic in order to minimize the risk of infections.

Digital files are not yet generally available in many German courts, although more and more courts take part in pilot projects and some states ("Länder") have recently installed it comprehensively. Therefore, digital communication between courts and court users is not yet a general standard at German courts.

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 relevant changes since last consultation.

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

3000 character(s) maximum

No relevant changes since last consultation.

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

No relevant changes since last consultation. Statistics that would allow to assess the influence of the Covid-19 pandemic on the length of proceedings are not yet available.

Other - please specify

3000 character(s) maximum

Anti-Corruption Framework - Germany

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

Prevention

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

3000 character(s) maximum

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

Rules on preventing conflict of interests in the public sector.

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 preventing corruption and conflict of interest in these sectors. (e.g. public procurement, healthcare, other).

3000 character(s) maximum

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

3000 character(s) maximum

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

3000 character(s) maximum

Repressive measures

Criminalisation of corruption and related offences.

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 the implementation of EU funds

3000 character(s) maximum

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

3000 character(s) maximum

Other – please specify

3000 character(s) maximum

Media Pluralism - Germany

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

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

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

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

3000 character(s) maximum

Framework for journalists' protection

Rules and practices guaranteeing journalist's independence and safety

3000 character(s) maximum

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

3000 character(s) maximum

Access to information and public documents

3000 character(s) maximum

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

3000 character(s) maximum

Other - please specify

3000 character(s) maximum

Other institutional issues related to checks and balances - Germany

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

It must be noted that the deadlines set in stakeholders'/public consultations on judicial reforms on the Federal level have increasingly been set remarkably shorter than in the past. Several large legal reforms that were not in any way linked to the Covid-19 pandemic were presented with extremely short deadlines of only a few days or very few weeks during holiday season, which made it difficult to deliver substantial remarks on the proposed reforms.

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

No statistics available.

Regime for constitutional review of laws.

3000 character(s) maximum

No relevant changes since last consultation.

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

Courts have played an important role in overseeing the legality of emergency regimes in the context of the Covid-19 pandemic. Thousands of such cases have already been decided all over Germany, so an overview cannot be given. Reports also mention a large number of cases to be referred to the Federal Constitutional Court in 2020 and early 2021.

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

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

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

3000 character(s) maximum

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

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

Other – please specify

3000 character(s) maximum

Contact

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

