

European Rule of Law Mechanism: input from Member States

2023 Rule of Law Report

1. 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.

To facilitate the appropriate involvement of Member States, the Commission has set up a network of contact points on the rule of law, composed of national contact points appointed by Member States. In the preparation for the 2020, 2021 and 2022 Rule of Law Reports, all Member States, through these contact points, provided detailed input on presenting the summary of the legal framework and significant developments as regards the topics covered. The input assisted the Commission in the drafting of the Rule of Law Reports using comparable information covering all Member States. The input was complemented by the other contacts and sources set out in the document on methodology, including through networks such as the *Group of contact persons on national justice systems* and the *National contact points on corruption*.

The Commission would like to invite the national contact points to provide contributions to the 2023 Rule of Law Report. This document provides information on the type of information and topics that will be covered in the 2023 Rule of Law Report, in order to allow Member States to provide input. More targeted input may be requested at a later stage of preparation of the 2023 Rule of Law Report, including in the context of country visits, or bilateral contacts, as well as the later consultation on the draft country chapters.

The 2023 Rule of Law Report will continue to deepen the assessment under the existing four pillars, and will also follow-up on the implementation of the recommendations to Member States, that were issued as part of the 2022 Rule of Law Report. 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 2022¹ falling under the ‘type of information’ outlined in section II.**

The input should consist of a short summary, if possible in English, covering the areas referred to below. The contribution should aim at not exceeding 30 pages. Legislation or other documents may be referenced with a link (no need to provide the full text). Contact points will be asked whether they agree to publish their input on the Commission’s website. In order to avoid duplication and excessive administrative burden, contact points are encouraged to answer as many questions as possible by making explicit reference to any contribution already provided in a different context including under Council of Europe, OECD, OSCE and UN bodies or procedures. Information covered in the inputs for the previous Rule of Law Reports should be referenced where relevant and does not need to be repeated.

Contributions should focus on significant developments both as regards the legal framework and its implementation in practice.

Please send us your replies by **20 January 2023** to the following email address: rule-of-law-network@ec.europa.eu. In case you would have any questions or requests for clarifications, please do not hesitate to contact the Commission at the same email address.

2. 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,

¹ Unless the information was already submitted in the input for the previous Rule of Law Reports.

positive developments and best practices:

A) Legislative developments

- Newly adopted legislation
- legislative drafts currently discussed in Parliament
- legislative plans envisaged by the Government

B) 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

C) 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 request for input²)

D) 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.

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

3. Questions for contribution

The following four pillars (I.-IV.) are sub-divided into topics (A., B., etc.) and sub-topics (1., 2., 3., etc.). 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 State 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 2022³. Please always include a link to and reference relevant legislation/documents (in the national language and/or where available, in English). 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.

² Such as: media regulatory authorities and bodies, national human rights institutions, equality bodies, ombudsman institutions, supreme audit institutions and, where they exist, transparency authorities.

³ Unless already covered in the input for the previous Rule of Law Reports.

I. Justice System

1. *Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the justice system (if applicable)*

A. Independence

2. *Appointment and selection of judges⁴, prosecutors and court presidents (incl. judicial review)*
3. *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)*
4. *Promotion of judges and prosecutors (incl. judicial review)*
5. *Allocation of cases in courts*
6. *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)*
7. *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)*
8. *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*
9. *Independence/autonomy of the prosecution service*
10. *Independence of the Bar (chamber/association of lawyers) and of lawyers*
11. *Significant developments capable of affecting the perception that the general public has of the independence of the judiciary*

B. Quality of justice⁵

12. *Accessibility of courts (e.g. court/legal fees, legal aid, language)*
13. *Resources of the judiciary (human/financial/material⁶)*
14. *Training of justice professionals (including judges, prosecutors, lawyers, court staff)*
15. *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)⁷*
16. *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)*

⁴ The reference to 'judges' concerns judges at all level and types of courts as well as judges at constitutional courts.

⁵ Under this topic, Member States are not required to give statistical information but should provide input on the type of information outlined under section 2.

⁶ Material resources refer e.g. to court buildings and other facilities.

⁷ Factual information presented in Commission Staff Working Document of 2 December 2020, SWD(2020) 540 final, accompanying the Communication on Digitalisation of justice in the European Union, COM(2020) 710 final and Figures 41 to 49 of the 2022 EU Justice Scoreboard, does not need to be repeated.

17. *Geographical distribution and number of courts/jurisdictions (“judicial map”) and their specialisation, in particular specific courts or chambers within courts to deal with fraud and corruption cases.*

C. Efficiency of the justice system⁸

18. *Length of proceedings*

Other – please specify

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.

19. *Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the anti-corruption framework (if applicable)*

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

20. *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 measures taken to effectively and timely cooperate with OLAF and EPPO.*
21. *Safeguards for the functional independence of the authorities tasked with the prevention and detection of corruption.*
22. *Information on the implementation of measures foreseen in the strategic anti-corruption framework (if applicable). If available, please provide relevant objectives and indicators.*

B. Prevention

23. *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.*
24. *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)*
25. *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)*
26. *Measures in place to ensure whistleblower protection and encourage reporting of corruption.*
27. *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,*

⁸ Under this topic, Member States are not required to give statistical information but should provide input on the type of information outlined under section 2.

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)

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

C. Repressive measures

29. Criminalisation, including the level of sanctions available by law, of corruption and related offences, including foreign bribery.

30. Data on investigation and application of sanctions for corruption offences⁹, including for legal persons and high level and complex corruption cases) and their transparency, including as regards to the implementation of EU funds.

31. 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)

32. Information on effectiveness of non-criminal measures and of sanctions (e.g. recovery measures and administrative sanctions) on both public and private offenders.

Other – please specify

III. Media freedom and pluralism

33. Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding media freedom and pluralism (if applicable)

A. Media authorities and bodies¹⁰

34. Measures taken to ensure the independence, enforcement powers and adequacy of resources (financial, human and technical) of media regulatory authorities and bodies

35. Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media regulatory authorities and bodies

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

B. Safeguards against government or political interference and transparency and concentration of media ownership

37. Measures taken to ensure the fair and transparent allocation of state advertising (including any rules regulating the matter)

38. 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

⁹ 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.

¹⁰ Cf. Article 30 of Directive 2018/1808.

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 licences, company operation, capital entry requirements, concentration, and corporate governance

39. *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

40. *Rules and practices guaranteeing journalist's independence and safety, including as regards protection of journalistic sources and communications*

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

42. *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)*

43. *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*

Other – please specify

IV. Other institutional issues related to checks and balances

44. *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)*

A. The process for preparing and enacting laws

45. *Framework, policy and use of impact assessments and evidence based policy-making, stakeholders¹¹/public consultations (particularly consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process*

46. *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)*

47. *Regime for constitutional review of laws*

48. *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*

¹¹ This includes also the consultation of social partners.

- *processes related to lessons learned/crisis preparedness in terms of the functioning of checks and balances*

B. Independent authorities

49. *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 institutions¹²*
50. *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.*

C. Accessibility and judicial review of administrative decisions

51. *Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data)*
52. *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).*
53. *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*

D. The enabling framework for civil society

54. *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)*
55. *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.*
56. *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)*
57. *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.)*

E. Initiatives to foster a rule of law culture

58. *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.)*

Other – please specify

¹² Cf. the website of the European Court of Auditors: <https://www.eca.europa.eu/en/Pages/SupremeAuditInstitutions.aspx#>