

## European Rule of Law mechanism:

### Methodology for the preparation of the Annual Rule of Law Report

In the Political Guidelines, President von der Leyen announced that the Commission will set up a comprehensive European rule of law mechanism covering all Member States, with objective annual reporting by the European Commission<sup>1</sup>. In July 2019, the Commission adopted its Communication on *Strengthening the rule of law within the Union - a blueprint for action*, setting out some of the features of such a mechanism<sup>2</sup>. The first annual Rule of Law Report is one of the major initiatives of the Commission's Work Programme for 2020. The new European rule of law mechanism will act as a preventive tool, deepening dialogue and joint awareness of rule of law issues.

The European Rule of Law Mechanism will monitor significant developments relating to the rule of law in Member States. The annual Rule of Law Report will provide a synthesis of significant developments in Member States and at EU level, both positive and negative: the first report will naturally tend more towards a summary of the overall situation, taking into account developments since January 2019, with subsequent reports focusing rather on developments over the year in practice. The monitoring approach will be the same in all Member States, it will rely on comparable information and all relevant sources and it will be based on an open dialogue with Member States.

This paper sets out the methodology for this monitoring, in particular its scope and sources, the standards for the assessment, the assessment methodology as well as the involvement of Member States and of stakeholders.

#### 1. The scope of the monitoring and sources for assessment

The monitoring will cover four pillars: *justice systems, anti-corruption framework, media pluralism, and other institutional issues related to checks and balances*. For each of these pillars, the relevant sub-topics and main existing sources of information are set out in the table below. Sources can be relevant for several sub-topics. As explained in the July 2019 Communication on "Strengthening the rule of law within the Union - A blueprint for action", the Commission will rely on a coherent use of a wide range of relevant sources, which will be clearly indicated in the report.

The monitoring will strive to avoid duplicating existing reporting mechanisms and adding to the administrative burden on Member States which are subject to various resource-intensive peer review and other type of evaluations in the areas under the scope of the Rule of Law Report (e.g. Group of States against Corruption (GRECO), OECD, United Nations Convention against Corruption (UNCAC), Venice Commission). The report will build on information available from these mechanisms.

TOPICS	MAIN SOURCES
JUSTICE SYSTEMS Civil, administrative and criminal, all instances, all branches, all stages (including prosecution and enforcement of judgments):  (i) Independence <i>the appointment, irremovability including transfers of judges and dismissal, promotion, independence and powers of the body tasked with safeguarding</i>	<i>Comparative:</i> <ul style="list-style-type: none"><li>• EU Justice Scoreboard</li><li>• Annual questionnaires to the Group of contact persons on national justice systems and to Supreme Courts/Councils for the Judiciary</li><li>• Council of Europe (CoE): in particular Committee for the efficiency of justice (CEPEJ) annual study for DG JUST</li><li>• Eurobarometer survey on perceived judicial independence</li><li>• Reports and surveys from relevant international organisations (e.g. World Bank, OECD, OSCE, UN, World Economic Forum)</li></ul> <i>Country specific:</i> <ul style="list-style-type: none"><li>• Contributions from Member States in the context of the European Rule of Law Mechanism</li></ul>

<sup>1</sup> [https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf)

<sup>2</sup> COM(2019) 343 final

<p><i>the independence of the judiciary, accountability including disciplinary regime and ethical rules, independence/ autonomy of the prosecution service, independence of the Bar, etc. perception of independence</i></p> <p>(ii) Quality <i>accessibility (e.g. legal aid, digitalisation), resources, use of assessment tools and standards</i></p> <p>(iii) Efficiency <i>length of proceedings enforcement of judgements</i></p>	<ul style="list-style-type: none"> <li>• Contributions from other stakeholders in the context of the European Rule of Law Mechanism</li> <li>• Country visits</li> <li>• Case law of the European Court of Justice (ECJ)</li> <li>• Implementation reports</li> <li>• Case law of the European Court of Human Rights (ECtHR)</li> <li>• Country-specific assessment in the European Semester and the Cooperation and Verification Mechanism, including country visits</li> <li>• DG BUDG and OLAF on prosecution</li> <li>• EU Fundamental Rights Information System (EFRIS) by the Fundamental Rights Agency</li> <li>• Council of Europe reports: in particular from Venice Commission, Group of States against Corruption (GRECO), Consultative Council of Judges (CCJE), Consultative Council of European Prosecutors (CCPE), Department for the execution of judgments, Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL).</li> <li>• Contacts with stakeholders, in particular judicial networks, national human rights institutions, civil society, academics</li> </ul>
<p>ANTI-CORRUPTION FRAMEWORK</p> <p>(i) Institutional framework capacity to fight corruption</p> <p>(ii) Prevention <i>Integrity framework: asset disclosure rules, lobbying, revolving doors and general transparency of public decision-making (including public access to information); rules on preventing conflict of interests in the public sector; measures in place to ensure whistle-blower protection and encourage reporting of corruption; measures to prevent corruption in high-risk sectors (e.g. public procurement, healthcare, other);</i></p> <p>(iii) Repressive measures <i>Criminalisation of corruption and related offences, application of sanctions (criminal and non-criminal) for corruption offences; potential obstacles to investigation and prosecution of high-level and complex corruption cases (e.g. political immunity regulation)</i></p>	<ul style="list-style-type: none"> <li>• Contributions from Member States in the context of the European Rule of Law Mechanism</li> <li>• Contributions from other stakeholders in the context of the European Rule of Law Mechanism</li> <li>• Country visits</li> <li>• Implementation reports</li> <li>• Country-specific assessment in the European Semester and the Cooperation and Verification Mechanism, including country visits</li> <li>• Local corruption research correspondents</li> <li>• Reports of national authorities (e.g. Court of Auditors, corruption prevention authorities, prosecution authorities)</li> <li>• Expert Group on Policy Needs for Data on Crime, National contact Points on corruption</li> <li>• Eurobarometer surveys on perception of corruption</li> <li>• Expert group on the transposition of the whistleblowers directive</li> <li>• Contribution from OLAF</li> <li>• Relevant materials by the EU Fundamental Rights Agency (FRA)</li> <li>• Council of Europe reports: in particular Venice Commission, Group of States against Corruption (GRECO), Department for the execution of judgments; Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL).</li> <li>• Reports and surveys by other international and regional organisations, including review under the UN Convention against Corruption and the OECD Anti-Bribery Convention.</li> </ul>
<p>MEDIA PLURALISM</p> <p>(i) media regulatory authorities and bodies</p> <p>(ii) Transparency of media ownership and governmental interference <i>transparent allocation of state advertisement, public information campaigns, rules</i></p>	<ul style="list-style-type: none"> <li>• Contributions from Member States in the context of the European Rule of Law Mechanism</li> <li>• Contributions from other stakeholders in the context of the European Rule of Law Mechanism</li> <li>• Country visits</li> <li>• European Court of Justice (ECJ) case law</li> <li>• European Court of Human Rights (ECtHR) case law</li> <li>• Implementation reports</li> <li>• Media Pluralism Monitor, Mapping Media Freedom platform</li> </ul>

<p><i>governing transparency of media ownership</i></p> <p>(iii) Framework for journalists' protection</p> <p><i>Rules and practices protecting journalistic and other media activity from state interference, capacity to investigate attacks on journalists, access to information/ public documents</i></p>	<ul style="list-style-type: none"> <li>• Relevant aspect of the implementation of the Audiovisual Media Services Directive (AVMS) Directive</li> <li>• European Regulators Group for Audiovisual Media Services</li> <li>• Reports of international organisations and associations such as Reporters without borders</li> <li>• Direct contacts with national authorities, judicial networks, stakeholders and international organisations</li> <li>• Relevant materials by the EU fundamental rights agency (FRA)</li> <li>• Council of Europe reports, European Audiovisual Observatory OSCE Office for Democratic Institutions and Human Rights (ODIHR) and UN reports</li> </ul>
<p>OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES</p> <p>(i) process for preparing and enacting laws</p> <p><i>consultations, use of fast-track procedures or emergency procedures, regime for constitutional review of laws</i></p> <p>(ii) independent authorities</p> <p>(iii) accessibility, judicial review of administrative decisions</p> <p>(iv) Enabling framework for civil society</p>	<ul style="list-style-type: none"> <li>• Contributions from Member States in the context of the European Rule of Law Mechanism</li> <li>• Contributions from other stakeholders in the context of the European Rule of Law Mechanism</li> <li>• Country visits</li> <li>• European Court of Justice (ECJ) case law</li> <li>• European Court of Human Rights (ECtHR) case law</li> <li>• Implementation reports</li> <li>• Country-specific assessment in the European Semester, including country visits</li> <li>• Council of Europe reports: in particular Venice Commission, Group of States against Corruption (GRECO)</li> <li>• EU Pack studies, public administration assessment framework (REFORM)</li> <li>• OSCE Office for Democratic Institutions and Human Rights (ODHIR) reports and guidelines (e.g. working group on law making process), and UN reports</li> <li>• Specific studies (e.g. ECFIN);</li> <li>• Relevant materials by the EU Fundamental Rights Agency FRA;</li> <li>• Reports from National Human Rights Institutions (NHRIs) and European Network of National Human Rights Institutions (ENNHRI).</li> </ul>

## 2. Standards for the assessment

As explained in the Communications on "Further strengthening the rule of law in the Union - State of play and possible next steps", and "Strengthening the rule of law in the Union - A blueprint for action", the rule of law is a well-established principle, well-defined in its core meaning<sup>3</sup>.

The assessment in the European Rule of Law Mechanism will be carried out by the Commission against EU law requirements and well established European standards, including:

- (i) Relevant obligations under EU law and European Court of Justice case law (e.g. Art. 2 TEU, 19 (1) TEU, 47 Charter of Fundamental Rights of the European Union, 325 TFEU and rule of law-relevant EU secondary legislation such as EU criminal law, Directive on the fight against fraud to the Union's financial interests by means of criminal law (PIF Directive));
- (ii) European Court of Human Rights case law;
- (iii) Council of Europe standards such as the Recommendation of the Committee of Minister on judges: independence, efficiency and responsibilities, the Recommendation of the Committee of Ministers on the role of public prosecution in the criminal justice system, Criminal Law Convention on Corruption, Civil Law Convention on Corruption, Resolution of the Committee of

<sup>3</sup> Communications from the Commission, «Further strengthening the Rule of Law within the Union», Brussels, 3.4.2019, COM(2019) 163 final, p.1; « Strengthening the rule of law within the Union - A blueprint for action », Brussels, 17.7.2019, COM(2019) 343 final, p. 1.

Minister on the twenty guiding principles for the fight against corruption, the Recommendation of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors, the Recommendation of the Committee of Ministers on media pluralism and transparency of media ownership.

A list of relevant standards can also be found in the standards section of Venice Commission Rule of Law Check List. The Check List can help to identify specific risks and weaknesses.

In its assessment the Report will make reference to the specific standards relevant for the situation assessed.

### **3. Type of assessment**

The report will provide a qualitative assessment carried out by the Commission. The main characteristics of the assessment will be the following:

- focus on a synthesis of significant developments introduced by a brief factual description of the legal and institutional framework relevant for each pillar;
- present both challenges and positive aspects, including good practices;
- qualitatively assess all Member States, whilst remaining proportionate to the situation and developments in full respect of the principle of equality of Member States;
- be based on a close dialogue with Member States, country visits, on stakeholders' contributions and on all other relevant sources; reports and materials used will be referenced in the Report.

### **4. Involvement of Member States**

The Commission will ensure the close involvement of Member States in the preparation of and follow-up to the annual Rule of Law Report. Follow-up actions could for example include discussion on possible operational support from the Commission to address a specific issue identified in the Report, in line with the preventive approach which characterises the rule of law mechanism.

The Commission will also ensure that duplication and excessive administrative burden are avoided, including by ensuring that relevant contributions provided by Member States in other contexts are used.

The monitoring will be carried out in close cooperation with Member States, which will be involved throughout the process in different forms:

#### *Network of contact persons on the rule of law:*

- The national contact points will have a liaison function, facilitating and accompanying the dialogue between the Commission and competent national authorities. The network will meet in Brussels to discuss horizontal rule of law issues and to share information and best practices.

#### *Request for contributions from Member States:*

- The Commission will invite the contact persons to provide written contributions to the Report. The first meeting of the network has discussed the request for contribution from Member States and a period of three weeks was given for the contact persons to send their written comments on the request for contribution. The Commission has now prepared a consolidated version, and the contact persons will have until 4 May 2020 (six weeks) to reply. In order to avoid duplication and excessive administrative burden, where previous specific reports of the various bodies of the Council of Europe, OECD, OSCE and UN bodies or procedures have addressed the issues covered by the Rule of Law report, contact points are encouraged to make a reference to the points they wish to bring to the Commission's attention, indicating any relevant updates that have occurred since the previous relevant reports and documents were published.

- Contact points will be asked whether they agree to publish their input on the Commission's website.

*Dialogue and country visits:*

- The Commission will maintain a constant dialogue with Member States throughout the process both through the network of contact persons, the Group of contact persons on national justice system, the National Contact Points on corruption, and in bilateral format at political and technical level.
- Country visits will take place to support the evidence gathering and engage in dialogue with the Member States authorities and relevant national stakeholders. The country visits will be organised in close coordination with the contact person including as regards the precise timing, modalities and list of interlocutors. The country visits will take place between the beginning of May and beginning of June, also depending on the COVID-19 situation. Commission Representations will be involved. Depending on the COVID-19 situation, country visits could be replaced by videoconferences.
- Prior to the publication of the Annual Rule of Law Report, Member States will be given the opportunity to comment on the analytical parts of the Report concerning their country-specific assessment. Member States will be informed of the precise timing of such consultation as soon as possible.

**5. Input from stakeholders**

- The Commission will invite stakeholders to provide written contributions to the Report through a targeted consultation to be published on the Commission's website and to be carried out in a transparent manner. The request for contribution will have the same scope as the request to Member States. In addition, a letter will be sent to the key European stakeholders, listed in Annex. The inputs received by stakeholders will be published on the Commission's website, for those stakeholders who agree to such publication.
- A letter to the Council of Europe was sent asking for a contact person to facilitate the cooperation with its monitoring bodies.
- The contributions gathered in the consultation will be carefully assessed by the Commission in order to determine their relevance.

**6. Inter-institutional coordination/rule of law cycle**

- The Commission will continue to keep the General Affairs Council informed about the preparation of the Report.
- The Commission's reporting will be designed to be well coordinated with consideration of rule of law issues in the Council, in close coordination with the Presidency, and with the European Parliament.

**7. Milestones (provisional timetable)**

Member states will be regularly updated – through the national contact points as well at the GAC – on the progress of work and possible evolutions in the timetable.

- Input from contact points: 4 May;
- Second meeting of the Network of contact points on the rule of law: 7 May (*tbc*);
- Country visits: May – beginning of June (*modalities depending on the COVID-19 situation*);
- Member States' comments: July;
- Publication of the Report: September.

**ANNEX: list of key stakeholders to be contacted by the Commission**

1. Network of the Presidents of the Supreme Courts of the EU
2. European Network of Councils for the Judiciary
3. Association of the Councils of State and the Supreme Administrative Jurisdictions
4. European Association of Judges (EAJ)
5. Magistrats Européens pour la Démocratie et les Libertés (MEDEL)
6. Association of European Administrative Judges (AEAJ)
7. Council of Bars and Law Society of Europe (CCBE)
8. Conference of European Constitutional Courts
9. European Network of National Human Rights Institutions (ENNHRI)
10. European Partners against corruption/European contact-point network against corruption
11. Network of Corruption Prevention Agencies
12. European Federation of Journalists (EFJ)
13. European Regulators Group for Audiovisual Media Regulation (ERGA)