

## European Rule of Law Mechanism: input from Member States

### 2022 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. The first Rule of Law Report was published on 30 September 2020, and the second on 20 July 2021.

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 and 2021 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 2022 Rule of Law Report. This document provides information on the type of information and topics that will be covered in the 2022 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 2022 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 2022 Rule of Law Report will continue to deepen the assessment under the existing four pillars, with the main novelty being the inclusion of specific recommendations to Member States, as announced in the State of the Union Speech by President von der Leyen. The contribution to be provided should address **(1) the feedback and progress made and developments with regard to the points raised in the respective country chapter of the 2021 Rule of Law Report and (2) any other significant developments since January 2021<sup>1</sup> falling under the ‘type of information’ outlined in section II.** This should, where relevant, also continue to 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 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 2020 and 2021 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 **24 January** 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

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<sup>1</sup> Unless the information was already submitted in the input for the 2020 or the 2021 Rule of Law Reports.

include aspects set out below under each pillar. This can include challenges, current work streams, 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 input<sup>2</sup>)

**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.

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 inputs for the 2020 and 2021 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) feedback and progress made and developments with regard to the points raised in the respective country chapter of the **2021** Rule of Law Report and (2) any other significant developments since January 2021<sup>3</sup>. 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. 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.

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

<sup>3</sup> Unless already covered in the input for the 2020 or the 2021 Rule of Law Reports.

## **I. Justice System**

### **A. Independence**

1. *Appointment and selection of judges<sup>4</sup>, prosecutors and court presidents (incl. judicial review)*
2. *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)*
3. *Promotion of judges and prosecutors (incl. judicial review)*
4. *Allocation of cases in courts*
5. *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)*
6. *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)*
7. *Remuneration/bonuses/rewards for judges and prosecutors, including changes (significant increase or decrease over the past year), transparency on the system and access to the information*
8. *Independence/autonomy of the prosecution service*
9. *Independence of the Bar (chamber/association of lawyers) and of lawyers*
10. *Significant developments capable of affecting the perception that the general public has of the independence of the judiciary*

### **B. Quality of justice<sup>5</sup>**

11. *Accessibility of courts (e.g. court/legal fees, legal aid, language)*
12. *Resources of the judiciary (human/financial/material<sup>6</sup>)*
13. *Training of justice professionals (including judges, prosecutors, lawyers, court staff)*
14. *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)<sup>7</sup>*
15. *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)*
16. *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.*

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<sup>4</sup> The reference to ‘judges’ concerns judges at all level and types of courts as well as judges at constitutional courts.

<sup>5</sup> 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.

<sup>6</sup> Material resources refer e.g. to court buildings and other facilities.

<sup>7</sup> 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 39 to 47 of the 2021 EU Justice Scoreboard, does not need to be repeated.

### **C. Efficiency of the justice system<sup>8</sup>**

#### *17. 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.

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

*18. List any changes as regards relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption and the resources allocated to each of these authorities (the human, financial, legal, and technical resources as relevant), including the cooperation among domestic authorities. Indicate any relevant measure taken to effectively and timely cooperate with OLAF and EPPO (where applicable).*

*19. Safeguards for the functional independence of the authorities tasked with the prevention and detection of corruption.*

*20. 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**

*21. 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.*

*22. General transparency of public decision-making (e.g. public access to information, including possible obstacles related to the classification of information, transparency authorities where they exist, and framework rules on lobbying including the transparency of lobbying, asset disclosure rules, gifts and transparency of political party financing)*

*23. 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)*

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

*25. List the sectors with high-risks of corruption in your Member State and list the relevant measures taken/envisaged for monitoring and preventing corruption and conflict of interest in these sectors. (e.g. public procurement, healthcare, citizen investor schemes, risk or cases of corruption linked to the disbursement of EU funds, other).*

*26. Measures taken to assess and address corruption risks in the context of the COVID-19 pandemic.*

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<sup>8</sup> 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.

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

**C. Repressive measures**

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

29. Data on investigation and application of sanctions for corruption offences<sup>9</sup>, including for legal persons and high level and complex corruption cases) and their transparency, including as regards to the implementation of EU funds.

30. Potential obstacles to investigation and prosecution as well as to the effectiveness of sanctions of high-level and complex corruption cases (e.g. political immunity regulation, procedural rules, statute of limitations, pardoning)

31. Information on effectiveness of administrative measures and sanctions, in particular recovery measures and administrative sanctions on both public and private offenders.

**Other – please specify**

**III. Media freedom and pluralism**

**A. Media authorities and bodies<sup>10</sup>**

32. Measures taken to ensure the independence, enforcement powers and adequacy of resources of media regulatory authorities and bodies

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

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

**B. Transparency of media ownership and safeguards against government or political interference**

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

36. Safeguards against state / political interference, in particular:

- safeguards to ensure editorial independence of media (private and public)

- specific safeguards for the independence of governing bodies of public service media governance (e.g. related to appointment, dismissal) and safeguards for their operational independence (e.g. related to reporting obligations),

- procedures for the concession/renewal/termination of operating licenses

- information on specific legal provisions for companies in the media sector (other than licensing), including as regards company operation, capital entry requirements and corporate governance

37. Transparency of media ownership and public availability of media ownership information, including on media concentration (including any rules regulating the matter)

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<sup>9</sup> 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.

<sup>10</sup> Cf. Article 30 of Directive 2018/1808.

### **C. Framework for journalists' protection**

38. Rules and practices guaranteeing journalist's independence and safety
39. Law enforcement capacity, including during protests and demonstrations, to ensure journalists' safety and to investigate attacks on journalists
40. Access to information and public documents (incl. procedures, costs/fees, timeframes, administrative/judicial review of decisions, execution of decisions by public authorities)
41. Lawsuits (incl. SLAPPs - strategic litigation against public participation) and convictions against journalists (incl. defamation cases) and measures taken to safeguard against abusive lawsuits

**Other – please specify**

### **IV. Other institutional issues related to checks and balances**

#### **A. The process for preparing and enacting laws**

42. Framework, policy and use of impact assessments, stakeholders'/public consultations (particularly consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process
43. 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)
44. Regime for constitutional review of laws
45. 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 (incl. ex-post reporting/investigation) by Parliament of emergency regimes and measures in the context of COVID-19 pandemic

#### **B. Independent authorities**

46. Independence, resources, capacity and powers of national human rights institutions ('NHRIs'), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions<sup>11</sup>
47. 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**

48. Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data)
49. 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).

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<sup>11</sup> Cf. the website of the European Court of Auditors: <https://www.eca.europa.eu/en/Pages/SupremeAuditInstitutions.aspx#>

50. *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**

51. *Measures regarding the framework for civil society organisations (e.g. access to funding, legal framework incl. registration rules, measures related to dialogue between authorities and civil society, participation of civil society in policy development, measures capable of affecting the public perception of civil society organisations, etc.)*

52. *Rules and practices guaranteeing the effective operation of civil society organisations and rights defenders*

**E. Initiatives to foster a rule of law culture**

53. *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.)*

**Other – please specify**