

European Rule of Law Mechanism: input from Member States

2021 Rule of Law Report

1. Introduction

The first annual Rule of Law Report was published on 30 September 2020. It lies at the centre 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 order to facilitate the appropriate involvement of Member States, the Commission has asked all Member States to appoint their national contact points, who are part of a network of contact points on the rule of law. In the preparation for the 2020 Rule of Law Report, 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 first Rule of Law Report 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 2021 Rule of Law Report. This document provides information on the type of information and topics that will be covered in the 2021 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 2021 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 2021 Rule of Law Report will be a transitional cycle aimed at consolidating the first report. 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 2020 Rule of Law Report and (2) any other significant developments since January 2020¹ falling under the ‘type of information’ outlined in section II**. This should 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 consist of a short summary, if possible in English, to cover 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 2020 Rule of Law Report 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 **8 March** 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, positive developments and best practices:

¹ Unless the information was already submitted in the input for the 2020 Rule of Law Report.

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 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 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.

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.

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.). For 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 2020 Rule of Law Report and (2) any other significant developments since January 2020³. 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 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.

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

³ Unless already covered in the input for the 2020 Rule of Law Report.

I. Justice System

A. Independence

1. *Appointment and selection of judges⁴, prosecutors and court presidents*
2. *Irremovability of judges; including transfers, dismissal and retirement regime of judges, court presidents and prosecutors*
3. *Promotion of judges and prosecutors*
4. *Allocation of cases in courts*
5. *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)*
6. *Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal liability of judges.*
7. *Remuneration/bonuses for judges and prosecutors*
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 justice⁵

11. *Accessibility of courts (e.g. court fees, legal aid, language)*
12. *Resources of the judiciary (human/financial/material⁶)*
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)⁷*
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*

C. Efficiency of the justice system⁸

17. *Length of proceedings*

Other – please specify

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, does not need to be repeated.

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.

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 that have occurred since these documents were published.

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

18. *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), e.g. in table format.*

B. Prevention

19. *Integrity framework including incompatibility rules (e.g.: revolving doors)*
20. *General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)*
21. *Rules on preventing conflict of interests in the public sector*
22. *Measures in place to ensure whistleblower protection and encourage reporting of corruption*
23. *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).*
24. *Measures taken to address corruption risks in the context of the COVID-19 pandemic.*
25. *Any other relevant measures to prevent corruption in public and private sector*

C. Repressive measures

26. *Criminalisation of corruption and related offences*
27. *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 to the implementation of EU funds.*
28. *Potential obstacles to investigation and prosecution of high-level and complex corruption cases (e.g. political immunity regulation)*

Other – please specify

III. Media pluralism

A. Media authorities and bodies⁹

29. *Independence, enforcement powers and adequacy of resources of media regulatory authorities and bodies*
30. *Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media regulatory authorities and bodies*
31. *Existence and functions of media councils or other self-regulatory bodies*

⁹ Cf. Article 30 of Directive 2018/1808.

B. Transparency of media ownership and government interference

32. *The transparent allocation of state advertising (including any rules regulating the matter); other safeguards against state / political interference*
33. *Rules governing transparency of media ownership and public availability of media ownership information*

C. Framework for journalists' protection

34. *Rules and practices guaranteeing journalist's independence and safety*
35. *Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists*
36. *Access to information and public documents*
37. *Lawsuits and convictions against journalists (incl. defamation cases) and safeguards against abuse*

Other – please specify

IV. Other institutional issues related to checks and balances

A. The process for preparing and enacting laws

38. *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*
39. *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)*
40. *Regime for constitutional review of laws*
41. *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)*

B. Independent authorities

42. *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 institutions¹⁰*

C. Accessibility and judicial review of administrative decisions

43. *Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data) and judicial review (incl. scope, suspensive effect)*
44. *Implementation by the public administration and State institutions of final court decisions*

¹⁰ Cf. the website of the European Court of Auditors: <https://www.eca.europa.eu/en/Pages/SupremeAuditInstitutions.aspx#>

D. The enabling framework for civil society

45. 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.)

E. Initiatives to foster a rule of law culture

46. 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