

European Rule of Law Mechanism: input from Member States

1. Introduction

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 Commission¹. 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 mechanism². 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.

In order to facilitate the appropriate involvement of Member States, the Commission has asked all Member States to appoint a national contact point, who will be part of a network of contact points on the rule of law. The Commission would also like to invite the contact persons to provide contributions to the Rule of Law Report. In order to facilitate the gathering of information, you will find below the type of information and the topics to be covered. This will be complemented by the other contacts and sources set out in the methodology, including in networks such as the *Group of contact persons on national justice systems* and the *National contact points on corruption*.

This document provides information on the topics that will be covered in the Rule of Law Report, in order to allow Member States to provide input. More targeted input could be envisaged at a later stage of the preparation of the annual Rule of Law Report, including in the context of country visits, or bilateral contacts, as well as the later consultation on the analytical parts of the Report concerning their country-specific assessment.

The input should consist of a short summary, preferably in English, to cover the areas referred to below. It should provide an overview of the legal and institutional framework. Whilst the first report will naturally tend more towards a summary of the overall situation, it should also highlight significant developments, primarily since January 2019. 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.

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

Please send us your replies by 4 May 2020 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 workstreams, positive developments and best practices:

A) Legislation

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

¹ https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf

² COM(2019) 343 final

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

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.

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, you are invited to provide an overview of the legal and institutional framework in your country. Moreover, for each of the sub-topics (1.-43.), you are invited to provide concrete information on significant developments, focusing primarily on developments since January 2019. 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.

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.

I. Justice System

A. Independence

1. *Appointment and selection of judges and prosecutors*
2. *Irremovability of judges, including transfers of judges and dismissal*
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 ethical rules.*
7. *Remuneration/bonuses for judges and prosecutors*
8. *Independence/autonomy of the prosecution service*
9. *Independence of the Bar (chamber/association of lawyers)*
10. *Significant developments capable of affecting the perception that the general public has*

of the independence of the judiciary

11. *Other - please specify*

B. Quality of justice³

12. *Accessibility of courts (e.g. court fees, legal aid)*

13. *Resources of the judiciary (human/financial)*

14. *Use of assessment tools and standards (e.g. ICT systems for case management, court statistics, monitoring, evaluation, surveys among court users or legal professionals)*

15. *Other - please specify*

C. Efficiency of the justice system⁴

16. *Length of proceedings*

17. *Enforcement of judgements*

18. *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 that have occurred since these documents were published.

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

19. *List of relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption. Where possible, please indicate the resources allocated to these (the human, financial, legal, and practical resources as relevant).*

B. Prevention

20. *Integrity framework: asset disclosure rules, lobbying, revolving doors and general transparency of public decision-making (including public access to information)*

21. *Rules on preventing conflict of interests in the public sector*

22. *Measures in place to ensure Whistle-blower 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 in these sectors. (e.g. public procurement, healthcare, other).*

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

³ 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.

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C. Repressive measures

- 25. *Criminalisation of corruption and related offences,*
- 26. *Overview of application of sanctions (criminal and non-criminal) for corruption offences (including for legal persons)*
- 27. *Potential obstacles to investigation and prosecution of high-level and complex corruption cases(e.g. political immunity regulation)*

III. Media pluralism

A. Media regulatory authorities and bodies⁵

- 28. *Independence, enforcement powers and adequacy of resources of media authorities and bodies*
- 29. *Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media authorities and bodies*

B. Transparency of media ownership and government interference

- 30. *The transparent allocation of state advertising (including any rules regulating the matter)*
- 31. *Public information campaigns on rule of law issues (e.g. on judges and prosecutors, journalists, civil society)*
- 32. *Rules governing transparency of media ownership*

C. Framework for journalists' protection

- 33. *Rules and practices guaranteeing journalist's independence and safety and protecting journalistic and other media activity from interference by state authorities*
- 34. *Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists*
- 35. *Access to information and public documents*
- 36. *Other - please specify*

IV. Other institutional issues related to checks and balances

A. The process for preparing and enacting laws

- 37. *Stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms), transparency of the legislative process, 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).*
- 38. *Regime for constitutional review of laws*

B. Independent authorities

- 39. *independence, capacity and powers of national human rights institutions, ombudsman institutions and equality bodies*

⁵ Cf. Article 30 of Directive 2018/1808.

C. Accessibility and judicial review of administrative decisions

40. modalities of publication of administrative decisions and scope of judicial review

41. implementation by the public administration and State institutions of final court decisions

D. The enabling framework for civil society

42. Measures regarding the framework for civil society organisations

43. Other - please specify