

2022 Rule of Law Report - targeted stakeholder consultation

Fields marked with * are mandatory.

Introduction

The annual Rule of Law Report is at the core 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.

In the preparation of the first two editions of the Rule of Law Report, the Commission has relied on a diversity of relevant sources, including from Member States, country visits, and stakeholders' contributions collected through the targeted stakeholder consultation [1]. The information provided has informed the Commission's country-specific assessments in preparing the Report. Building on the positive experience from the first two editions of the Rule of Law Report, the Commission is now inviting stakeholders to provide written contributions for the preparation of the 2022 Rule of Law Report through this targeted consultation.

The contributions should cover in particular (1) feedback and developments with regard to the points raised in the country chapters of the 2021 Rule of Law Report and (2) any other significant developments since January 2021 [2] falling under the 'type of information' outlined in the next section. 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 be short and concise, if possible in English, and summarise information related to one or more of the areas referred to in the template. You are invited to focus on the areas that relate to the scope of work and expertise of your organisation. Existing reports, statements, legislation or other documents may be referenced with a link (no need to provide the full text). Stakeholders are encouraged to make references to any contributions already provided in a different context or to Reports and documents already published. Contributions should focus on significant developments both as regards the legal framework and its implementation in practice.

If you wish to submit information concerning several Member States, you will have to fill-in the questionnaire separately for each Member States (due to the size of the questionnaire). There is no limit to the number of contributions submitted by a single participant. In such cases, you are not required to repeat the information in the section "about you" that is non-mandatory nor the information on horizontal developments.

Please provide your contribution by **24 January 2022**. Should you have any requests for clarifications or encounter difficulties in filling in the questionnaire, you can contact the Commission at the following email address: rule-of-law-network@ec.europa.eu.

[1] https://ec.europa.eu/info/publications/2020-rule-law-report-targeted-stakeholder-consultation_en and https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2021-rule-law-report-targeted-stakeholder-consultation_en

[2] Unless the information was already submitted in the consultation for the 2020 or the 2021 Rule of Law Reports.

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:

Legislative developments

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

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

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[1])

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.

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

About you

* I am giving my contribution as

- Academic/research institution
- Business association
- Civil society organisation/NGO
- International organisation
- Judicial association or network
- Media organisation or association
- Public authority or network of public authorities
- Other

* Organisation name

250 character(s) maximum

Deutsches Aktieninstitut e.V.

Main Areas of Work

- Justice System
- Anti-corruption
- Media Pluralism
- Other

If "Other", please specify

capital markets, including investor protection

Please insert an URL towards your organisation's main online presence or describe your organisation briefly:

500 character(s) maximum

<https://www.dai.de/>

Transparency register number

Check if your organisation is in the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making

38064081304-25

* Country of origin

Please add the country of origin of your organisation

- Afghanistan
- Albania
- Algeria
- Andorra
- Angola
- Antigua and Barbuda
- Argentina
- Armenia
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bhutan
- Bolivia
- Bosnia and Herzegovina
- Botswana
- Brazil
- Brunei Darussalam
- Bulgaria
- Burkina Faso
- Burundi
- Cabo Verde
- Cambodia
- Cameroon
- Canada
- Central African Republic
- Chad
- Chile
- China
- Colombia
- Comoros
- Congo
- Costa Rica
- Côte D'Ivoire
- Croatia
- Cuba
- Cyprus

- Czechia
- Democratic Republic of the Congo
- Denmark
- Djibouti
- Dominica
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Fiji
- Finland
- France
- Gabon
- Gambia
- Georgia
- Germany
- Ghana
- Greece
- Grenada
- Guatemala
- Guinea
- Guinea Bissau
- Guyana
- Haiti
- Honduras
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Israel
- Italy
- Jamaica
- Japan
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kuwait
- Kyrgyzstan

- Laos
- Latvia
- Lebanon
- Lesotho
- Liberia
- Libya
- Liechtenstein
- Lithuania
- Luxembourg
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Mauritania
- Mauritius
- Mexico
- Micronesia
- Monaco
- Mongolia
- Montenegro
- Morocco
- Mozambique
- Myanmar
- Namibia
- Nauru
- Nepal
- Netherlands
- New Zealand
- Nicaragua
- Niger
- Nigeria
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Poland
- Portugal

- Qatar
- Republic of Moldova
- Romania
- Russian Federation
- Rwanda
- Saint Kitts and Nevis
- Saint Lucia
- Saint Vincent and the Grenadines
- Samoa
- San Marino
- Sao Tome and Principe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Sweden
- Switzerland
- Syrian Arab Republic
- Tajikistan
- Tanzania
- Thailand
- Timor-Leste
- Togo
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States of America

- Uruguay
- Uzbekistan
- Vanuatu
- Venezuela
- Viet Nam
- Yemen
- Zambia
- Zimbabwe

First name

Maximilian

Surname

Lück

Email Address of the organisation (this information will not be published)

lueck@dai.de

*** Publication of your contribution and privacy settings**

You can choose whether you wish for your contribution to be published and whether you wish your details to be made public or to remain anonymous.

- Anonymous - Only your type of respondent, country of origin and contribution will be published. Organisation name, URL, transparency register number, first name and surname given above will not be published. **To maintain anonymity, please refrain from mentioning the name of your organisation and any details from which your organisation can be identified in the rest of your contribution.**
- Public - Your personal details (name, organisation name, transparency register number, country of origin) will be published with your contribution.
- No publication - Your contribution will not be published. Elements of your contribution may be referred to anonymously in documents produced by the Commission based on this consultation.

I agree with the personal data protection provisions.

[Specific privacy statement targeted stakeholder consultation 2022 rule of law report.pdf](#)

Questions on horizontal developments

In this section, you are invited to provide information on general horizontal developments or trends, both positive and negative, covering all or several Member States. In particular, you could mention issues that are common to several Member States, as well as best practices identified in one Member State that could be replicated. Moreover, you could refer to your activities in the area of the four pillars and sub-topics (an overview of all sub-topics can be found below), and, if you represent a Network of national organisations, to the support you might have provided to one of your national members.

Overview topics for contribution

Please provide any relevant information on horizontal developments here

5000 character(s) maximum

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 2021 Rule of Law Report and (2) any other significant developments since January 2021[1]. 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.

[1] Unless already covered in the input for the 2020 or the 2021 Rule of Law Reports.

Member State covered in contribution [only one choice possible]

If you wish to submit information concerning several Member States, please fill in the questionnaire.

There is no limit to the number of contributions submitted by a single participant.

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czechia
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg

- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovak Republic
- Slovenia
- Spain
- Sweden

I. Justice System

A. Independence

Appointment and selection of judges, prosecutors and court presidents (incl. judicial review)

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

3000 character(s) maximum

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)

3000 character(s) maximum

Promotion of judges and prosecutors (incl. judicial review)

3000 character(s) maximum

Allocation of cases in courts

3000 character(s) maximum

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)

3000 character(s) maximum

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)

3000 character(s) maximum

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

3000 character(s) maximum

Independence/autonomy of the prosecution service

3000 character(s) maximum

Independence of the Bar (chamber/association of lawyers) and of lawyers

3000 character(s) maximum

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

3000 character(s) maximum

B. Quality of justice

(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under section

2)

Accessibility of courts (e.g. court/legal fees, legal aid, language)

3000 character(s) maximum

Resources of the judiciary (human/financial/material)

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

3000 character(s) maximum

Training of justice professionals (including judges, prosecutors, lawyers, court staff)

3000 character(s) maximum

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)

3000 character(s) maximum

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)

3000 character(s) maximum

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

3000 character(s) maximum

C. Efficiency of the justice system

(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under section 2)

Length of proceedings

3000 character(s) maximum

Other - please specify

3000 character(s) maximum

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)

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).

3000 character(s) maximum

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

3000 character(s) maximum

Information on the implementation of measures foreseen in the strategic anti-corruption framework (if applicable). If available, please provide relevant objectives and indicators.

3000 character(s) maximum

B. Prevention

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.

3000 character(s) maximum

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)

3000 character(s) maximum

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)

3000 character(s) maximum

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

3000 character(s) maximum

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).

3000 character(s) maximum

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

3000 character(s) maximum

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

3000 character(s) maximum

C. Repressive measures

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

3000 character(s) maximum

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.

3000 character(s) maximum

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)

3000 character(s) maximum

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

3000 character(s) maximum

Other - please specify

3000 character(s) maximum

III. Media Freedom and Pluralism

A. Media authorities and bodies

(Cf. Article 30 of Directive 2018/1808)

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

3000 character(s) maximum

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

3000 character(s) maximum

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

3000 character(s) maximum

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

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

3000 character(s) maximum

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

3000 character(s) maximum

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

C. Framework for journalists' protection

Rules and practices guaranteeing journalist's independence and safety

3000 character(s) maximum

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

3000 character(s) maximum

Access to information and public documents (incl. procedures, costs/fees, timeframes, administrative /judicial review of decisions, execution of decisions by public authorities)

3000 character(s) maximum

Lawsuits (incl. SLAPPs - strategic litigation against public participation) and convictions against journalists (incl. defamation cases) and measures taken to safeguard against abusive lawsuits

3000 character(s) maximum

Other - please specify

3000 character(s) maximum

IV. Other institutional issues related to checks and balances

A. The process for preparing and enacting laws

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

3000 character(s) maximum

Cross-border investments within the EU are a crucial cornerstone for the functioning of the Internal Market. For example, more than 3 million employees work for EU companies in which German investors hold a

participation. One of the defining factors for companies to invest cross-border is legal certainty and protection against arbitrary measures by the host state. This not only applies to administrative decisions, but also to policy changes targeting foreign companies in an unjustified, discriminatory manner.

Unfortunately, in a number of Member States the legal standards on the use of impact assessments, stakeholders'/public consultations, transparency and quality of the legislative process, defined by EU law, are not always fully respected and implemented. In this context, there still occurs discrimination and unfair treatment against companies from other EU Member States. Whilst policy changes are of course in the discretion of the democratically elected policy makers, legislative changes that are designed to only target foreign investors in an arbitrary way are breaching EU law. We thus encourage the EU Commission in its plans to create a single rulebook to codify and specify investor rights to enhance legal certainty and protection. EU law tends to be less specific than rules enshrined in bilateral investment treaties concluded with third countries. This needs to change.

Codification is needed in particular as to:

- the definition of what constitutes expropriation by the host state (not only via administrative, but also via legislative acts)
- the right for compensation
- procedural and substantive rights for investors vis-à-vis discriminatory public policy changes
- the extent to which measures interfere with the distinct and reasonable expectations of the investors arising out of the investment
- the specification of the principle of good administration

Even more important than codification and specification of investors rights is reliable, efficient, and independent enforcement of those rights vis-à-vis the host state. If they cannot be efficiently enforced, they do not properly serve their purpose (see more under C. Accessibility and judicial review of administrative decisions).

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)

3000 character(s) maximum

Regime for constitutional review of laws

3000 character(s) maximum

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

3000 character(s) maximum

B. Independent authorities

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

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

3000 character(s) maximum

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.

3000 character(s) maximum

C. Accessibility and judicial review of administrative decisions

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

3000 character(s) maximum

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).

3000 character(s) maximum

As stated above, there still occurs discrimination and unfair treatment against companies from other EU Member States within the EU. However, investors are only encouraged to invest in the EU if their investments are sufficiently protected against arbitrary measures by the host state. This applies to companies of all sizes, be it small, medium or large companies.

Unfortunately, the recent termination of the existing bilateral investments treaties within the EU (so-called intra-EU BITs) has led to a significant decrease in investment protection. To enforce rights against discriminatory measures of a host state, EU investors are now obliged to take recourse before the national courts of the host state.

However, in our opinion, some Member States lack effective and independent judicial protection to enforce investors' rights, depriving EU investors of protection of their rights. Surveys and studies such as the World Justice Report and Ease of Doing Business confirm that there is still a lack of legal protection and judicial

independence in several EU Member States. The Commission itself is criticizing this and requests the Member States to improve their national legal systems, for example in the country specific recommendations or within rule of law proceedings or verification proceedings. As to efficiency, the EU Justice Scoreboard demonstrates year after year, how lengthy procedures in judicial branches in some Member States are, causing the investment to be a loss.

We thus believe that only a mechanism on EU level binding to national jurisdictions will lead to the urgently needed improvements in enforcement of EU investor rights:

- a) It would guarantee independence from executive interference of the host state.
- b) As the conclusions of such a mechanism would be binding, no margin to avert the enforcement of rightful claims of EU investors would be given to national jurisdictions.
- c) A dedicated mechanism would involve experts for investment disputes, who will provide profound knowledge in EU law when it comes to EU cross-border investment protection cases.
- d) The mechanism would establish harmonised standards for investment protection proceedings that would have to be applied on an EU wide basis. It would thus remedy discrepancies that arise from diverging legal opinions of national courts in a much more efficient way than via preliminary rulings or lengthy infringement procedures.
- e) Last, a binding EU mechanism would guarantee that the requirements of the ECJ in its “Achmea” judgement are respected.

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

3000 character(s) maximum

D. The enabling framework for civil society

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.)

3000 character(s) maximum

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

3000 character(s) maximum

E. Initiatives to foster a rule of law culture

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.)

3000 character(s) maximum

Other - please specify

3000 character(s) maximum

As discussed above, the enforcement of investor rights in some Member States does not live up to EU standards, set out in the EU treaties and the rulings of the European Court of Justice, thereby breaching the rule of law principle.

To foster a rule of law culture, we propose a binding dispute settlement mechanism on EU level with enforceable decisions, which is a necessary element of an effective investor protection. Infringement and preliminary proceedings before the European Court of Justice (ECJ) do not suffice, as they are time consuming and depend on the capacities and willingness of the national judicial bodies.

A binding mechanism is necessary for amicable dispute resolution to be a success, thereby fostering a rule of law culture: The risk of binding judicial proceedings on EU level will make states willing to treat investors fairly, to respect EU and international law, to improve their legal systems and to engage in a dialogue with investors and the EU Commission.

Contact

rule-of-law-network@ec.europa.eu