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2020 Rule of Law Report - The rule of law situation in the European
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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**2020 Rule of Law Report
The rule of law situation in the European Union**

{SWD(2020) 300-326}

*The rule of law helps protect people from the rule of the powerful.
It is the guarantor of our most basic of every day rights and freedoms.
It allows us to give our opinion and be informed by a free press.*

President von der Leyen, State of the Union Address 2020

1. Introduction

The European Union is based on a set of shared values, including fundamental rights, democracy, and the rule of law.¹ These are the bedrock of our societies and common identity. No democracy can thrive without independent courts guaranteeing the protection of fundamental rights and civil liberties, nor without an active civil society, and a free and pluralistic media. Globally, the EU is recognised as having very high standards in these areas.² Nevertheless, these high standards are not always equally applied, improvements can be made, and there is always a risk of a backwards step. Standing up for our fundamental values is a shared responsibility of all EU institutions and all Member States, and all should play their part.

*What is the rule of law?*³

The rule of law is enshrined in Article 2 of the Treaty on European Union as one of the common values for all Member States. Under the rule of law, all public powers always act within the constraints set out by law, in accordance with the values of democracy and fundamental rights, and under the control of independent and impartial courts. The rule of law includes principles such as legality, implying a transparent, accountable, democratic and pluralistic process for enacting laws; legal certainty; prohibiting the arbitrary exercise of executive power; effective judicial protection by independent and impartial courts, effective judicial review including respect for fundamental rights; separation of powers; and equality before the law. These principles have been recognised by the European Court of Justice and the European Court of Human Rights. In addition, the Council of Europe has developed standards and issued opinions and recommendations which provide well-established guidance to promote and uphold the rule of law.

The rule of law is a well-established principle. While Member States have different national identities, legal systems and traditions, the core meaning of the rule of law is the same across the EU. Respect for the rule of law is essential for citizens and business to trust public institutions, and its key principles are supported by citizens in all Member States.⁴ The rule of law has a direct impact on the life of every citizen. It is a precondition for ensuring equal

¹ Article 2 of the Treaty on European Union. The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

² World Justice Project – Rule of Law index; World Economic Forum – The global competitiveness report; Transparency International – Corruption perceptions index; Reporters Without Borders – World press freedom index.

³ See COM(2019) 163 “Further strengthening the rule of law in the Union: state of play and possible next steps”, and COM(2019) 343 “Strengthening the rule of law within the Union: a blueprint for action”. Recent case law of the European Court of Justice is also of particular importance.

⁴ Special Eurobarometer 489 – rule of law.

treatment before the law and for the defence of EU citizens' rights. It is essential to the implementation of EU laws and policies, and central to a Union of equality, opportunity and social fairness. The particular circumstances of 2020 have brought additional challenges to citizens' rights, and some restrictions on our freedoms, such as freedom of movement, freedom of assembly or freedom to conduct a business, had to be applied to address the COVID-19 pandemic. Effective national checks and balances upholding respect for the rule of law are key to ensuring that any such restrictions on our rights are limited to what is necessary and proportionate, limited in time and subject to oversight by national parliaments and courts.

Strengthening the rule of law: a priority for an effective functioning of the Union

The EU is based on the rule of law. Threats to the rule of law challenge its legal, political and economic basis. Deficiencies in one Member State impact other Member States and the EU as a whole. Ensuring respect for the rule of law is a primary responsibility of each Member State, but the Union has a shared stake and a role to play in resolving rule of law issues wherever they appear. Respect for the rule of law is also at the core of the functioning of the internal market, of the cooperation in the justice area based on mutual trust and recognition, and of the protection of the financial interests of the Union as recently underlined by the European Council.⁵ If the EU is to succeed in the task of a sustainable and resilient recovery, it is critical that its tools and instruments can work in an environment grounded in the rule of law.

The rule of law is also an important theme for the EU beyond its borders. The EU will continue to pursue a strong and coherent approach between its internal rule of law policies and how the rule of law is embedded in the work with accession and neighbourhood countries as well as in all its external action, at bilateral, regional and multilateral level.

Guided by the universal values and principles embedded in the UN Charter and international law, the EU is a staunch defender of human rights, democracy and the rule of law throughout the world as demonstrated by the new EU Action Plan for Human Rights and Democracy 2020-2024,⁶ and in line with the Sustainable Development Goals.⁷ Upholding the rule of law at global level includes strengthening cooperation on rule of law issues with international and regional organisations, such as the United Nations, the Council of Europe and the Organisation for Security and Cooperation in Europe.

In the last decade, the EU has developed and tested a number of instruments to help enforce the rule of law.⁸ Further debates at EU and national level on how to strengthen the EU's ability to address such situations were triggered by severe rule of law challenges in some Member States. In its Communication of July 2019, the Commission proposed that the EU and its Member States should increase efforts to promote a robust political and legal culture supporting the rule of law, and should develop instruments preventing rule of law problems from emerging or deepening.⁹

⁵ Conclusions of European Council of 17-21 July 2020: “*The Union's financial interests shall be protected in accordance with the general principles embedded in the Union Treaties, in particular the values of Article 2 TEU [Treaty on European Union]. The European Council underlines the importance of the protection of the Union's financial interests. The European Council underlines the importance of the respect of the rule of law.*”

⁶ JOIN(2020) 5 final

⁷ <https://www.un.org/sustainabledevelopment/>

⁸ Rule of law toolbox at EU level. https://ec.europa.eu/info/sites/info/files/rule_of_law_factsheet_1.pdf.

⁹ See the Commission communications cited in footnote 3.

The European Rule of Law Mechanism

The Political Guidelines of President von der Leyen set out the intention to establish an additional and comprehensive rule of law mechanism as a key building block in the common commitment of the EU and the Member States to reinforce the rule of law. The mechanism is designed as a yearly cycle to promote the rule of law and to prevent problems from emerging or deepening. It focuses on improving understanding and awareness of issues and significant developments in areas with a direct bearing on the respect for the rule of law – justice system, anti-corruption framework, media pluralism and freedom, and other institutional issues linked to checks and balances. Identifying the challenges will help Member States to find solutions that protect the rule of law, with cooperation and mutual support from the Commission, other Member States, and stakeholders such as the Venice Commission.

The approach is based on close dialogue with national authorities and stakeholders, bringing transparency and covering all Member States on an objective and impartial basis. This is brought together each year in a rule of law report, including Member State-by-Member State assessment in 27 country chapters. This rule of law mechanism further reinforces and complements other EU instruments that encourage Member States to implement structural reforms in the areas covered by its scope, including the EU Justice Scoreboard¹⁰ and the European Semester¹¹, and now the Next Generation EU instrument. The assessments provided in the annual report would be a reference point for these instruments. Other elements in the EU's rule of law toolbox will continue to provide an effective and proportionate response to challenges to the rule of law where necessary.¹²

As well as deepening common understanding through dialogue, the rule of law mechanism will frame the Commission's support to Member States and national stakeholders in addressing rule of law challenges. Several instruments and funding help support structural reforms through technical assistance and funding of projects in the field of public administration, justice, anti-corruption and media pluralism. Specific and direct grants for civil society and networks (such as judicial, journalists) are also available for projects with a European dimension. Reforms would also benefit from expertise from recognised international bodies, in particular the Council of Europe, as well as from exchanges with practitioners from other Member States.

Deepening the EU's work on the rule of law needs close and continuous cooperation between EU institutions and Member States. A core objective of the European rule of law mechanism is to stimulate inter-institutional cooperation and encourage all EU institutions to contribute in accordance with their respective institutional roles. This is central to a European rule of law mechanism and reflects a long-standing interest both from the European Parliament¹³ and

¹⁰ The EU Justice Scoreboard is an annual comparative information tool aiming to assist the EU and Member States improving the effectiveness of their national justice systems by providing objective, reliable and comparable data on a number of indicators relevant for the assessment of the efficiency, quality and independence of justice systems in all Member States.

¹¹ Issues related to the rule of law are considered in the European Semester to the extent that these issues have an impact on the business environment, investment, economic growth and jobs.

¹² The European rule of law mechanism should be distinguished from other instruments such as the Article 7(1) TEU procedures or infringement procedures.

¹³ Resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights; Resolution of 14 November 2018 on the need for a comprehensive EU mechanism for the protection of democracy, the rule of law and fundamental rights.

the Council.¹⁴ Its common and objective basis, looking at all Member States equally, is designed with this aim. The Commission looks forward to supporting the work now under way in both institutions, including looking at following up on the European Parliament resolution currently under preparation.¹⁵ The European rule of law mechanism will help to streamline discussions on the rule of law at EU level and strengthen inter-institutional cooperation, allowing for an annual rhythm in the work of the European Parliament and the Council and a structured and targeted follow-up, as well as cooperation with national parliaments.

The rule of law mechanism is one element of a broader endeavour at EU level to strengthen the values of democracy, equality, and respect for human rights, including the rights of persons belonging to minorities. It will be complemented by a set of upcoming initiatives including the European Democracy Action Plan, the renewed Strategy for the Implementation of the Charter of Fundamental Rights, and targeted strategies to address the needs of the most vulnerable in our societies to promote a society in which pluralism, non-discrimination, justice, solidarity and equality prevail.

*The first Rule of Law Report*¹⁶

Through this report, including its 27 country chapters presenting the Member State-specific assessments, the aim of the Commission is to set out first key elements of the situation in the Member States, on which the new cycle of the rule of law mechanism and future reports will be able to build.

The assessment contained in the 27 country chapters, which are an integral part of this rule of law report, has been prepared in line with the scope and methodology discussed with Member States.¹⁷ The work focused on four main pillars: the justice system, the anti-corruption framework, media pluralism, and other institutional checks and balances. For each pillar, the methodology recalled the EU law provisions relevant for the assessment. It also refers to opinions and recommendations from the Council of Europe, which provide useful guidance. These four areas were identified in the preparatory process as key interdependent pillars for ensuring the rule of law. Effective justice systems and robust institutional checks and balances are at the heart of the respect for the rule of law in our democracies. However, laws and strong institutions are not enough. The rule of law requires an enabling ecosystem based on respect for judicial independence, effective anti-corruption policies, free and pluralistic media, a transparent and high-quality public administration, and a free and active civil society. Preventive policies and grassroots campaigns raise citizens' awareness and maintain respect for the rule of law high on the agenda. Investigative journalists, independent media and the scrutiny of civil society are vital to keeping decision-makers accountable.

The report is the result of close collaboration with Member States, both at political level in the Council and through political and technical bilateral meetings, and relies on a variety of sources. This methodology will become part of the annual process for the rule of law mechanism. A network of national rule of law contact points has been established to help setting up the mechanism and its methodology, and to act as an ongoing channel of

¹⁴ The Presidency conclusions of the **General Affairs Council** in November 2019 underlined that the Commission's reports could serve as a basis for the annual Council rule of law dialogue. <https://www.consilium.europa.eu/media/41394/st14173-en19.pdf>.

¹⁵ The establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights (2020/2072(INL)).

¹⁶ https://ec.europa.eu/info/publications/2020-rule-law-report-communication-and-country-chapters_en

¹⁷ https://ec.europa.eu/info/files/2020-rule-law-report-methodology_en

communication. The network has met two times. All Member States participated in the process of preparing the report, providing written contributions in early May¹⁸ and joining dedicated virtual country visits held in May until July.¹⁹ During these country visits, the Commission discussed rule of law developments with Member States' national authorities, including judicial and independent authorities, law enforcement, as well as other stakeholders, such as journalists' associations and civil society. Prior to the adoption of this report, Member States have been given the opportunity to provide factual updates on their country chapter.

A targeted stakeholder consultation was also carried out, providing valuable horizontal and country-specific contributions from a variety of EU agencies, European networks, national and European civil society organisations and professional associations and international and European actors.²⁰ These include the Fundamental Rights Agency, the European Network of Councils for the Judiciary, the European Network of the Presidents of Supreme Courts of the EU, the European Network of National Human Rights Institutions (ENNHRI), the Council of Bars and Law Societies of Europe (CCBE), the Council of Europe, the Organisation for Security and Co-operation in Europe (OSCE), and the Organisation for Economic Co-operation and Development (OECD), as well as national and international civil society and journalists' organisations.

The country chapters rely on a qualitative assessment carried out by the Commission, focusing on a synthesis of significant developments since January 2019 introduced by a brief factual description of the legal and institutional framework relevant for each pillar. The assessment presents both challenges and positive aspects, including good practices. The Commission has ensured a coherent and equivalent approach by applying the same methodology and examining the same topics in all Member States, while remaining proportionate to the situation and developments. The country chapters do not purport to give an exhaustive description of all relevant elements of the rule of law situation in Member States but to present significant developments.²¹ Based on this first experience and on the evolution of the situation in Member States, other relevant aspects can be included or further developed in future years.

The assessment also refers to EU law requirements, including the rulings from the European Court of Justice. In addition, the recommendations and opinions of the Council of Europe provide a useful framework of reference for standards and best practices. The Council of Europe further contributed to the assessment in the country chapters by providing an overview of its recent opinions and reports concerning EU Member States.²²

The assessment in the rule of law report draws on this process of dialogue, consultation and expert input. It offers a solid and well-documented basis for discussion with and further work of the European Parliament and the Council. The European rule of law mechanism is set to evolve and continue to improve through inter-institutional discussions and dialogue with Member States, as a collective learning exercise and as a trigger for EU support.

¹⁸ https://ec.europa.eu/info/publications/2020-rule-law-report-input-member-states_en

¹⁹ More detailed information on the country visits can be found in the country chapters.

²⁰ https://ec.europa.eu/info/publications/2020-rule-law-report-targeted-stakeholder-consultation_en

²¹ Examples of elements which have not been systematically examined this year concern accountability mechanisms for law enforcement, the role and independence of public service media, as well as measures taken to ensure that public authorities effectively implement the law and to prevent abuse of administrative powers.

²² https://ec.europa.eu/info/files/2020-rule-law-report-stakeholder-contribution-council-europe_en

The COVID-19 pandemic: a stress test for rule of law resilience

Beyond the immediate health and economic impact, the COVID-19 crisis created a wide variety of challenges for society, and more specifically for public administrations and legal and constitutional systems. The crisis has proven to be a real-life stress test for the resilience of national systems in times of crisis. All Member States have taken exceptional measures in order to protect public health, and most have declared some form of public emergency, or granted special emergency powers, under constitutional provisions or public health protection laws. Changing or suspending customary national checks and balances can pose particular challenges for the rule of law, and these developments became a major issue of public debate in certain Member States. As a result, the Commission has been closely monitoring the application of emergency measures and this is reflected in the country chapters, where appropriate.

The Commission has underlined that responses to the crisis must respect our fundamental principles and values as set out in the Treaties. Key tests for the emergency measures have included whether measures were limited in time, whether safeguards were in place to ensure that measures were strictly necessary and proportionate, and whether parliamentary and judiciary oversight as well as media and civil society scrutiny could be maintained.²³ As the most acute phase of the crisis has eased, another key issue has been the way in which these powers have been scaled down or phased out. With the pandemic still ongoing, emergency regimes or emergency measures are still in place in a number of Member States. It will therefore be necessary for the Commission to continue its monitoring. The situation is also being examined by international organisations,²⁴ and the European Parliament has requested the Venice Commission for an opinion on the measures taken in Member States and their impact on democracy, the rule of law and fundamental rights.²⁵

Reactions to the crisis showed overall strong resilience of the national systems. In many Member States, courts have scrutinised emergency measures and political and legal debates took place on whether the emergency regimes applied were justified and proportionate, whether decisions were lawful, and whether the right procedures and instruments had been used. The ongoing monitoring of the Commission and national debates already point to a number of findings and reflections which can further feed the national debates and improve the legal and political response.

A first reflection would be on the rule of law culture and on the level of trust in the checks and balances in Member States. This concerns in particular the interplay between national institutions and their sincere cooperation, the role of parliamentary scrutiny and opportunities to maintain consultation and transparency rules for citizens. The COVID-19 pandemic has highlighted the importance of ensuring that urgent and effective decision-making necessary for the protection of public health does not mean by-passing established checks and balances

²³ The Council of Europe provided a useful guidance on the criteria to consider. These include whether the laws and emergency regimes were adopted in line with the applicable procedures, whether a state of emergency and the emergency measures are all strictly limited in time, a narrow definition of emergency powers, whether the “easing” of checks and balances is limited and proportionate, and on the indispensable parliamentary control of executive action. <https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40> and [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2020\)005rev-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2020)005rev-e).

²⁴ See for example the Council of Europe’s Venice Commission “respect for democracy, human rights and the rule of law during states of emergency – reflections”, 26 May 2020, CDL-PI(2020)005rev.

²⁵ www.venice.coe.int/webforms/events/?id=2967

– including Parliaments – in particular when measures affect the fundamental freedoms and rights of the population as a whole.

A second reflection would be on the implications for the work of media and civil society when exercising democratic scrutiny. When emergency powers lower institutional checks on the decision makers, the scrutiny of public decisions by media and civil society becomes all the more important. However, in certain Member States, media and civil society have been facing new obstacles. Such situations have, among others, contributed to spreading disinformation and lowering trust in public authorities, which are damaging to the rule of law.²⁶

A third reflection is on the resilience of the justice system. Access to an independent court and judicial review is a fundamental element of the rule of law. The partial closure of national courts – which also act as Union courts when applying EU law – has revealed a major vulnerability. A number of Member States have taken measures to reduce the impact of the pandemic and were able to re-start hearings applying distancing rules or videoconferencing techniques. The pandemic also gave a boost to the digitalisation of proceedings in a number of Member States.

These reflections echo broader rule of law debates in a number of Member States on the resilience of their national systems.²⁷ In that sense, the COVID-19 pandemic has underlined how the rule of law has a direct impact on people’s daily lives.

2. Key aspects of the rule of law situation in Member States

Member States’ constitutional, legal and political systems generally reflect high rule of law standards. The key principles of the rule of law – legality, legal certainty, prohibiting the arbitrary exercise of executive power, effective judicial protection by independent and impartial courts, including respect for fundamental rights, separation of powers, and equality before the law– are enshrined in national constitutions and translated in legislation. However, there are also serious challenges, cases where the resilience of rule of law safeguards is being tested and where shortcomings become more evident.

Looking at the four pillars identified for the mechanism, the next four sections highlight a number of significant common themes and trends, specific challenges and positive developments.²⁸ Examples of developments in Member States which stand out in particular are given, drawn from the assessment for all 27 Member States to be found in the country chapters.²⁹ The aim is to stimulate a constructive debate on consolidating the rule of law and encourage all Member States to examine how challenges can be addressed, learn from each other’s experiences and show how the rule of law can be further strengthened in full respect for national traditions and national specificities.

²⁶ See also Joint Communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: Tackling COVID-19 disinformation - Getting the facts right, 10.6.2020, JOIN(2020) 8 final.

²⁷ Other potential issues include the resilience of the anti-corruption framework to corruption-related risks in the area of public procurement during situations of emergency.

²⁸ Nevertheless, the analysis does not represent an exhaustive overview of all developments in Member States. See also footnote 18.

²⁹ The developments referred to in the examples should be read in their context described in the relevant country-chapters. Hyperlinks have been added to facilitate such a contextual reading.

2.1 Justice systems

Effective justice systems are essential for upholding the rule of law. Independence, quality and efficiency are the defined parameters of an effective justice system, whatever the model of the national legal system and tradition in which it is anchored. Whilst the organisation of justice in the Member States falls within the competence of the Member States, when they are exercising that competence, Member States must ensure that their national justice systems provide for effective judicial protection.³⁰ The independence of national courts is fundamental to ensuring such judicial protection.³¹ National courts ensure that the rights and obligations provided under EU law are enforced effectively. As re-affirmed by the European Court of Justice, the very existence of effective judicial review to ensure compliance with EU law is of the essence for the rule of law.³² Effective justice systems are also the basis for mutual trust, which is the bedrock of the common area of freedom, justice and security,³³ an investment friendly environment, the sustainability of long-term growth and the protection of EU financial interests. The European Court of Justice has further clarified the requirements stemming from EU law regarding judicial independence. The case-law of the European Court of Human Rights also provides for key standards to be respected to safeguard judicial independence.

The functioning of the justice system is high on national political agendas, as illustrated by the fact that almost all Member States are engaged in justice reforms,³⁴ even if their objective, scope, form and state of implementation vary. The areas of reform range from structural constitutional changes, such as establishing a council for the judiciary or new courts, to concrete operational measures, for example on the digitalisation of case management in courts. The dialogue has shown that Member States follow closely reforms and rule of law developments in other Member States, and the evolving case law of the European Court of Justice and the European Court of Human Rights.

Perceived judicial independence across the EU

In Eurobarometer surveys conducted among both companies and the general public in 2020,³⁵ the same Member States tend to cluster around the higher and lower end of the scale. The latest Eurobarometer survey shows that the perception of independence among the general public is very high (above 75%) in six Member States. These ratings have remained more or less stable over the past four years. At the same time, the level of perceived independence has decreased in nine Member States over the past year and in a few Member States, the level of perceived judicial independence remains very low (below 30%).

Efforts aimed at strengthening structural safeguards for judicial independence are ongoing

³⁰ Judgement of 24 June 2019, *Commission v Poland*, C-619/18, EU:C:2019:531, paragraphs 52 and 54; Judgement of 5 November 2019, *Commission v Poland*, C-192/18, EU:C:2019:924, paragraphs 102 to 103.

³¹ Judgement of 27 February 2018, *Associação Sindical dos Juizes Portugueses*, C-64/16, EU:C:2018:117; Judgement of 7 February 2019, *Escribano Vindel*, C-49/18, EU:C:2019:106

³² Judgement of 28 March 2017, *Rosneft* C-72/15, EU:C:2017:236, paragraph 73; Judgement of 27 February 2018, *Associação Sindical dos Juizes Portugueses*, C-64/16, EU:C:2018:117, paragraph 36; Judgement of 25 July 2018, *LM*, C-216/18, EU:C:2018:586, paragraph 51; Judgement of 24 June 2019, *Commission v Poland*, C-619/18, EU:C:2019:531, paragraph 46; Judgement of 19 November 2019, *A.K.*, C-585/18, C-624/18, and C-625/18, EU:C:2019:982 paragraph 120.

³³ Judgement of 25 July 2018, *LM*, C-216/18, EU:C:2018:586, paragraph 49.

³⁴ See also Figure 1, 2020 EU Justice Scoreboard.

³⁵ 2020 EU Justice Scoreboard. Eurobarometer surveys FL 483 and 484 of January 2020. The Commission has also used other sources, such as the World Economic Forum.

Efforts are under way in a number of Member States aiming at strengthening judicial independence and reducing the influence of the executive or legislative power over the judiciary. These include setting up or strengthening an independent national council for the judiciary. The method for the appointment of judges is one of the elements which can have an impact on judicial independence and public perceptions of independence. A number of Member States have envisaged or adopted reforms aimed at strengthening the involvement of the judiciary in the procedure, or defining clear criteria or judicial review mechanisms. Reforms of disciplinary procedures for judges and prosecutors also demonstrate an increased attention to the need for a balance that provides essential safeguards while preserving accountability.

In [Malta](#), for example, a number of reforms of the justice system have recently been adopted by Parliament to strengthen judicial independence. In [Czechia](#), reforms under preparation seek to increase transparency in the appointment, promotion and dismissal of judges. In [Cyprus](#), since July 2019, the appointment of judges is subject to new detailed criteria, and further changes are under discussion. In [Latvia](#), new powers have been granted to the Council for the Judiciary with a view to strengthening judicial independence.

Debates, reflections and reform plans on strengthening legal and constitutional safeguards for judicial independence are also taking place in Member States where judicial independence has traditionally been seen as high or even very high.³⁶ Member States where the separation of powers and respect for judicial independence relies more on political tradition than on detailed legal safeguards reported that developments in other Member States have been one reason behind steps to apply more formal systems.

In [Ireland](#), for example, an independent Judicial Council was established at the end of 2019 to safeguard judicial independence. In [Luxembourg](#), a planned revision of the Constitution aims at introducing new elements to strengthen judicial independence. In [Finland](#), in January 2020, an independent agency responsible for the administration of the courts, the National Courts Administration, has taken over functions previously exercised by the Ministry of Justice. In the [Netherlands](#), reforms are envisaged to limit the influence of the executive and the legislature in the appointment of Supreme Court judges and members of the Council of the Judiciary. In [Sweden](#), a Commission of Inquiry on ‘Strengthening the protection of democracy and the independence of the judiciary’ was set up in February 2020 with the objective to bring forward proposals for legislative and constitutional reforms.

The independence of the prosecution with regard to the executive is increasingly discussed as it has important implications for the capacity to fight crime and corruption

While there is no single model in the EU for the institutional set-up of the prosecution service, or for appointment, dismissal or disciplinary procedures for prosecutors at different levels, institutional safeguards can help to ensure that the prosecution is sufficiently independent and free from undue political pressure.³⁷ A judgment of the European Court of Human Rights³⁸ recently underlined that the independence of prosecutors is a key element for the maintenance of judicial independence.

³⁶ See previous footnote.

³⁷ Council of Europe standards. The Venice Commission notes in its Rule of Law Checklist, concerning the prosecution service, that ‘[t]here is no common standard on the organisation of the prosecution service, especially about the authority required to appoint public prosecutors, or the internal organisation of the public prosecution service. However, sufficient autonomy must be ensured to shield prosecutorial authorities from undue political influence’.

³⁸ Judgment of 5 May 2020, *Kövesi v. Romania*, application no. 3594/19, § 208.

Reforms to strengthen the independence of the prosecution are ongoing in [Malta](#), where a fully separate prosecution service is being set up, ending the traditional role of the prosecutor general also acting as legal advisor to the government. [Cyprus](#) is also preparing legislative changes which aim at restructuring the Law Office of the Republic with the creation of separate, self-contained directorates within the Law Office.

The right of the executive to give formal instructions to the prosecution, including in individual cases, has been a particular topic of debate in certain Member States such as [Germany](#) and [Austria](#),³⁹ in particular following the European Court of Justice case law on the European Arrest Warrant.⁴⁰ In [Poland](#), the double role where the Minister of Justice is also the Prosecutor General has raised particular concerns, as it increases the vulnerability to political influence as regards the organisation of the prosecution service and the investigation of cases. The role of the Prosecutor General towards lower-ranking prosecutors is also a source of concerns in certain Member States. In [Bulgaria](#), for example, legislative procedures to answer long-standing concerns about an effective accountability regime for the Prosecutor General remain to be finalised.

Judicial independence remains an issue of concern in some Member States

Despite reform efforts in a number of Member States to enhance judicial independence, developments raise concerns in a few of them. These concerns vary in the type of measures they relate to and in their intensity and scope. They range from concerns about the capacity of councils for the judiciary to exercise their functions to more structural concerns over an increasing influence of the executive and legislative branch over the functioning of the justice systems, including constitutional courts or Supreme Courts. Some of these developments have led the Commission to launch infringement proceedings or express concerns in the context of the Article 7(1) TEU procedures.

In some Member States, the direction of change has given rise to serious concern about the impact of reforms on judicial independence. This was one of the issues raised in the Article 7(1) TEU procedure initiated by the European Parliament regarding [Hungary](#). In particular, the independent National Judicial Council faces challenges in counter-balancing the powers of the President of the National Office for the Judiciary in charge of the management of the courts; the election of a new President may open the way for reinforced cooperation. Other concerns related to new rules allowing for the appointment to the Supreme Court of members of the Constitutional Court, elected by Parliament, outside the normal appointment procedure. [Poland](#)'s justice reforms since 2015 have been a major source of controversy, both domestically and at EU level, and have raised serious concerns, several of which persist. This led the Commission to launch the procedure under Article 7(1) TEU in 2017, which is still under consideration by the Council. In 2019 and 2020, the Commission launched two infringement procedures to safeguard judicial independence and the Court of Justice has granted interim measures to suspend the powers of the Supreme Court's Disciplinary Chamber with regard to disciplinary cases concerning judges.

Challenges also remain in certain other Member States. In [Bulgaria](#),⁴¹ the composition and functioning of the Supreme Judicial Council and the Inspectorate to the Supreme Judicial

³⁹ The right of the executive is accompanied by institutional safeguards or long-standing conventions limiting in practice the risk that this power could be abused by the executive.

⁴⁰ Notably the Judgment of 27 May 2019, *OG and PI*, Joined C-508/18 and C-82/19 PPU, EU:C:2019:456 (on the European Arrest Warrant).

⁴¹ Since accession to the EU in 2007, Bulgarian reforms in areas including justice and anti-corruption have been followed by the Commission through the Cooperation and Verification Mechanism (CVM). The

Council have also raised concerns which are still pending. In [Romania](#),⁴² controversial reforms enacted in 2017-2019 with a negative impact on judicial independence continue to apply.⁴³ In 2020, the government expressed its commitment to restore the path of judicial reform after the backtracking of previous years, leading to a significant decrease in tensions with the judiciary. In [Croatia](#), low administrative capacity creates difficulties for the State Judicial Council and the State Attorney's Council in fulfilling their mandate, with their role with respect to the appointment of judges and prosecutors having been reduced and an upgraded IT system for the verification of asset declarations lacking. In [Slovakia](#), there are long-standing concerns regarding the independence and integrity of the justice system. In April 2020, the government announced important reform plans to strengthen judicial independence and integrity, as well as the appointment process for the Constitutional Court.

Political attacks and media campaigns against judges and prosecutors are frequently reported in some Member States. Measures, including disciplinary ones, have also been taken affecting the freedom of judges to submit preliminary references to the Court of Justice of the European Union. Such attacks and measures can have a chilling effect and a negative impact on public trust in the judiciary, affecting its independence.⁴⁴ In a number of cases, the attacks target judges and prosecutors who are taking public positions to denounce developments which could damage the judiciary as a whole. In its recent decision of 5 May 2020, the European Court of Human Rights reaffirmed the freedom of expression for prosecutors and judges to participate in public debates on legislative reforms affecting the judiciary, and more generally on issues concerning the independence of the judiciary.⁴⁵

The COVID-19 pandemic has further highlighted the importance of digitalisation of justice systems

For a number of years, Member States have been striving to make the best use of ICT tools to facilitate the communication of courts with parties and lawyers, for an efficient management of workload, and to increase transparency, including on-line access to court decisions. Many initiatives are ongoing in Member States to deliver real improvements for the users of justice systems. The COVID-19 pandemic has given an extra impetus to these efforts, showing the importance of accelerating reforms to digitalise the handling of cases by the judicial institutions, the exchange of information and documents with parties and lawyers, and the continued and easy access to justice for all. A number of initiatives are being taken ranging from allowing court users to monitor on-line the stages of proceedings to modelling judgments according to a standard enabling their machine-readability.

Some Member States are already well advanced in the implementation of such systems. For example, in [Estonia](#) and [Latvia](#), the justice systems are characterised by some of the most advanced information and communication technologies used in courts. They provide a high

Communication on strengthening the rule of law (COM(2019) 343) states that once the CVM mechanism ends, monitoring should continue under horizontal instruments. The rule of law mechanism provides the framework for taking these issues forward in the future.

⁴² Since accession to the EU in 2007, Romanian reforms as regards justice and anti-corruption have been followed by the Commission through the Cooperation and Verification Mechanism (CVM). The Communication on strengthening the rule of law (COM(2019) 343) states that once the special CVM mechanism ends, monitoring should continue under horizontal instruments. The rule of law mechanism provides the framework for taking these issues forward in the future.

⁴³ An example of this is the Prosecutorial Section for Investigation of Offences in the Judiciary, tasked exclusively with the prosecution of crimes committed by judges and prosecutors, which continues to operate.

⁴⁴ This is especially the case where an official reaction or effective possibilities for redress are lacking.

⁴⁵ Judgment of 5 May 2020, *Kövesi v. Romania*, application no. 3594/19, §§ 201, 205, and 209. See also judgment of 23 June 2016, *Baka v. Hungary*, application no. 20261/12, §§ 156-157 and 164-167.

degree of accessibility and flexibility to court uses, and have also contributed greatly to the continued functioning of the courts with relatively little disruption during the COVID-19 pandemic. In [Slovenia](#), the digitalisation of the justice system for case management is well advanced and further developments are ongoing to improve electronic communication between courts and parties. [Hungary](#) also has a high level of digitalisation of justice, with a high availability of electronic means as regards online access to published judgements. In [Portugal](#), an amendment to the Code of Civil Procedure implemented the principle of ‘digital by default’ to all civil proceeding. In [Italy](#), a draft reform of the civil procedure is ongoing to provide for an exclusive online filing and a wider range of electronic means, including online payment of court fees. The Commission has underlined the importance of the digitalisation of justice systems in the context of the recovery plan.⁴⁶ These efforts could be supported through the future Digital Europe Programme and the Next Generation EU instrument.

Investing in justice is more than ever necessary for addressing efficiency challenges

Effective justice systems rely on adequate human and financial resources. While government expenditure on the justice system is in general increasing⁴⁷, in a number of Member States the judiciary has to cope with limited resources. Investment in justice systems is also indispensable for addressing the efficiency challenges that certain Member States still face. The excessive length of proceedings and backlogs in the justice systems need to be addressed through appropriate measures. The economic and social effects of the COVID-19 crisis has underlined the need to strengthen the resilience of the justice system, namely because caseload can be expected to increase. Inefficiency can generate mistrust in justice systems, which can become a pretext for inadequate justice reforms affecting the rule of law. Planned investments in the efficiency and quality of justice systems which benefit the business environment can be facilitated by the Next Generation EU programmes and the Recovery and Resilience Facility. In some Member States, the need for additional resources has been officially recognised in government programmes. For example, [Germany](#) is implementing a ‘Pact for the Rule of Law’, which includes significant additional resources, both at the federal level and the level of the *Länder*. Initiatives in [Austria](#) and [France](#) also aim at increasing the resources for the justice system.

2.2 Anti-corruption framework

The fight against corruption is essential for maintaining the rule of law. Corruption undermines the functioning of the state and of public authorities at all levels and is a key enabler of organised crime⁴⁸. Effective anti-corruption frameworks, transparency and integrity in the exercise of state power can strengthen legal systems and trust in public authorities. Fighting corruption needs to be based on evidence about its prevalence and form in a given country, the conditions that enable corruption and the legal, institutional and other incentives that can be used to prevent, detect and sanction corruption.

The fight against corruption cannot be reduced to a standard ‘one-size-fits-all’ set of measures. It also needs to take into account specific risk factors, which may vary between different Member States. Nevertheless, all Member States need tools in place to prevent, detect, curb and sanction corruption. The need for comprehensive prevention strategies that increase transparency and integrity in all sectors of society and focus on root causes, has long

⁴⁶ Europe's moment: Repair and Prepare for the Next Generation (COM(2020) 456 final)

⁴⁷ 2020 EU Justice Scoreboard

⁴⁸ EU Serious and Organised Crime Threat Assessment (EU SOCTA), 2017 Europol.

been recognised by the EU.⁴⁹ Such strategies should be based on an assessment of threats, vulnerabilities and risk factors. Likewise, the need for reliable and effective integrity measures, efficient corruption prevention systems and effective, accountable and transparent public institutions at all levels is also part of the EU approach to fighting corruption.

A comprehensive approach to fighting corruption must rely on a combination of prevention and repressive measures. This calls for independent and impartial justice systems that effectively enforce anti-corruption legislation by conducting impartial investigations and prosecutions, and effective, proportionate and dissuasive sanctions including the effective recovery of proceeds of corruption.⁵⁰ This in turn requires a robust legal and institutional framework, sufficient administrative and judicial capacity, as well as the political will for enforcement measures. Independent and pluralistic media, in particular investigative journalism and an active civil society, play an important role in the scrutiny of public affairs, detecting possible corruption and integrity breaches, raising awareness and promoting integrity. The fight against corruption also has an important EU dimension as it is linked to the protection of the financial interests of the Union⁵¹. The European Public Prosecutor Office will play a crucial role in this regard.⁵² Over the past few years, EU legislation was adopted to strengthen the fight against corruption, including standards to protect whistleblowers against all forms of retaliation.⁵³ Revised rules against money laundering, notably by setting up beneficial ownership registries of companies⁵⁴, and further steps to help the exchange of financial information and to speed up financial investigations⁵⁵, all have an important impact on facilitating the fight against corruption.

Corruption perceptions across the EU

The results of the Corruption Perception Index⁵⁶ show that ten Member States are in the top twenty of the countries perceived as least corrupt in the world, while the average score of the EU is globally good. Several Member States have improved their score compared to previous years, whereas others continue to score significantly lower than the other European countries.

The latest Eurobarometer perception surveys⁵⁷ show that corruption remains a serious concern for EU citizens and businesses. Over seven in ten Europeans (71%) believe that

⁴⁹ Council document 14310/19.

⁵⁰ Idem.

⁵¹ According to Article 325 TFEU, the Union and its Member States have to take appropriate measures to counter fraud and any other illegal activities affecting the financial interests of the Union. While fraud and corruption are distinct legal concepts, fraud cases against the EU budget might involve corruption. At the EU level, the EU's Anti-Fraud Office OLAF conducts internal and external investigations for the purpose of fighting fraud, corruption and other illegal activities affecting the financial interests of the Union.

⁵² The European Public Prosecutor's Office, currently being set up, will be an independent prosecution office of the EU, with the competence to investigate, prosecute and bring to judgment crimes against the EU budget, such as fraud, corruption or serious cross-border VAT fraud. The Member States currently participating in the European Public Prosecutor Office are Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Romania, Slovakia, Spain and Slovenia.

⁵³ Directive 2019/1937 of 23 October 2019 on the protection of persons who report breaches of Union law.

⁵⁴ Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and Directive (EU) 2018/1673 of 23 October 2018 on combating money laundering by criminal law.

⁵⁵ Directive (EU) 2019/1153 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences.

⁵⁶ <https://www.transparency.org/en/news/cpi-western-europe-and-eu>.

⁵⁷ Special Eurobarometer 502 'Corruption', June 2020 and Flash Eurobarometer 482 'Businesses' attitudes towards corruption in the EU', December 2019.

corruption is widespread in their country and over four in ten Europeans (42%) consider that the level of corruption has increased in their country. In the meantime, only 34% of respondents are of the opinion that their government's efforts to combat corruption are effective. In addition, more than six in ten European companies (63%) consider that the problem of corruption is widespread in their country and a majority of companies (51%) think that it is unlikely that corrupt people or businesses in their country would be caught, or reported to the police or prosecutors.

National anti-corruption strategies

A strategic anti-corruption framework offers the opportunity to translate political commitment and vision into concrete actions. National anti-corruption strategies can ensure that individual legislative or institutional loopholes are not addressed in isolation and that anti-corruption provisions are mainstreamed in all relevant policy sectors in order to have an effective impact on the ground. Several Member States have adopted comprehensive new or revised anti-corruption strategies with specific and measurable objectives, clear-cut budget and well-defined responsibilities of specialised institutions, as well as a strong involvement of relevant stakeholders.

For example, in January 2020, [France](#) adopted a multiannual national plan to fight corruption (2020-2022), covering both the preventive and repressive dimensions of corruption. Other Member States, such as [Bulgaria](#), [Croatia](#), [Czechia](#), [Estonia](#), [Greece](#), [Italy](#), [Lithuania](#), [Romania](#), and [Slovakia](#) have had comprehensive national anti-corruption strategies in place for several years. Whilst developing anti-corruption plans and strategies is important, their effective implementation and monitoring is key to ensure that progress is made.

Other Member States are in the process of preparing national anti-corruption strategies. In [Ireland](#), the government has announced its intention to tackle corruption more effectively, by following up on the ongoing comprehensive assessment of the various State bodies involved in preventive and repressive anti-corruption measures and the procedures in criminal law enforcement. Discussions are ongoing also in [Portugal](#), where a working group was established to prepare a national anti-corruption strategy. [Finland](#) and [Sweden](#), which have relied less on a strategic approach and more on practices, traditions and high standards of integrity and transparency to prevent corruption, are also now in the process of preparing national anti-corruption plans.

Strengthening the capacity of the criminal justice system to fight corruption

Some Member States have also carried out reforms to align their criminal legislation with international anti-corruption standards. [Latvia](#), for example, has recently amended its criminal law as regards the definition of several corruption offences, eliminating certain restrictions from the scope of bribery and trading in influence.

It is also of key importance for the institutions entrusted with enforcement of criminal law to work in an effective and impartial manner. It is fundamental for the judiciary, prosecution and law enforcement bodies to be equipped with adequate funding, human resources, technical capacity and specialised expertise. Measures to strengthen the capacity of the institutional framework to fight corruption and to reduce obstacles to effective prosecution have been introduced in some Member States. For example, the anti-corruption law adopted in January 2019 in [Italy](#) has tightened sanctioning for corruption crimes and suspended limitation periods after the first instance judgments. In addition, a comprehensive reform to streamline criminal procedure is being discussed in Parliament, as the dissuasive impact of sanctions is hampered by the excessive length of criminal proceedings. [Spain](#) has also sought to increase the capacity of prosecution by allocating additional resources and updating

criminal legislation to extend the statute of limitations for serious offences and introduce more severe sanctions for corruption-related crimes. Similarly, [France](#) has recently taken measures to reorganise the financial police, and a 2020 report showed that corruption-related cases have increased significantly as a proportion of all cases.

Striking the right balance between the privileges and immunities of public officials and ensuring that these are not used as obstacles to effective investigation and prosecution of corruption allegations is also important. [Greece](#) has taken measures to eliminate some important obstacles to the prosecution of high-level corruption related to immunities and special statutes of limitation by way of a constitutional review in 2019.

Significant efforts are ongoing in other Member States, often in response to specific challenges or societal pressure. Examples include [Malta](#), where the ongoing investigation and separate public inquiry into the assassination of investigative journalist Daphne Caruana Galizia unveiled deep corruption patterns and sparked a strong public demand for significantly strengthening the capacity to tackle corruption and wider rule of law reforms. A broad reform project has now been launched to address gaps and strengthen the institutional anti-corruption framework, including as regards law enforcement and prosecution. Similarly, in [Slovakia](#), the government announced a range of reforms in response to public outcry over the revelations made in the context of investigations into the murder of journalist Ján Kuciak and his fiancée Martina Kušnírová. Judicial procedures are still ongoing.

In some cases, ongoing reforms also respond to specific concerns in areas such as corruption or money laundering. For example, in [Austria](#), following certain high profile corruption cases, the government envisages possible reforms to further strengthen the control of political party financing by the Court of Audit. There are also several initiatives under way in the [Netherlands](#) aimed at further strengthening the framework to detect, investigate and prosecute corruption, in particular in relation to the financial sector. The joint analysis of files by the Anti-Corruption Centre and the Financial Intelligence Unit in the Netherlands, ensuring a sharing of know-how and a more efficient and broader analysis of unusual transactions related to corruption, constitutes a good example of identifying shortcomings to be addressed.

Criminal investigations and the application of sanctions for corruption still face challenges

The lack of uniform, up to date and consolidated statistics across all Member States makes it difficult to track the comparative success of the investigation and prosecution of corruption offences. Two European Commission pilot data collections of official statistics on the criminal treatment of corruption cases in Member States have shown that there are still obstacles to gather comparative data across the EU on the treatment of corruption cases in various stages of the criminal procedure in Member States. The collected data received from participating Member States has shown that there are notable differences between Member States in definitions of offences, availability of data, and methodology for recording data.⁵⁸

⁵⁸ Through the expert group on policy needs for data on crime, the Commission has worked with Member States to identify those indicators where official statistics from the crime and criminal justice process are sufficiently widely available to warrant an EU-wide data collection. Responses were received from 26 Member States for the collection related to the reference years 2011, 2012 and 2013. The final version of the data collection of official statistics on the treatment of corruption cases in the criminal justice system in Member States was published in January 2016, available at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/organized-crime-and-human-trafficking/corruption/docs/official_corruption_statistics_2011_2013_jan16_en.pdf. A second data collection was launched in June 2018 to update the data collection for the reference years 2014, 2015 and 2016 received responses from 22 Member States.

Monitoring shows that there are concerns about the effectiveness of the investigation, prosecution and adjudication of corruption cases, including high-level corruption cases, in several Member States. Examples include [Bulgaria](#), where a reform of its legal and institutional anti-corruption frameworks has led to improved cooperation between the relevant authorities, however, important challenges remain before these institutions can build a solid reputation of impartiality, objectivity and independence. A solid track record of final convictions in high-level corruption cases remains to be established. In [Croatia](#), the efforts of the specialised anti-corruption services to fight corruption are hampered by a lack of specialised investigators and by the inefficiency of the justice system, as lengthy court proceedings and appeals often impede closure of cases, including against high-level officials. Similarly, in [Slovakia](#), only few high-level corruption cases have been investigated or prosecuted in recent years, with weak whistleblower protection and limited capacity of the specialised anti-corruption institutions to investigate and prosecute being important challenges.

Concerns that high-level corruption cases are not pursued systematically are also present in [Czechia](#), where investigations and audits are currently ongoing at both national and European level into potential conflicts of interests and the use of EU funds. In [Hungary](#), while there is prosecution of high-level corruption in some cases, it remains very limited and there appears to be a consistent lack of determined action to start criminal investigations and prosecute corruption cases involving high-level officials or their immediate circle when serious allegations arise. The treatment of high-level corruption cases also presents shortcomings in [Malta](#), where criminal files against holders of top executive functions reportedly remain in the early stages of criminal proceedings and where recent reforms seek to address challenges to investigation and prosecution.

Measures to strengthen the corruption prevention and integrity framework

Corruption prevention policies cover many areas, typically including ethical rules, awareness-raising measures, rules on asset disclosures, incompatibilities and conflicts of interest, internal control mechanisms, rules on lobbying, and revolving doors. Transparency, access to public information, the protection of whistleblowers and an overall culture of integrity in public life are key elements enabling the prevention and detection of corruption. Many Member States have taken or are envisaging measures to strengthen the prevention and integrity framework. Examples include [Bulgaria](#), [Ireland](#), [Greece](#), [Malta](#), [Czechia](#), [Poland](#) and [Portugal](#). Legislation under way covers areas including obligations for asset declarations, conflict of interest rules for all public officials (including Members of Parliament), transparency in public office, or setting up dedicated transparency entities and offices tasked with the monitoring and verification of asset declarations and conflicts of interests. In certain other Member States, such as [Denmark](#), [Finland](#) and [Sweden](#), corruption prevention relies essentially on a strong integrity culture, with few formal rules and controls.

In order to be effective, such measures need to be based on a careful diagnosis of risks and vulnerabilities and contain mechanisms that ensure adequate enforcement of and follow-up on integrity incidents. Prevention measures lead to visible results when they are part of a comprehensive approach and are streamlined across all relevant policy sectors. Challenges remain in several countries when it comes to enforcement or the control mechanisms to verify and possibly sanction integrity incidents relating to asset declarations, lobbying, conflicts of interest and revolving doors.

2.3 Media pluralism and media freedom

All Member States have legal frameworks in place to protect media freedom and pluralism and EU citizens broadly enjoy high standards of media freedom and pluralism. Freedom of expression, media freedom and pluralism and the right of access to information are generally enshrined in the Constitution or in secondary law. Media pluralism and media freedom are key enablers for the rule of law, democratic accountability and the fight against corruption. The murders of journalists who were investigating high-level corruption and organised crime allegations have been a wake-up call reminding Member States of the obligation to guarantee an enabling environment for journalists, protect their safety and pro-actively promote media freedom and media pluralism.

Developments caused by the COVID-19 pandemic have further confirmed the key role of free and pluralistic media and the essential service they provide to society by supplying fact-checked information – and thereby contributing to the fight against disinformation – and maintaining democratic accountability. They also underlined the potential risks arising from restrictions on freedom of expression and on access to information. The crisis has revealed that the measures designed to tackle the ‘infodemic’ can be used as a pretext to undermine fundamental rights and freedoms or abused for political purposes.⁵⁹ It has also amplified the already difficult economic situation of the sector due to a dramatic fall in advertising revenue, despite increased audiences. The situation is particularly difficult for vulnerable smaller players and local and regional media outlets. The strength and diversity of the media sector within the EU risk being weakened as a result.

The monitoring in the first rule of law report focuses on some fundamental elements of media freedom and pluralism with a particular bearing on the rule of law, such as the independence of the media regulatory authorities, transparency of media ownership, state advertising, the safety of journalists and access to information. Other aspects of the media landscape not yet covered in this first report, such as for example the role and independence of public service media, are also critical in a rule of law context and will be further developed in future years. The monitoring in the rule of law report will also be complemented by actions to be proposed in the upcoming European Democracy Action Plan and Media and Audiovisual Action Plan.

*The Media Pluralism Monitor*⁶⁰

The Media Pluralism Monitor assesses risks to media freedom and pluralism in all EU Member States, focusing on four areas -basic protection of media freedom, market plurality, political independence and social inclusiveness of media. The latest results of the Monitor (MPM 2020) highlight, in particular, that journalists and other media actors continue to face threats and attacks (both physical and online) in several of the Member States monitored. The results further show that not all media regulators can be considered to be free from influence, both due to the manner of appointment of their boards and when implementing their remit. According to the report, the transparency of media ownership presents on average medium risk across the Member States, due to a lack of effectiveness of legal provisions and/or to the fact that information is provided only to public bodies, but not to the public. Results also

⁵⁹ JOIN(2020)8 final.

⁶⁰ The Media Pluralism Monitor 2020 has been an important source for the 2020 Rule of Law Report. The Media Pluralism Monitor is a scientific and holistic tool to document the health of media ecosystems, detailing threats to media pluralism and freedom in Member States and some candidate countries, and is co-financed by the European Union. It has been implemented, on a regular basis, by the Centre for Media Pluralism and Media Freedom, since 2013/2014. The Commission has also used other sources, such as the World Press Freedom Index, as referenced in the country chapters.

highlight that news organisations continue to be vulnerable to political interference, especially when economic conditions for the news organisations are unstable.

Independence of media authorities

Media authorities are key actors for enforcing media pluralism. When implementing media specific regulation and media policy decisions, their independence from economic and political interests and the impartiality of their decisions have a direct impact on market plurality and on the political independence of the media environment.

The independence and competence of media authorities is established by law in all Member States. Nevertheless, some concerns have been raised with regard to the risk of politicisation of the authority, for instance in [Hungary](#), [Malta](#) and [Poland](#). There are also concerns about the effectiveness of some national media authorities in light of the resources available to them, for example in [Bulgaria](#), [Greece](#), [Luxembourg](#), [Romania](#) and [Slovenia](#). In [Czechia](#), the government is considering a reform to further strengthen independence of the media regulator.

The Audiovisual Media Services Directive (AVMSD), whose transposition should be completed this year⁶¹, includes specific requirements which will contribute to strengthening the independence of national media authorities.

Transparency of media ownership

Transparency of media ownership is an essential precondition for any reliable analysis on the plurality of a given media market; it is necessary not only to conduct informed regulatory, competition and policy processes, but also to enable the public to evaluate the information and opinions that are disseminated by the media.⁶² Some Member States have well-developed systems to ensure transparency of media ownership. In [Germany](#), for example, there are specific obligations to disclose ownership applying to the news media sector, commercial broadcasters, online media and the press. Political parties must disclose their involvement in media entities. In [France](#), media companies are required to disclose their three largest owners to the public, and have to notify the media authority ('Conseil Supérieur de l'Audiovisuel' - CSA) when the ownership or control reaches the threshold of 10% or more. Information on the capital structure of publishers is available on the CSA website. [Portugal](#) has a thorough framework for ensuring transparency of media ownership. The obligation of disclosure of ownership and financing of the media is laid down in the Constitution, and its monitoring is the responsibility of the media authority.

In a few Member States, there are obstacles to an effective public disclosure of ownership, or there is no effective disclosure system in place. In [Czechia](#), media companies are not obliged to reveal their ownership structures, any changes to them or any information relating to the ultimate beneficial owner of the company. In [Cyprus](#), there is no ownership transparency with regard to the written and digital press, which creates concerns with regard to cross-ownership. The lack of transparency of media ownership is a source of concern in [Bulgaria](#), too.

Distribution of state advertising

⁶¹ Directive (EU) 2018/1808 of 14 November 2018 includes specific requirements for the independence of the national media authorities.

⁶² Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on media pluralism and transparency of media ownership.

State advertising⁶³ can be an important source of support to media. Financial support from the state can be crucial, especially for non-profit, community media and other less commercial forms of journalism, in particular in times of economic crisis, and transparent rules and fair criteria lower the risk of favouritism. It is therefore of particular importance that fair and transparent rules on the distribution of state resources and support are in place and effectively implemented. The absence of such rules increases the risk of public money being allocated to specific media outlets in a biased manner.

In many Member States, there is no specific legislation to ensure fair and transparent rules on the distribution of state advertising to media outlets. The risks caused by the lack of clear and transparent rules may manifest themselves through low transparency in relation to the distribution criteria, the amounts allocated and the beneficiaries. In [Hungary](#), in the absence of legislation and transparency in the distribution of state advertising, significant amounts of state advertising channelled to pro-government outlets have opened the door for the government to exert indirect political influence over the media. [Austria](#) allocates relatively high levels of state advertising to media companies, and concerns were raised over potential political influence over such allocation, in the absence of rules on its fair distribution.

In some cases, these risks are mitigated by general public procurement rules and/or good governance rules of state expenditure. In [Slovakia](#) for example, no framework for regulating the distribution of state advertising exists, however contracts between the state and the private sector are registered in the central register of contracts which is publicly available.

Recently, the Commission has proposed that the recovery package from the EU budget could help address immediate liquidity needs, while the digital investment and resilience of the sector would also be strengthened through InvestEU, Creative Europe, and Horizon Europe Programmes. The Commission further encouraged Member States and all EU actors to support media while ensuring the respect of their independence, media freedom and pluralism.⁶⁴

Political pressure on the media

Vulnerabilities and risks to media pluralism increase when the political independence of media is under threat, in the absence of regulation against political interference or as a result of rules allowing political actors to own media.

The country chapters have identified a number of cases where serious concerns have been raised by stakeholders. In [Bulgaria](#), for example, it is reported that the ownership of several media outlets is closely linked to political actors, even if not officially owned by them. In addition, a large number of Bulgarian journalists have characterised political interference in the media as “common” and “widespread”. In [Hungary](#), the establishment of the KESMA media conglomerate via the merger of more than 470 government-friendly media outlets, without scrutiny from media and competition authorities, has been seen as a threat to media pluralism. Further concerns have been voiced that a recent takeover might follow a pattern of economic takeover of the remaining independent news media sites. In [Malta](#), the two main political parties represented in Parliament own, control or manage multiple Maltese media outlets and broadcasters. In [Poland](#), during the 2020 presidential campaign, the governing coalition referred to possible plans for legislative changes concerning foreign-owned media outlets, which could have implications for media pluralism.

⁶³ The Media Pluralism Monitor defines state advertising as “any advertising that is paid for by governments (national, regional, local) and state-owned institutions and companies, to the media”.

⁶⁴ JOIN(2020) 8.

Right of access to information

The right of access to information is a fundamental precondition for democratic debate and scrutiny of public institutions, of key importance to the media but also more generally for upholding the rule of law. It relies on transparency of public administration and decision-making. This right is guaranteed in the Constitution or in secondary legislation in all Member States but some country chapters point to obstacles or delays in providing the information. In [Czechia](#), [Malta](#) and [Romania](#), for instance, repeated difficulties and obstacles to obtain information have been reported.

Measures to support and protect journalists against threats and attacks

In a number of Member States, journalists and other media actors increasingly face threats and attacks (physical and online) in relation to their publications and their work, in various forms: the deployment of ‘SLAPP’⁶⁵ lawsuits; threats to physical safety and actual physical attacks; online harassment, especially of female journalists; smear campaigns, intimidation and politically oriented threats. Such threats, attacks and smear campaigns are reported in one form or another in several Member States. Particular examples have been highlighted in the country chapters in [Bulgaria](#), [Croatia](#), [Hungary](#), [Slovenia](#) and [Spain](#). Threats and attacks have a chilling effect on journalists, and entail the risk of a shrinking public debate on controversial societal issues.

To address this situation, a number of Member States have developed good practices, and set up structures and measures offering support and protection. In [Belgium](#), the Flemish association of journalists set up a specific hotline for physical or verbal aggression against journalists. In [Italy](#), a Coordination Centre dealing with acts against journalists has been set up. In the [Netherlands](#), the ‘*PersVeilig*’ protocol aimed at reducing threats, violence and aggression against journalists was concluded between the public prosecution service, the police, the Society of Editors-in-Chief and the Association of Journalists. [Sweden](#) has set up national contact points and allocated additional human and financial resources to support journalists and better investigate hate crimes.

2.4 Other institutional issues linked to checks and balances

Institutional checks and balances are at the core of the rule of law. They guarantee the functioning, cooperation and mutual control of State organs so that power is exercised by one state authority with the scrutiny of others. In addition to an effective justice systems, checks and balances rely on a transparent, accountable, democratic and pluralistic process for enacting laws, the separation of powers, the constitutional and judicial review of laws, a transparent and high-quality public administration as well as effective independent authorities such as ombudsperson institutions or national human rights institutions. In every Member State, the specific checks and balances differ depending on the equilibrium resulting from the political, legal and constitutional traditions. Whilst the precise model chosen by each Member State may vary, what is crucial is that it ensures the respect for the rule of law and democratic norms.

The first rule of law report focuses on some key elements of particular importance for the rule of law, such as the process for preparing and enacting laws, in particular as regards stakeholders’ involvement, the use of fast-track and emergency procedures, and the regime

⁶⁵ A strategic lawsuit against public participation (SLAPP) is a lawsuit intended to censor, intimidate, and silence critics by burdening them with the cost of a legal defence until they abandon their criticism or opposition.

for the constitutional review of laws. It also looks at constitutional reforms to strengthen the checks and balances. Reporting also includes an examination of exceptional measures taken to fight the COVID-19 pandemic. The role of independent authorities, such as the Ombudsperson and other National Human Rights Institutions, and the role of civil society organisations in safeguarding the rule of law, are other elements of analysis.

Stress on checks and balances can be found in all Member States and is often a normal part of the political process in a democratic society. Economic crisis, the COVID-19 pandemic and societal changes can add to these tensions, but checks and balances remain as essential as ever. In recent years, several rule of law crises have unfolded in the Union and have been associated with attacks on institutional checks and balances. Strengthening the resilience of institutional checks and balances is therefore essential for safeguarding the rule of law.

An enabling framework for civil society allows for debate and scrutiny of those in power. As is the case for independent journalists and critical media, attempts to suppress civil society actors should always be considered as a warning sign with regard to the rule of law.

Debates on the rule of law contributing to strengthening the rule of law culture

Positive reform initiatives often emerge out of public debates on specific issues of relevance for the rule of law. Debate and increased awareness of the checks and balances needed for the rule of law to function effectively is therefore an important first step. The increasing attention to the rule of law debate across the Union can be illustrated by efforts to promote national debates through parliamentary hearings, public awareness campaigns or initiatives driven by the judiciary. In [Czechia](#), the Senate organises conferences and debates on topics related to the justice system. In [Denmark](#), the National Courts Administration has in recent years undertaken a series of efforts to promote the rule of law, better understanding of the justice system to a variety of target groups and improve the user focus of the justice system. In [Germany](#), regular debates, nationwide information and publicity campaigns, and publications on rule of law topics contribute to fostering a dynamic rule of law culture. In the [Netherlands](#), regular policy debates on the State of the rule of law are organised in both Chambers of Parliament.

Constitutional reforms to strengthen institutional checks and balances, in particular on constitutional review

In a number of Member States, reform processes are under way. In particular, they concern the opening up of new channels for citizens to challenge the exercise of executive or legislative power.

In [Cyprus](#), for example, draft legislation foresees the creation of a Constitutional Court that would take over the constitutionality review of laws from the Supreme Court. Following a constitutional revision in [Lithuania](#), the possibility of individual constitutional review and *a posteriori* control of enacted laws was introduced in 2019. In [Luxembourg](#), a recent constitutional reform reinforced the effects of Constitutional Court's decisions when declaring legal provisions unconstitutional and a proposed revision of the constitution would give constitutional status to the office of the Ombudsman. In [Slovakia](#), the government is considering strengthening the powers of the Constitutional Court by, amongst others, introducing the possibility of a constitutional complaint and an *ex ante* control of compliance of laws with the Constitution. Constitutional reforms also concern other aspects of checks and balances. For example, in [Malta](#), a recently adopted constitutional reform concerns the election procedure of the President of Malta and the role of the ombudsman institution, and, another constitutional reform on the appointment to certain independent commissions has been tabled to Parliament. Reflections in [Sweden](#) on strengthening the democratic system

include reforming how constitutional amendments are adopted, while a parliamentary inquiry is reviewing the constitutional status, remit and activities of the Parliamentary Ombudsmen.

Some of these efforts are drawing on the advice of international expert bodies, such as the Venice Commission, itself a recognition that taking account of different views and expertise through a broad and thorough consultation contribute to develop a balanced system.

Improving the inclusiveness and quality of the legislative process is important for structural reforms

The process for enacting laws is benefitting from increasingly inclusive and evidence-based tools. In particular, many Member States have established systematic policies for involving stakeholders and ensure that structural reforms are the product of a broad discussion within society, although these policies are not always fully applied in practice.

Some Member States are improving the inclusiveness of the legislative process. In [Cyprus](#) and [Czechia](#), for example, efforts to improve consultation and transparency are ongoing. In [Estonia](#), a new law-making environment and legislative policy guidelines are being developed to enhance user-friendliness and inclusiveness. In [Greece](#), a comprehensive reform of law-making procedures is under way. In [France](#), the recent initiative of Citizens Convention on Climate is seen as an innovative way of engaging citizens in the legislative process.

Excessive use of accelerated and emergency legislation can give rise to concerns over the rule of law

In all Member States, the normal legislative process gives supremacy to Parliament as legislator. However, fast-track legislative processes and absence of consultation are common features of rule of law crises. The Venice Commission and the Organisation for Security and Cooperation in Europe (OSCE) have, on several occasions, underlined the importance of the Parliamentary procedure: thorough deliberations of legislative proposals and amendments, including meaningful consultations with stakeholders, experts and civil society, and a dialogue with the political opposition.⁶⁶ In addition, bypassing Parliament in the legislative procedure skews the separation of powers, a key principle of the rule of law.

In a few Member States, repeated recourse to fast-track legislation in Parliament or emergency ordinances from the government has given rise to concerns, especially when applied in the context of broad reforms affecting fundamental rights or the functioning of key State organs such as the judicial system or the Constitutional Court. In such cases, there is an increased risk of adopting laws which endanger the respect of fundamental rights, the rule of law or democracy, as well as international obligations.⁶⁷ In [Poland](#), in the period of 2015-2019, the expedited adoption of legislation through Parliament was widely used in the adoption of significant structural reforms of the judiciary, which have increased the political influence on the judiciary. In [Romania](#), the widespread use of government emergency ordinances applied in key areas, including judicial reforms, raised concerns regarding the quality of legislation, legal certainty and the respect for the separation of powers.⁶⁸ Frequent use of fast-track procedures or the adoption of legislation based on initiatives introduced

⁶⁶ Rule of Law Checklist - CDL-AD(2016)007; <https://www.osce.org/odihr/legislative-support>

⁶⁷ In addition, many legislative amendments adopted by Parliament, including through fast-track procedures, lack predictability and transparency, and raise concerns with regard to the public interest.

⁶⁸ In a consultative referendum in May 2019, a majority of citizens supported banning the adoption of government emergency ordinances in the area of justice.

directly by members of Parliament, without going through the normal preparatory processes and consultation of stakeholders, is also a risk from a rule of law perspective.

National Parliaments, Constitutional courts and Supreme Courts have played a key role in the scrutiny of measures taken to respond to the COVID-19 pandemic

Reactions to the crisis showed overall strong resilience in national systems, with intense political and legal debates on the measures taken. In many Member States, Parliamentary scrutiny and debates have been instrumental in framing the proposals for a state of emergency or, alternatively, a health emergency regime, and in checking *ex post* on the ordinances taken by the government. In addition, these measures have often been reviewed by the Constitutional Court, Supreme Courts or ordinary courts. *Ex ante* mechanisms for constitutionality review before the adoption of laws have been particularly relevant in this context where rapid response and respect for fundamental rights must go hand in hand.

The Ombudsperson and the National Human Rights Institutions play an important role

National Human Rights Institutions play an important role as rule of law safeguard and can provide an independent check on the system in a rule of law crisis. A few Member States ([Czechia](#), [Italy](#) and [Malta](#)) have not yet established such an institution, although other authorities are active in the field of fundamental rights.⁶⁹ In [Italy](#), two draft laws proposing the creation of an Independent National Human Rights Authority (NHRI) are currently being examined by Parliament. In [Malta](#), a proposal to establish a human rights institution is under discussion in Parliament. The role of the ombudsperson in the checks and balances varies. In some Member States, the ombudsperson can challenge laws to the Constitutional Court or ask for their revision in Parliament.

Civil society organisations operate in an unstable environment, but continue to be a strong actor in defending the rule of law.

In a recent ruling, the European Court of Justice⁷⁰ made clear that civil society organisations “*must be able to pursue [their] activities and operate without unjustified interference by the State*”. It recognised that the right to freedom of association constitutes one of the essential foundations of a democratic and pluralist society, as it enables citizens to act collectively in areas of common interest and, in so doing, contribute to the proper functioning of public life.

In most Member States, there is an enabling and supporting environment for civil society. Recently some Member States have strengthened, or intend to take initiatives relating to, the environment for civil society. In [Croatia](#), for instance, the government is ready to adopt a National Plan to improve the legal, financial and institutional support system for the activities of civil society organisations. In [Slovenia](#), the National Strategy for the Development of the Non-Governmental Sector and Volunteering aims at improving support to non-governmental organisations by 2023, in particular when contributing to the principles of pluralism and democracy in the society. In many Member States, civil society has proved to be resilient in difficult circumstances and continued to play an active part in the national and European rule of law debate as part of the checks and balances. In [Slovakia](#), civil society has reacted robustly following the assassination of Ján Kuciak and his fiancée Martina Kušnírová in 2018 and in its aftermath. In [Romania](#), strong involvement of civil society has been key to

⁶⁹ An independent ombudsperson is present both in Czechia and Malta; in Italy the Inter-ministerial Committee for Human Rights (CIDU) interacts with civil society, academia and all relevant stakeholders to promote and protect human rights and several regional ombudsmen are responsible for safeguarding the freedoms and rights of persons.

⁷⁰ Judgment of 18 June 2020, *Commission v Hungary*, C-78/18, EU:C:2020:476, paragraphs 112 and 113.

encourage anti-corruption reforms and in defending the rule of law in the country. In [Italy](#), there is a vibrant civil society, although some NGOs, particularly on certain issues such as migration, are subject to smear campaigns. In [Greece](#), some civil society organisations active in the field of migration have expressed concerns that the civic space to operate on the ground has narrowed.

In some Member States, however, there have been examples of civil society facing serious challenges in terms of new legislations limiting access to foreign funding or smear campaigns. In [Bulgaria](#), for example, new draft rules on transparency of foreign funding for NGOs have been criticised for their possible negative impact on civil society. In [Hungary](#), in June 2020, the European Court of Justice found that a law of 2017 on the transparency of foreign-funded civil society organisations is incompatible with free movement of capital as well as with the right to freedom of association and the rights to protection of private life and personal data. In [Poland](#), NGOs are targeted by unfavourable statements of the representatives of the public authorities adversely affecting the civil society space. Actions of the government aimed at LGBTI+ groups, including arresting and detaining some of the groups' representatives, and smear campaigns conducted against such groups have raised further concerns.

3. Developments and actions at EU level on the rule of law

Over the past year, the rule of law has continued to be high on the agenda of the European Union. Respect for the rule of law is a key priority for this Commission as stated in the political guidance of President Ursula von der Leyen, which specifically identified this as a priority portfolio entrusted to a Vice-President and a Commissioner responsible for the rule of law. From the start, while also setting in place the new European rule of law mechanism, the Commission has responded to rule of law developments in Member States and at EU level. In addition to ongoing monitoring, it has stimulated dialogue and cooperation, using processes such as the European Semester to highlight challenges with regard to the effectiveness of the judicial system or the anti-corruption framework in Member States.

The COVID-19 pandemic has raised important rule of law questions still present in the European debate. From mid-March, the Commission has been monitoring the measures in the Member States which have an impact on the rule of law, democracy and fundamental rights. Under the European Semester, the Country Specific Recommendations of August 2020 recalled that these exceptional measures should be necessary, proportionate, limited in time and subject to scrutiny.⁷¹

The European Parliament plays an increasingly important role in setting the debate on the rule of law at European level. In the last year, the European Parliament reacted to developments relating to the respect of our common values, including the rule of law, as they were unfolding. The European Parliament has adopted several resolutions⁷² and the Committee on Civil Liberties, Justice and Home Affairs (LIBE) has adopted reports and

⁷¹ Adopted by the Council - OJ of 26/08/20, C 282.

⁷² In particular, resolution of 28 March 2019 on the situation of rule of law and fight against corruption in the EU, specifically in Malta and Slovakia P8_TA(2019)0328; resolution of 18 December 2019 on the rule of law in Malta following the recent revelations surrounding the murder of Daphne Caruana Galizia P9_TA(2019)0103; resolution of 16 January 2020 on ongoing hearings under Article 7(1) of the TEU regarding Poland and Hungary P9_TA(2020)0014; resolution of 17 April 2020 on EU coordinated action to combat the Covid-19 pandemic and its consequences P9_TA(2020)0054.

organised on-the-spot country visits.⁷³ These political debates have been a key component in raising the profile of rule of law issues. The Commission recognises the necessary link to be made with democracy and fundamental rights, which will be addressed in dedicated work strands: the European Democracy Action Plan and the New Strategy for the Implementation of the Charter of Fundamental Rights, both to be adopted later in 2020. The Commission considers that the first rule of law report and the preparatory dialogue with Member States provides a solid basis for future work in the European Parliament.

The rule of law mechanism also responds to intensified Council action on the rule of law. In autumn 2019, the Council debated further strengthening the Council's annual rule of law dialogue through a yearly stocktaking exercise. This would use discussion and the exchange of best practice to contribute to the prevention of rule of law problems in an inclusive and constructive manner. The Council Presidency has set out its intention to organise a political rule of law dialogue, on the basis of the Commission's rule of law report, including a debate focusing on specific Member States.⁷⁴

In this way the first rule of law report will help to drive debate in the European and national institutions. There will also be regular meetings of the network of rule of law contact points and with stakeholders. Member States will be asked to contribute in early 2021, to be followed by country visits to all Member States in spring ahead of the next report. In parallel, there will also be work to promote rule of law compliant reforms through EU funding and expertise. Since 2017, the Commission has a dedicated programme for technical support to reforms in Member States, covering rule of law reforms.⁷⁵ The support provided can take the form of expert and fact-finding missions on the ground, sharing relevant best practices, diagnostic analyses, and developing and implementing targeted solutions to address the situation. Other Commission programmes such as those for Justice and Citizens, Equality, Rights and Values, and Internal Security Fund (Police), can also make a contribution, including through calls for proposals open for civil society and other stakeholders. Judicial and anti-corruption reforms can have an important impact on the business environment, as already often highlighted in European Semester reports, and should therefore be carefully considered by Member States when preparing their national Recovery and Resilience Plans.

In addition to the European rule of law mechanism, the EU rule of law toolbox includes different instruments to respond to a variety of situations. Article 7 of the Treaty on European Union is most often the focus of public debate. It sets out a Treaty-based procedure to address risks to the founding values of the EU in the Member States, ultimately providing for the most serious political sanction the EU can impose on a Member State, namely the suspension of voting rights in the Council. Until 2017, the procedure had never been triggered. Proceedings were launched in December 2017 for Poland by the Commission, and then in September 2018 for Hungary by the European Parliament. These procedures continue in the Council with hearings and updates on the situation in the two Member States concerned⁷⁶, but

⁷³ LIBE's Democracy, Rule of Law and Fundamental Rights Monitoring Group. The Group is focused on threats to democracy, the rule of law and fundamental rights, as well as the fight against corruption within the EU, across all Member States. It is meant to recommend specific actions to the LIBE Committee, such as meetings with stakeholders, hearings and missions, as well as to make suggestions for proposals for resolutions and reports.

⁷⁴ German Presidency programme, page 20.

⁷⁵ The Structural Reform Support Programme, to be replaced as of 2021 by the Technical Support Instrument; this programme does not require co-financing.

⁷⁶ In 2019, two hearings under Art. 7(1) TEU and two updates on the state of play on the situation in Hungary as well as five updates on the state of play of the situation in Poland took place. In 2020, one update on the

most of the challenges identified remain unresolved. The Commission calls on the Member States concerned and the Council to invest in accelerating the resolution of the problems raised under these procedures, finding solutions that protect the rule of law and the values common to all Member States. Until a solution is found to the concerns raised, the Commission remains committed to supporting the Council in the continuation of the Article 7 procedures so as to resolve the issues at stake.

The European Court of Justice also plays a crucial role in upholding the rule of law through its developing case-law in this area. Where rule of law deficiencies constitute a violation of EU law, the Commission pursues a strategic approach to infringement proceedings, building on the case law of the European Court of Justice. These proceedings are targeted to address specific issues of non-compliance with EU law. The Commission is committed to make full use of its powers and continue to play its role as guardian of the Treaties to ensure the respect of EU law requirements relating to the rule of law. It has brought proceedings before the European Court of Justice on rule of law-relevant issues a number of times and the Court has also been called upon by national courts to issue preliminary rulings on the interpretation of EU law in a number of cases. In 2019 and 2020, the Court developed an important case law on the rule of law. It has in particular confirmed and further clarified the principle of effective judicial protection and the right to an effective judicial remedy.⁷⁷ This case law is expected to be further developed in the coming months and years, in view of a number of important pending infringement proceedings and preliminary references on rule of law-related issues.

Finally, in the conclusions of its meeting of 17-21 July, the **European Council** recalled the importance of the respect of the rule of law and EU founding values in relation to the Union's budget. Recalling the importance to protect the Union's budget in accordance with the values of Article 2 TEU, the **European Council** supported the introduction of a regime of conditionality and measures in case of breaches. The commitment of the **European Council** should accelerate the adoption of the Commission's proposal to *protect the EU budget in case of breaches of the rule of law* in a Member State under discussion in the European Parliament and the Council.⁷⁸ The aim is to protect the EU budget in situations where the Union's financial interest might be at risk due to generalised deficiencies of the rule of law in a Member State.

4. Conclusions and next steps

In July 2019, President von der Leyen called on the European Parliament, the Council and the Member States to engage in a process of cooperation on the rule of law, a new European rule of law mechanism involving all the Member States and EU institutions in a preventive exercise.

The first rule of law report is the result of a new dialogue between the Commission and Member States feeding into the country-specific analysis for all the Member States. This report is an important step towards strengthening a common understanding of the rule of law in the EU and enhancing mutual trust. The Commission welcomes the open dialogue held with all the Member States and their engagement in preparing the country-specific analysis. It is a sign both of the importance of the rule of law for all Member States and of their

state of play on the situation in Hungary and Poland took place and no hearings under Art. 7(1) TEU were held.

⁷⁷ As guaranteed by Article 19(1) TEU and by Article 47 of the EU Charter of Fundamental Rights.

⁷⁸ COM(2018) 324

commitment to a European process. The Commission considers that this process will help preventing rule of law problems from emerging or deepening, and further contribute to promoting a robust political and legal rule of law culture throughout the EU. The rule of law mechanism can now act as a core elements of the rule of law toolbox of the EU.

The report takes stock of rule of law developments in the Member States. It highlights that many Member States have high rule of law standards and are recognised, including globally, as providing best practices in applying the key principles of the rule of law. However, the report also finds important challenges, when judicial independence is under pressure, when systems have not proven sufficiently resilient to corruption, when threats to media freedom and pluralism endanger democratic accountability, or when there have been challenges to the checks and balances essential to an effective system. The Commission is encouraged by the fact that all the Member States have cooperated in the preparation of the report and calls on them to continue this cooperation in the follow-up to the report.

The Commission looks forward to the further engagement of the European Parliament and the Council on rule of law issues and considers that this report provides a solid basis for further inter-institutional work. The Commission also invites national Parliaments and national authorities to discuss this report, including its country chapters, and seek support from one another, as an encouragement to pursue reforms and an acceptance of European solidarity. The wide circle of national actors, beyond government authorities, who have been involved and have contributed in this exercise, also shows that there is a demand for holding national debates.

This first rule of law report is the foundation stone for a new and dynamic process, involving a continued dialogue with Member States, the European Parliament and national parliaments as well as other stakeholders at national and EU level. The Commission will now start preparing the 2021 rule of law report, drawing on experiences gained in the first year of the functioning of the European Rule of Law Mechanism, and carrying forward the momentum to make the rule of law more resilient in our democracies. Being better equipped will help all Europeans to take up the challenges of the unprecedented economic, climate and health crisis, in full respect for our common principles and values.