



2021 Rule of Law Report - Questions and Answers

Brussels, 20 July 2021

What is the Rule of Law Report?

The Rule of Law Report is a preventive tool part of the annual European Rule of Law Mechanism. The aim of the report is to look at positive and negative key rule of law developments across the EU, as well as the specific situation in each Member State. The aim of the report is to promote the rule of law and to prevent problems from emerging or deepening and address them, as well as to identify best practices. It is not a sanctioning mechanism. The report covers four key areas for the rule of law: justice systems, the anti-corruption framework, media pluralism and freedom, and other institutional issues linked to checks and balances. It also pays specific attention to the impact created by the COVID-19 pandemic. The Rule of Law Report consists of a general report and 27 country chapters presenting the Member State-specific assessments.

How did the Commission prepare the 2021 Rule of Law Report – what is different from last year?

Like the first [Rule of Law Report in 2020](#), the 2021 edition is the result of an inclusive process with all 27 Member States as well as with stakeholders, and was prepared in line with the same scope and methodology discussed with Member States as for the first report. The Commission has further deepened its assessment and is in particular following up on challenges and developments identified in the first annual Report.

In January 2021, Member States were consulted on the questionnaire used to collect input for the second report. Between February and March, the Commission received written input from Member States and over 200 written contributions from stakeholders about developments in specific Member States, as well as at the EU-level. Between March and May 2021, over 400 virtual meetings took place across all 27 Member States, with national authorities, independent bodies and stakeholders (as compared to over 300 for the 2020 report).

The Rule of Law Network, which was set up in 2020, continued to provide a channel of communication between the Commission and the Member States. In preparation of the report, the Network met four times and was consulted on the questionnaire and methodology.

Member States provided written contributions and joined dedicated virtual country visits between March and May. During these country visits, the Commission discussed rule of law developments with Member States' national authorities, including judicial authorities, law enforcement, as well as other stakeholders, such as journalists' associations and civil society. Member States were given the opportunity to provide factual updates on their country chapters ahead of the adoption of the second Rule of Law Report.

What is the Rule of Law Mechanism?

The European Rule of Law Mechanism provides a process for an annual dialogue between the European Parliament, the Council and the Commission, as well as with Member States, national parliaments, civil society and other stakeholders. The Rule of Law Report is the foundation of this process.

The Rule of Law Report and the preparatory work with Member States is an annual exercise as part of the Mechanism, and serves as a basis for discussions in the EU as well as to prevent problems from emerging or deepening. Identifying challenges as soon as possible and with mutual support from the Commission, other Member States, and stakeholders, including the Council of Europe and the Venice Commission, could help Member States find solutions to safeguard and protect the rule of law.

The European Rule of Law Mechanism is part of broader EU efforts to promote and defend its founding values. This work includes the [European Democracy Action Plan](#), the renewed [Strategy for the Implementation of the Charter of Fundamental Rights](#), as well as targeted strategies to progress towards a Union of Equality.

Where does the European Rule of Law Mechanism fit into the EU's existing Rule of Law toolbox?

The European Rule of Law Mechanism has become a core element of the Rule of Law Toolbox of the EU. This annual process helps prevent rule of law problems from emerging or deepening, and through the establishment of an annual cycle of reporting and dialogue it contributes to promoting a robust political and legal rule of law culture throughout the EU.

The European Rule of Law Mechanism 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 Scoreboard and the European Semester. The rule of law is also prominent in the implementation of the Recovery and Resilience Facility. The Member States' Recovery and Resilience Plans include important reform priorities such as improving the business environment through effective public administration and justice systems.

The European Rule of Law Mechanism is separate from the other response instruments in the EU's rule of law toolbox such as infringement procedures, [the Rule of Law Framework](#) and the procedure according to [Article 7 TEU](#). While the European Rule of Law Mechanism is meant as a preventive tool, these procedures will continue to provide an effective and proportionate response to challenges to the rule of law where necessary.

What has happened since the adoption of the first annual Rule of Law Report?

The Rule of Law Report has successfully achieved key objectives: raising awareness and promoting an open discussion among EU Member States on rule of law issues, both at national and European level. During the autumn 2020, the Presidency of the Council of the EU organised a two-step process with a horizontal discussion on general rule of law developments as well as separate country-specific discussions, based on the Rule of Law Report. The country-specific dialogue continued in the spring of 2021, setting a yearly cycle for discussion in the General Affairs Council. The current Presidency has announced that it will continue this approach in the second half of 2021.

The European Parliament has played an increasingly important role in setting the debate on the rule of law, a trend which has continued over the past year. The European Parliament adopted a Resolution welcoming the 2020 Rule of Law Report.

Following the publication of the 2020 Rule of Law Report, the Commission visited most national Parliaments to present and discuss the methodology and the country-specific findings of the 2020 Rule of Law Report. The Commission also conducted bilateral meetings to gather information on the state of play on key reforms as a follow up to the findings of the Report. Such contacts were limited to a few Member States this first year but could become a more prominent feature in the future.

In May 2021, the first High-Level Conference on the Rule of Law was organised in Coimbra by the Portuguese Presidency in cooperation with the European Commission, bringing together policy makers, civil society organisations, European judicial networks, academics and journalists. The conference took stock of the efforts to uphold the rule of law in Europe.

How has the Commission assessed the developments related to the rule of law in the 27 Member States?

The assessment contained in the 27 country chapters was prepared in line with the same scope and methodology discussed with Member States for the first report. It relies on a variety of sources. The work again 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.

The country chapters rely on a qualitative assessment carried out by the Commission, focusing on a synthesis of significant developments since the adoption of the first report in September 2020. 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 the rule of law situation in Member States but to present significant developments.

Who was consulted on this report?

A targeted [stakeholder consultation](#) was carried out, providing valuable general and country-specific contributions from a variety of EU agencies, European networks, national, European civil society organisations and professional associations and international and European actors. These include the

[Fundamental Rights Agency](#), the [European Network of Councils for the Judiciary](#) (ENCJ), the [European Network of National Human Rights Institutions](#) (ENNHRI), the [Council of Bars and Law Societies of Europe](#) (CCBE), the [Council of Europe](#), and the [Organisation for Economic Co-operation and Development](#) (OECD,) as well as national and international civil society and journalists' organisations.

The report also builds on a series of studies and reports, such as the [Media Pluralism Monitor](#).

How will the Commission support Member States in addressing challenges?

Several instruments and funding opportunities already exist to support structural reforms through technical assistance and funding of projects. Since 2017, the Commission has had a dedicated programme for technical support to reforms in Member States that covers rule of law reforms. 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), also contribute, including through calls for proposals open for civil society and other stakeholders. For the first time, the Commission presented last year a comprehensive approach for the media sector building on two plans: the [European Democracy Action Plan](#) and the [Media and Audiovisual Action Plan](#). The Commission is now working on measures to improve the safety of journalists, tackle abusive litigation against them and increase funding support. The rule of law is also prominent in the implementation of the Recovery and Resilience Facility. The Member States' Recovery and Resilience Plans include important reform priorities such as improving the business environment through effective public administration and justice systems.

How does the Rule of Law Report look into COVID-19 rule of law-related developments?

The COVID-19 pandemic has posed particular challenges for the rule of law. Health imperatives required extraordinary measures to combat the pandemic, often overturning daily life and curtailing fundamental rights as a result. The urgency to take emergency measures can put strains on democratic legitimacy, as well as on the normal working of constitutional and legal systems and public administrations. The 2021 Report shows that national systems showed considerable resilience. However, beyond the immediate response, there is a need to reflect on how to prepare better for the impact of crisis situations on the rule of law, which could last for extended periods.

The Commission has monitored developments in all Member States and analysed the exceptional measures taken, with their impact on the rule of law reflected in the country chapters. This includes the role of Parliaments, Constitutional Courts and other national courts, as well as of ombudspersons and national human rights institutions reviewing the legal regime and the measures taken. Key questions are whether COVID-19-related measures were limited in time, whether their necessity and proportionality had been justified, the extent of continued scrutiny by national parliaments and courts, and the legal foundation of the measures. Equally critical was the ability to maintain the checks and balances upholding the rule of law. It also concerns the extent to which the role of media and civil society in exercising public scrutiny could be maintained, and how the authorities took steps to mitigate the impact of the pandemic on these actors. As the measures taken to address the pandemic often involved relaxing administrative rules and controls in the interests of rapid reaction, measures taken to prevent corruption and conflict of interest in public spending during the pandemic are also relevant.

What is the relation with other procedures?

• Article 7 of the Treaty of the European Union (TEU)

The Article 7 TEU procedure and the European Rule of Law Mechanism are two distinct instruments with different objectives and scope.

The Article 7 TEU procedure remains an exceptional response instrument for the EU to act where there is a clear risk of a serious breach, or the existence of a serious and persistent breach, of the values of Article 2 TEU, including the rule of law.

The European Rule of Law Mechanism is a preventive tool aiming at regular monitoring and providing an overview of significant rule of law developments in all Member States and in the European Union.

• Infringement procedures

Infringement procedures have a specific aim, namely to ensure the correct application of EU law. The European Rule of Law Mechanism is a preventive tool, which sets out positive developments and challenges, to prevent potential problems from arising or deepening in a cooperative manner, benefiting from other Member States experience and best practices. It is not strictly meant for

monitoring compliance with EU law.

- **Rule of law conditionality mechanism**

The general regime of conditionality procedure and the rule of law mechanism are two distinct instruments with different objectives and scope.

The general regime of conditionality linked to the rule of law is a budgetary instrument designed to remedy adverse effects of breaches of the principles of the rule of law on the financial interests of the Union. The Rule of Law Mechanism is a preventive tool, aiming at deepening the awareness about the situation of the rule of law in Member States to prevent challenges from emerging or deepening.

The Commission may take into account the Rule of Law report, as well as other sources from recognised institutions (for instance, OLAF, EPPO, the European Court of Auditors), when identifying and assessing breaches of the principles of the rule of law that affect the financial interests of the Union.

- **The Cooperation and Verification Mechanism (CVM) – does the new Rule of Law Mechanism replace the CVM for Bulgaria and Romania?**

Since their accession to the EU in 2007, reforms in Bulgaria and Romania in areas including justice and anti-corruption have been followed by the Commission through the Cooperation and Verification Mechanism (CVM). The scope of the new Rule of Law Mechanism is broader than the CVM, as it covers not only judicial reform and the fight against corruption, but also media freedom and pluralism as well as institutional checks and balances. The [Communication on strengthening the rule of law \(COM \(2019\) 343\)](#) states that once the CVM ends, monitoring should continue under horizontal instruments. The Rule of Law Mechanism provides the framework for taking these issues forward in the future.

- **The EU Justice Scoreboard?**

The EU Justice Scoreboard presents comparative data on the functioning of national justice systems and is one of the sources of information for the Rule of Law Report.

For further information

2021 Rule of Law Report – [The rule of law of law situation in the European Union](#)

2021 Rule of Law Report – [Country Chapters](#)

The European Rule of Law Mechanism – [Factsheet](#)

The EU's Rule of Law Toolbox – [Factsheet](#)

[2021 Rule of Law Report – Press release](#)

2021 Rule of Law Report – [website](#)

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