



Brussels, 20.7.2021  
COM(2021) 700 final

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL  
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**2021 Rule of Law Report  
The rule of law situation in the European Union**

{SWD(2021) 701 final} - {SWD(2021) 702 final} - {SWD(2021) 703 final} -  
{SWD(2021) 704 final} - {SWD(2021) 705 final} - {SWD(2021) 706 final} -  
{SWD(2021) 707 final} - {SWD(2021) 708 final} - {SWD(2021) 709 final} -  
{SWD(2021) 710 final} - {SWD(2021) 711 final} - {SWD(2021) 712 final} -  
{SWD(2021) 713 final} - {SWD(2021) 714 final} - {SWD(2021) 715 final} -  
{SWD(2021) 716 final} - {SWD(2021) 717 final} - {SWD(2021) 718 final} -  
{SWD(2021) 719 final} - {SWD(2021) 720 final} - {SWD(2021) 721 final} -  
{SWD(2021) 722 final} - {SWD(2021) 723 final} - {SWD(2021) 724 final} -  
{SWD(2021) 725 final} - {SWD(2021) 726 final} - {SWD(2021) 727 final}

## 1. INTRODUCTION

The EU is based on a set of shared values including respect for fundamental rights, democracy, and the rule of law<sup>1</sup>. These fundamental values are seen by Europeans as amongst the EU's main assets<sup>2</sup>, and safeguarding them is a shared responsibility of all EU institutions and all Member States. While the EU is recognised as having very high standards in these areas, these values should never be taken for granted. Promoting and upholding the rule of law requires vigilance and constant improvement, because there is always a risk of backsliding.

The rule of law is not only an integral part of the democratic identity of the EU and of the Member States, but also essential for the functioning of the EU, and for citizens and businesses to trust public institutions. While Member States have different legal systems and traditions, the core meaning of the rule of law is the same across the EU. The key principles of the rule of law are common to all Member States – legality, legal certainty, prohibition of the arbitrary exercise of executive power, effective judicial protection by independent and impartial courts respecting fundamental rights in full, the separation of powers, permanent subjection of all public authorities to established laws and procedures, and equality before the law – are enshrined in national constitutions and translated in legislation<sup>3</sup>.

The case-law of the Court of Justice of the European Union (CJEU) on the rule of law and judicial independence provides a clear set of legal requirements which Member States have to follow in their rule of law-related reforms<sup>4</sup>. Respect for the rule of law entails compliance with EU law and the principle of primacy of EU law, which is the foundation of the EU.

The Rule of Law Report is designed on this common and objective basis, as a yearly cycle to promote the rule of law and to prevent problems from emerging or deepening and to address them, looking at all Member States equally. It seeks to strengthen the rule of law in full respect for national traditions and specificities, stimulating a constructive debate and encouraging all Member States to examine how challenges can be addressed and to learn from each other's experiences.

The rule of law is also an important dimension and guiding principle for EU external action. The credibility of our external policies relies on the state of the rule of law in the EU itself. Pressure is mounting on the rule of law globally, and the EU is working actively to protect, inspire and support democracies around the world. Developments close to our borders, most recently in Belarus, have recalled the need to promote our values in the neighbourhood with determination. Moreover, the EU will continue to pursue a strong and coherent approach in its external action, and in particular embed the rule of law in its work on enlargement, in the neighbourhood and globally.

There is also a close link to EU policies to bring economic recovery: strong justice systems, a robust anti-corruption framework, and a clear and consistent system of law-making, the protection of the EU's financial interests, and sustainable growth. This is a key driver for the

---

<sup>1</sup> Article 2 of the Treaty on European Union.

<sup>2</sup> Special Eurobarometer 500 on the Future of Europe.

<sup>3</sup> See 2020 Rule of Law Report COM/2020/580 final, p. 1 and 7.

<sup>4</sup> For example stating that compliance with the rule of law is a precondition for the accession to the EU and Member States cannot subsequently amend their legislation in such a way as to bring about a reduction in the protection of the value of the rule of law. See judgement of 20 March 2021, *Repubblika v Il-Prim Ministru*, C-896/19, ECLI:EU:C:2021:311.

work of EU instruments which promote structural reforms in Member States<sup>5</sup>. In addition, the quality of public administration and the rule of law culture as reflected in the way authorities apply the law and implement court decisions are key.

Deepening work on the rule of law needs close and continuous cooperation between EU institutions and Member States. The Commission was encouraged by the response to the 2020 Rule of Law Report in the European Parliament and in the Council, as well as in national Parliaments, and looks forward to further strengthening inter-institutional cooperation on the rule of law.

The Report is also part of broader EU efforts to promote and defend its founding values. This work includes the European Democracy Action Plan<sup>6</sup> and the renewed Strategy for the Implementation of the Charter of Fundamental Rights<sup>7</sup>, as well as targeted strategies to progress towards a “Union of Equality”<sup>8</sup>. Another related aspect is monitoring the application of EU law and the protection of fundamental rights under the Charter, including through the use of infringement proceedings<sup>9</sup>.

The 2021 Rule of Law report covers the same scope as last year – justice systems, the anti-corruption framework, media pluralism and media freedom and other institutional checks and balances – consolidating the exercise started by the 2020 report while further deepening the Commission’s assessment. It also develops further on the impact and challenges brought by the COVID-19 pandemic. The country chapters, which form an integral part of this report, analyse new developments since the first report and the follow up to the challenges and developments identified in the 2020 Report.

## **2. THE COVID-19 PANDEMIC AND THE RULE OF LAW**

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 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. 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. This

---

<sup>5</sup> Such as the EU Justice Scoreboard, the Recovery and Resilience Facility, the Structural Funds and the Technical Support Instrument.

<sup>6</sup> COM (2020) 790 final.

<sup>7</sup> COM (2020) 711 final.

<sup>8</sup> See Gender equality strategy 2020-2025, COM(2020) 152; EU Anti-racism Action Plan 2020-2025, COM(2020) 565; EU Roma strategic framework for equality, inclusion and participation, COM(2020) 620, LGBTIQ equality strategy 2020-2025, COM(2020) 698; Strategy on the rights of the child, COM(2021) 142; Strategy for the Rights of Persons with Disabilities 2021-2030, COM(2021) 101; The European Pillar of Social Rights Action Plan, COM(2021) 102.

<sup>9</sup> The Commission launches infringements to defend these rights. The most recent examples include cases against Hungary and Poland for violations of fundamental rights of LGBTIQ people. In the case of Hungary, this concerns a recently adopted law banning LGBTIQ content and a decision imposing a disclaimer on children’s books with LGBTIQ content. In the case of Poland, the infringements relates to the ‘LGBT-ideology free zones’.

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. 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.

Overall, the monitoring indicates 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. Some Member States already had a legal framework enshrined in their constitution or in public health or other laws for use in crisis situations. This foresight helped to bolster the legitimacy of COVID-19 measures, which could draw on a pre-existing framework. Other Member States introduced a new emergency regime specifically for this pandemic. In the course of the pandemic, most Member States modified, often several times, the legal regime for taking pandemic-related measures. These changes often took place in tense political circumstances, using accelerated procedures, with limited constitutional checks and parliamentary debates. In some Member States, the legal regime under which fundamental rights have been restricted had not been clearly established. In its interim report of 2020, the Venice Commission has pointed to the importance of having a clear legal regime in place before a crisis, so that respect for the rule of law, as well as for fundamental rights and constitutional requirements, is built in from the outset<sup>10</sup>.

The urgent demands of the crisis put pressure on established constitutional systems. Some Member States maintained Parliaments' responsibility for legislative scrutiny on all pandemic-related measures. Others restored strengthened parliamentary oversight after an initial period where this was curtailed. In terms of scrutinising the executive, many Parliaments also changed rules about physical presence and voting to allow democratic participation. Other institutions key to checks and balances were also able to adapt, despite the serious impact of the pandemic on their ability to work. In many Member States, courts and Constitutional Courts played an important role in ensuring that judicial review was maintained. Ombudspersons and human rights institutions made particular efforts to keep working and took up a number of challenges to review emergency measures. It proved more difficult to maintain the ability of society as a whole to take part in the formulation of measures, with public consultation, institutionalised social dialogue and consultation of stakeholders being generally curtailed.

The regulatory and administrative action of governments was also put under strain, but steps were also taken to mitigate the impact. For example, a high level of digitalisation helped to limit disruption. Support for digitising public administration and the judiciary and for better policy making is included in many Member States' Recovery and Resilience Plans. For public administrations, lighter procedures in areas such as public procurement were introduced to accelerate decision-making. This created risks for the rule of law and for the fight against corruption, but in some cases were mitigated by safeguards built in to the emergency regimes.

---

<sup>10</sup> Venice Commission, Opinion No. 995/2020 - Interim report on the measures taken in the EU Member States as a result of the COVID-19 crisis and their impact on democracy, the rule of law and fundamental rights.

The democratic fabric protecting the rule of law also relies on the media and on civil society. Both found their work severely constrained by pandemic-related restrictions. The role of the media in providing reliable information and casting light on the actions of the authorities is more essential than ever in a crisis. News media have been critical in keeping citizens informed and providing fact-checked information about the pandemic, but at the same time many have faced serious economic challenges. Several Member States took action as a result, in particular through schemes to support the media and journalists. Transparency and fairness in the distribution of such support is key. Journalists' work was also hindered by constraints on access to public information and to the public at large. Transparency and public access to information were a general concern, and the source of several instances of pandemic-related measures being challenged in court by civil society and citizens.

Overall, there are many positive developments and examples to draw on in order to improve the legal and political response at times of crisis, so as to strengthen the rule of law and democratic resilience. The experience has increased awareness of the importance of the rule of law and of how State authorities act in times of crisis. This could usefully be the subject of debates at EU level in the European Parliament and the Council, as well as at national level. Such a debate can also draw on analysis under way in international organisations such as the Council of Europe<sup>11</sup>.

### **3. KEY ASPECTS OF THE RULE OF LAW SITUATION IN MEMBER STATES**

Looking at the four pillars of the Rule of Law report, the next four sections highlight a number of significant common themes and trends, specific challenges and positive developments. Examples are given of developments in specific Member States that reflect these trends, drawn from the assessment for all 27 Member States to be found in the country chapters.

#### *Guidance to the reader - methodology*

The assessment included in this section needs to be read in close conjunction with the 27 country chapters presenting the specific national assessments. Examples are drawn from the country chapters to illustrate the general findings, but the detailed context is presented in the country chapters, providing a deeper understanding of the developments and debates taking place at national and European level.<sup>12</sup>

The assessment contained in the country chapters has been prepared in line with a scope and methodology discussed with Member States<sup>13</sup>. The country chapters rely on a qualitative assessment autonomously carried out by the Commission, focusing on a synthesis of significant developments since September 2020. This presents both challenges and positive aspects and includes good practices identified in Member States. When referring to the evolution of the situation since the previous report, it examines the extent to which concerns identified in 2020 have been addressed, whether they continue or whether the situation has further deteriorated/aggravated.

The Commission uses a coherent and equivalent approach, applying the same methodology and examining the same range of topics in all Member States, while remaining proportionate to the situation. In each country chapter, the analysis focuses in particular on topics where

<sup>11</sup> The Venice Commission is monitoring developments in all Member States and will issue a report in 2022.

<sup>12</sup> Hyperlinks to the country chapters have been provided to this effect.

<sup>13</sup> <https://ec.europa.eu/info/files/2021-rule-law-report-methodology>

there have been significant developments, or where important challenges have been identified in the previous report and persist during the reporting period. The terms used for the assessments aim at being comparable and uniform across the country chapters and at capturing the level of gravity, taking into account the overall country-specific context. The country chapters do not purport to give an exhaustive description of all rule of law issues in every Member State, but to present significant developments. The assessment refers to EU law requirements, including those resulting from the case-law of the CJEU. In addition, the recommendations and opinions of the Council of Europe provide a useful frame of reference for relevant standards and best practices.

The Report is the result of close collaboration with Member States and relies on a variety of national and other sources. All Member States participated in the process, providing written contributions<sup>14</sup> and joining in dedicated country visits held between March and May<sup>15</sup>. A targeted stakeholder consultation also provided valuable horizontal and country-specific contributions.<sup>16</sup> The Council of Europe also provided an overview of its recent opinions and reports concerning EU Member States<sup>17</sup>. Prior to the adoption of this report, Member States have been given the opportunity to provide factual updates on their country chapter.

### **3.1 Justice systems**

Independence, quality and efficiency are essential parameters of an effective justice system, whatever the model of the national legal system and tradition in which it is anchored. The independence of national courts is a necessary condition for ensuring effective judicial protection, an obligation for Member States under the Treaties. As re-affirmed by the CJEU, the existence of effective judicial review designed to ensure compliance with EU law is of the essence of the rule of law<sup>18</sup>. Effective justice systems are the basis for mutual trust, which is the foundation of the common area of freedom, security and justice. The themes that have come out of the analysis in the 27 country chapters are key parameters for judicial independence: the reforms of the Councils for the Judiciary, of judicial appointment processes, and the independence of the prosecution service. A specific focus in many Member States has also been the integrity and accountability of judges and prosecutors, as well as progress in digitalisation. Legal professions play a fundamental role in ensuring the protection of fundamental rights and the strengthening of the rule of law. An effective justice system requires that lawyers be free to pursue their activities of advising and representing their clients, and bar associations play an important role in helping to guarantee lawyers' independence and professional integrity.

Almost all Member States continue to be engaged in justice reforms, showing the high political importance of the topic. The country chapters show that the objectives, scope, form and state of implementation of these reforms vary. The organisation of justice systems falls within the competence of the Member States and national courts act as EU courts when

---

<sup>14</sup> <https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2021-rule-law-report-input-member-states>

<sup>15</sup> More detailed information on the country visits can be found in the country chapters. 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 stakeholders, such as journalists' associations and civil society.

<sup>16</sup> <https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2021-rule-law-report-targeted-stakeholder-consultation>

<sup>17</sup> <https://ec.europa.eu/info/files/2021-rule-law-report-stakeholder-contribution-council-europe>

<sup>18</sup> For references to relevant case-law see 2020 Rule of Law Report COM(2020) 580.

applying EU law. When reforming their justice systems, Member States must respect the requirements set by EU law and the case law of the CJEU, guaranteeing the effectiveness of the rights set out in the EU Charter of Fundamental Rights. Since the first Rule of Law Report, the CJEU has reaffirmed in several rulings the key importance of effective judicial protection for upholding the rule of law and the values upon which the EU is founded<sup>19</sup>.

### *Perceived judicial independence across the EU*

According to the EU Justice Scoreboard, Eurobarometer surveys conducted among both the general public and businesses in 2021<sup>20</sup> show that, compared to 2020, the same Member States continue to cluster around the higher and lower end of the scale of perceived judicial independence. Among the general public, in Austria, Finland, Germany, the Netherlands, and Luxembourg, the level of perceived judicial independence remains very high (above 75%), while in Croatia, Poland and Slovakia, the level of perceived judicial independence remains very low (below 30%).

### *Councils for the Judiciary and procedures for appointing judges as key safeguards for judicial independence*

The 2020 Rule of Law Report noted that in a number of Member States, steps were under way to strengthen judicial independence and reduce the influence of legislative and executive powers on the justice system. The important role of the Councils for the Judiciary in safeguarding judicial independence is increasingly recognised<sup>21</sup>. The new Councils for the Judiciary established in [Ireland](#) and [Finland](#) are now operational. In [Luxembourg](#), the proposal to establish an independent Council for the Judiciary is progressing and consultations including how to align its composition with Council of Europe recommendations are ongoing. In [Sweden](#), the Commission of Inquiry on “Strengthening the protection of democracy and the independence of the judiciary” continues its work and intends to propose legislative and constitutional reforms in 2023.

In other Member States, reforms to strengthen the existing Councils of the Judiciary are ongoing or have been completed. For example, in [Slovakia](#), reforms introduced changes to the method of appointment and dismissal of the members of the Judicial Council and extended the Council’s powers. In [Italy](#), reforms to the way the judges are elected to the High Judicial Council are under discussion in Parliament, which aim to strengthen its independence. In [Cyprus](#), reforms are pending to enhance representativeness of the members of the Judicial Council. In the [Netherlands](#), deliberations have continued to revise the appointment procedure for the members of the Council, to strengthen its independence from the executive. In [France](#), an envisaged reform to strengthen the independence of the Council has not advanced towards adoption. In [Bulgaria](#) a reform of the Council, which was part of a more comprehensive Constitutional reform, was not approved by the Parliament. The Council of Europe has established standards regarding the composition and powers of the Councils for the Judiciary, and these can be an important guide when reforms are undertaken.

The method for the appointment of judges can have a key impact on judicial independence and public perception of independence. The CJEU has clarified that under EU law, in order to guarantee judicial independence, substantive conditions and procedural rules governing

---

<sup>19</sup> A reference to the key judgments since the last report can be found in section 4.

<sup>20</sup> Figures 48 and 50, 2021 EU Justice Scoreboard.

<sup>21</sup> The CJEU has recognised that a Council for the Judiciary can constitute a safeguard for judicial independence provided that such body is sufficiently independent from the executive and legislative powers and from the body to which it is submitting an opinion. See e.g. case C-824/18 AB et al. paragraphs 123-125, and the case-law cited.

judicial appointments must prevent reasonable doubts as to the imperviousness of the judges concerned to external factors and as to their neutrality as judges<sup>22</sup>. Since the last report, reforms to strengthen the appointment procedures for judges have continued in several Member States. For example, [Czechia](#) adopted a new transparent and uniform system of appointment of new judges and court presidents. In [Latvia](#), new appointment procedures set up last year are now being implemented and applied. In [Malta](#) the comprehensive reforms of 2020 are now in place and being applied, and have contributed to strengthening judicial independence.

Reforms of appointment procedures, notably for high-level positions in the justice system, have raised important debates at national level. For example, in [Ireland](#), a draft law to reform the system for judicial appointments and promotions is alleviating previous concerns, but the reform would continue to leave broad discretion to the Government. In [Germany](#), discussions are ongoing on the selection criteria for presiding judges at the Federal Courts, following some criticism. In [Cyprus](#), Parliament continues to discuss draft legislation on the appointment procedures for judges and Presidents of the new proposed Constitutional Court and High Court. In [Austria](#), the limited involvement of the judiciary in the appointments of court presidents and vice-presidents at administrative courts continues to raise some concerns.

#### *Reinforcing the autonomy and independence of the prosecution services*

While there is no single model in the EU for the institutional set-up for prosecution services, institutional safeguards can help to ensure that the prosecution is sufficiently independent and free from undue political pressure. The independence of the prosecution has important implications for the capacity to fight crime and corruption. In [Cyprus](#), the restructuring of the Law Office is being implemented with the creation of separate, self-contained directorates to make the separation of the two main functions of the Attorney General more effective. In [Austria](#), a reform to create an independent Federal Prosecution Service is under preparation. In [Luxembourg](#), proposals have been brought forward to limit the possibility of the executive to give instructions in individual cases.

In [Portugal](#), the regime of hierarchical instructions to prosecutors is under judicial review, following concerns raised by prosecutors about interference with their internal autonomy. In [Spain](#), questions remain as regards the system of appointment of the Prosecutor General. There has been no change in [Poland](#), where the double role of the Minister of Justice, who is also the Prosecutor General, continues to raise concern. In [Hungary](#), while the independence of the prosecution service is enshrined in law, there has been no change as regards concerns about some aspects of the prosecution service with insufficient safeguards against political influence.

#### *Ensuring accountability in the judiciary and safeguarding judicial independence in disciplinary procedures*

A number of Member States have strengthened the integrity framework for judges and prosecutors. In [Belgium](#), the integrity framework has been strengthened by applying general ethical principles to all categories of members of the judiciary, as well as ethics training for both regular and lay judges. In [Austria](#), a comprehensive compliance management system is being implemented for courts and prosecution services, and in [Latvia](#), a new code of ethics for judges was adopted. In [Lithuania](#) and [Italy](#), initiatives to strengthen integrity rules are ongoing, with measures on asset declarations. Such initiatives can contribute to increasing

---

<sup>22</sup> See case C-824/18 AB et al. paragraphs 117, 119, 123 and the case law cited.



public trust in the judiciary. In [Portugal](#), [Croatia](#), [Slovakia](#), and [Italy](#), the judicial authorities, including the Councils for the Judiciary, have taken significant steps to address allegations of breaches of judicial ethics, disciplinary misconduct or corruption within the judiciary.

Reforms to strengthen safeguards for judicial independence in disciplinary proceedings are ongoing in a number of Member States. In [France](#), reflection has started on possible reforms of the liability and protection of magistrates, while a broader reform of the disciplinary regime to improve judicial independence is being discussed. In [Ireland](#), work is ongoing to establish a disciplinary regime for judges, though Parliament's role in removing judges remains unchanged. In [Slovenia](#), the judiciary initiated discussions on improving the framework for disciplinary proceedings. In [Czechia](#), a draft law introducing the possibility for review in disciplinary proceedings is being discussed in Parliament. In [Malta](#), the 2020 reform of the procedure for dismissal of magistrates and judges provides for additional guarantees.

#### *Judicial independence remains an area of concern in some Member States*

Concerns about judicial independence vary in their intensity and scope. Serious structural concerns exist in a few Member States and have deepened, while challenges of a lesser nature in other Member States require attention.

In a few Member States, the direction of reform has been towards lowering safeguards for judicial independence. These changes have given rise to serious concerns, which have aggravated in some cases, as they have led to increasing influence of the executive and legislative branch over the functioning of the justice system. Reforms of disciplinary procedures and of liability of judges raise particular concerns. In reaction to these developments, national judges have referred preliminary rulings to the CJEU. In [Poland](#), the reforms, including new developments, continue to be a source of serious concerns as referred to in 2020. In particular, the independence of the Disciplinary Chamber of the Supreme Court cannot be guaranteed, but it continues to take decisions with a direct impact on judges and the way they exercise their function, creating a 'chilling effect' for judges<sup>23</sup>. In addition, concerns over the independence and legitimacy of the Constitutional Tribunal have still not been resolved, as confirmed by the European Court of Human Rights finding that the composition of a bench of the Constitutional Tribunal did not meet the requirement of 'a tribunal established by law'<sup>24</sup>. In [Hungary](#), the direction of change continues to be towards lowering previously existing safeguards. The justice system has been subject to new developments, for example with regard to the nomination of the new President of the Supreme Court (Kúria). This adds to existing concerns on judicial independence, which have been expressed also in the context of the Article 7(1) TEU procedure initiated by the European Parliament.

On the other hand, in [Romania](#), steps are seeking to address the changes enacted in 2017-2019, which had had a negative impact on judicial independence and the fight against corruption. Some of these reforms<sup>25</sup> were examined in a preliminary ruling of the CJEU,

---

<sup>23</sup> On 15 July 2021, the Court of Justice issued a final ruling finding that the disciplinary regime for judges in Poland is not compatible with EU law (Judgment of the Court of Justice of 15 July 2021, *Commission v Poland*, C-791/19 ECLI:EU:C:2021:596).

<sup>24</sup> Judgment of 7 May 2021 *Xero Flor w Polsce sp. z o.o. v. Poland* (application no. 4907/18).

<sup>25</sup> The special prosecution section for the investigation of offences committed by judges and prosecutors and a regime for civil liability introduced in 2018, as well as the interim appointment of the management of the Judicial Inspection,

which set out the criteria to be respected to ensure compliance with EU law<sup>26</sup>. Legislative amendments are under way to address these problems.

Challenges regarding judicial independence remain in other Member States. In [Bulgaria](#), the composition and functioning of the Supreme Judicial Council and of the Inspectorate to the Supreme Judicial Council continue to raise concerns. A new law aiming to address the long-standing issue of accountability and lack of effective criminal liability of the Prosecutor General was declared unconstitutional. The issue therefore remains unresolved, with implications for the influence of the post of Prosecutor General over the justice system. In [Slovakia](#), important steps have been taken to strengthen the integrity and independence of the judiciary, both legislative steps and steps to address corruption within the judiciary. However, important challenges remain, including on the possible impacts of certain reforms on judicial independence, such as the reform of the dismissal of the members of the Judicial Council and the new criminal liability regime for judges.

Political attacks against the judiciary and repeated attempts to undermine the reputation of judges continue in some Member States. At times, these attacks target judges and prosecutors who have taken a public position or made judicial referrals against judicial reforms they saw as having negative implications for judicial independence. This can have a chilling effect on judges and prosecutors and a negative impact on public trust in the judiciary.

Tensions around judicial independence are also seen in stalemates, delays and public debates in connection with appointments to high posts in the judiciary. In [Croatia](#) the ongoing process for appointing the new Supreme Court President has given rise to controversy, with repeated disparaging public statements against judges. In [Slovenia](#), appointments of state prosecutors are unjustifiably delayed and the failure to nominate European Delegated Prosecutors in due time raises concerns. In [Spain](#), the Council for the Judiciary has been exercising its functions *ad interim* since December 2018, thus prolonging concerns that it might be perceived as vulnerable to politicisation. In [Lithuania](#), the appointment of a new President of the Supreme Court is pending since September 2019, and the sitting President remains in function *ad interim*.

#### *Investing in justice and digitalisation*

The COVID-19 pandemic has affected the functioning of the national justice systems and the activity of the courts. In particular, in the first phase of the pandemic, there were interruptions or delays in the handling of cases and court proceedings leading to significant additional backlogs in courts in a number of Member States. Despite the steps taken by Member States and judicial authorities to help justice systems to adapt, this has highlighted a vulnerability to disruption in an emergency. The handling of criminal investigations and criminal proceedings in court during the pandemic has been a challenge in many Member States, in particular to ensure that the rights of suspects and the accused, as well as the rights of victims, are fully respected and all witnesses heard, without creating unreasonable delays. Restrictions limiting freedom of movement and access to premises were an additional challenge for the work of prosecutors and police.

Generally, in those Member States where there was already a high level of digitalisation and appropriate procedural rules and safeguards in place, the justice systems worked more effectively and the risk of backlogs was mitigated. For example, in [Estonia](#), the advanced digitalisation of the justice system – such as developing a specific virtual court-room – was a

---

<sup>26</sup> Judgment of 18 May 2021, *Asociația ‘Forumul Judecătorilor Din România’ v Inspecția Judiciară and others*, C-83/19, C-127/19, C-195/19, C-291/19, C-397/19, ECLI:EU:C:2021:393.

determining factor in ensuring the justice system's resilience. In [Hungary](#), the high level of digitalisation for proceedings in civil/commercial and administrative cases and in criminal cases allowed the justice system to adapt. In [Finland](#), the National Court Administration paid particular attention to providing guidance and technical help for options such as remote connections at trials.

The pandemic has given a new sense of urgency to digitalisation of justice systems<sup>27</sup> and a high interest in learning from best practice. Initiatives to ensure electronic communication between courts and court users are being taken in many Member States. In [Belgium](#), the Federal Government programme includes ambitious initiatives to improve the digitalisation of the justice system by 2025. In [France](#), comprehensive projects to digitalise all areas of justice are advancing, including the creation of a digital criminal office – a single access point for criminal proceedings – and the possibility to lodge applications online in some areas of litigation, and to request legal aid. In [Denmark](#), a new database will improve access to judgements online. Projects under way in [Spain](#) include the development of an IT tool to automatically transform recordings of trials and hearings into text. In the [Netherlands](#) the judiciary and prosecution service are jointly developing a digital plan for criminal justice. Strengthening the resilience of the justice systems through structural reform and digitalisation is a priority under the Recovery and Resilience Facility, and a number of Member States have included this in their national Recovery and Resilience Plans.

Effective justice systems rely on adequate human and financial resources. The justice systems in [Malta](#), [Belgium](#), [Italy](#), [Greece](#), [Portugal](#) and [Cyprus](#) still face substantial efficiency challenges. Investing in human and financial resources and digitalisation of the justice system, as well as addressing structural obstacles, is indispensable to improve significantly the efficiency of the justice systems and effective judicial protection.

### ***3.2 Anti-corruption framework***

The fight against corruption is essential for maintaining the rule of law and preserving citizens' trust in public institutions. This section focuses on the different stages of national action essential to tackle corruption, anti-corruption strategies, the capacity of the criminal justice system to fight corruption, and the measures set up by Member States to prevent corruption.

#### *Corruption perceptions across the EU*

The 2020 Corruption Perceptions Index (CPI)<sup>28</sup> shows that EU Member States continue to be among the world's best performers. Ten Member States are in the top twenty of the countries perceived as least corrupt in the world<sup>29</sup>. Six Member States (Denmark, Finland, Sweden,

---

<sup>27</sup> In its Communication on the digitalisation of justice in the EU, the Commission proposed a toolbox for the digitalisation of justice in order to move the justice sector forward in the digital area, at national and EU level. COM(2020) 710 and accompanying SWD(2020) 540, 2 December 2020.

<sup>28</sup> Transparency International, Corruption Perception Index 2020: <https://www.transparency.org/en/news/cpi-2020-western-europe-eu>. This index captures experts and businesses' perceptions of the level of corruption in a given country. It covers a variety of corrupt practices, including bribery, diversion of public funds, misuse of public office for private gain, adequate corruption prevention regulations and enforcement, including on financial disclosure and conflict of interest, as well as effective criminal prosecution of corruption involving a public official. The Eurobarometer data on corruption perception and experience of citizens and businesses as reported last year is updated every second year. The latest data sets are the Special Eurobarometer 502 (2020) and the Flash Eurobarometer 482 (2019).

<sup>29</sup> In order of their scores, these Member States are as follows: Denmark, Finland, Sweden, the Netherlands, Germany, Luxembourg, Austria, Belgium, Estonia and Ireland.

Netherlands, Germany and Luxembourg) score above 80/100 on the index, and a further five (Austria, Belgium, Estonia, Ireland and France) score above 69/100<sup>30</sup>. Some Member States, while remaining below the EU average (63/100), have improved their scores over the last five years (Spain, Italy and Greece). Some others have registered a significant deterioration in perceived corruption levels (Poland, Malta and Hungary)<sup>31</sup>.

#### *National anti-corruption strategies need to lead to effective results*

A strategic anti-corruption framework allows political commitment to be translated into concrete action and helps to address legislative or institutional gaps in a coherent, comprehensive and coordinated manner. Clear and measurable objectives, adequate budgetary resources, regular evaluations and well-defined responsibilities for specialised institutions, as well as a strong involvement of relevant stakeholders, are important elements for such strategies to be effectively implemented and lead to tangible results.

Since September 2020, [Finland](#) and [Sweden](#) have adopted national anti-corruption strategies or action plans for the first time, and a government proposal for such a strategy is awaiting approval by Parliament in [Portugal](#). [Bulgaria](#), [Czechia](#), [Estonia](#), [Lithuania](#) and [Malta](#) have revised existing strategies and accompanying action plans and in [Croatia](#), [Germany](#), [Greece](#) and [Latvia](#), the revision process is ongoing. [Romania](#) has conducted an internal evaluation and an external audit and is preparing a new National Anti-Corruption Strategy for 2021-2025.

In [Hungary](#), the anti-corruption programme is limited to fostering integrity in the public service, leaving out other areas of risk. In other Member States, while strategies are in place, they have experienced delays in implementation. This is the case for example in [Czechia](#), where several key reform initiatives in the area of corruption prevention are still pending.

#### *Reforms to strengthen the capacity to fight corruption*

Most Member States have in place extensive legislation providing the criminal justice system with tools to fight corruption in all its forms. Efforts continued in several Member States to fill gaps and bring existing frameworks in line with international anti-corruption standards<sup>32</sup> and EU law<sup>33</sup>. For example, [Slovakia](#) has complemented its criminal legal framework with the entry into force of a new law on asset seizure, also introducing new criminal offences, such as the crime of accepting or offering unjustified benefits or undue advantages. [Italy](#) introduced stricter sanctions on fraud and widened the personal scope of international corruption. [Hungary](#) introduced legislation to address foreign bribery and criminalise informal payments in healthcare. Reforms in the area of substantive or procedural criminal law are under discussion in other Member States. [Sweden](#), for instance, is currently reviewing its statute of limitation for all crimes, including corruption offences, which could remove obstacles to the effective adjudication of complex corruption cases.

<sup>30</sup> In the country chapters, the level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption is above 79); relatively low (between 79-60), relatively high (between 59-50), high (below 50).

<sup>31</sup> A change is “significant” when the score has changed by more than five points in the last five years.

<sup>32</sup> Primarily the Council of Europe’s Criminal Law Convention on Corruption and its Civil Law Convention on Corruption; the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; and the United Nations Convention Against Corruption.

<sup>33</sup> Over the past few years, EU legislation has been adopted to strengthen the fight against corruption, including standards to protect whistleblowers against all forms of retaliation. Revised rules against money laundering, notably by setting up beneficial ownership registries of companies, and further steps to help the exchange of financial information and to speed up financial investigations also have an important impact on facilitating the fight against corruption.

Some Member States have introduced measures to strengthen the capacity of the authorities to fight corruption and to reduce obstacles to effective investigation and prosecution. [Lithuania](#) has reinforced its special police unit tasked with investigating corruption cases as well as with analytical tasks providing policy support to authorities. In [Cyprus](#), the office of the Attorney General has been considerably strengthened to prosecute financial crimes, including corruption. [Denmark](#) is preparing the establishment of a new national investigative unit for a more efficient approach to serious crime including complex corruption cases. In [Slovenia](#), legislative amendments have improved the independence, organisation and functioning of the Commission for the Prevention of Corruption.

In some Member States, structural and organisational changes took place or are being considered. In [Malta](#), the Attorney General has taken over the prosecution of specified serious crimes, including high-level corruption, and a task-force on complex financial crimes has been set up. [Austria](#) is revising its system of reporting obligations, seen as the source of unnecessary burdens and delays, with a negative impact on anti-corruption investigations.

#### *Challenges linked to criminal investigations, prosecutions and the application of sanctions for corruption*

Major or highly complex corruption cases continued to emerge in various Member States, sometimes involving high-level officials. [Slovakia](#)'s efforts to repress corruption have significantly increased, resulting in a number of high-level corruption cases being investigated and prosecuted. In [Estonia](#), a case currently under investigation led to the resignation of the previous Government in January 2021. In [Czechia](#), investigations and audits at national and European level on the use of EU funds have recently found evidence of conflict of interest at the top executive level, and a case has been accepted by the European Public Prosecutor's Office. In [Austria](#), investigations into high-level political corruption have intensified following recent political scandals. In [Romania](#), the effectiveness of the investigation and sanctioning of high-level corruption has improved, although amendments to the criminal code and criminal procedure code as well as the justice laws remain indispensable for an effective fight against corruption.

In many Member States, resources allocated for investigating corruption and prosecution authorities have created particular difficulties in hiring or retaining highly specialised personnel. Human resource challenges have been reported in [Latvia](#), impacting the operational efficiency of some prosecution offices. [Croatia](#) and [Luxembourg](#) find it difficult to recruit qualified candidates. In [Spain](#), prosecution authorities note that the lack of adequate resources affects the speed of the investigation and prosecution of corruption cases. This includes high-level cases of corruption, many of which have been pending in the investigation phase for several years. Some instances were reported in [Slovakia](#) and [Poland](#) where legal constraints to access financial data created obstacles in investigations.

In some Member States, concerns persist about the effectiveness of the investigation, prosecution and adjudication of high-level corruption cases<sup>34</sup>. Measures to speed up indictments and cases in trials are being considered in [Italy](#). In [Croatia](#), the prosecution and investigation of high-level corruption cases continues, but due to protracted proceedings, convictions are often delayed. In [Malta](#), while investigative and prosecution bodies have improved their capacity to deal with corruption cases, with an increase in the number of cases

---

<sup>34</sup> As noted in the 2020 Rule of Law Report, 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.

opened, investigations continue to be lengthy and there is not yet a track record of convictions in high-level cases. In [Bulgaria](#), despite increased investigative activity and reinforced resources, progress in high-profile cases of corruption remain slow and a solid track record of final convictions remains to be established<sup>35</sup>. In [Hungary](#), while the indictment rate for corruption cases is high, and some new high-level cases involving politicians have been opened since 2020, the track record of investigations of allegations concerning high-level officials and their immediate circle remains limited.

#### *Strengthening the corruption prevention and integrity framework*

The 2020 Rule of Law report showed that many Member States had taken measures to strengthen the corruption prevention and integrity frameworks and many of these efforts have continued.

##### *- Preventing conflicts of interest and fostering integrity in public institutions*

In some Member States, the integrity framework has been complemented with codes of conduct for parliamentarians, as in [Spain](#), or clearer or consolidated rules on gifts, conflicts of interest and incompatibilities for senior and high-level officials, as for instance in [Finland](#), [Italy](#) and [Portugal](#). In addition, some Member States, such as in [Belgium](#), [Cyprus](#), the [Netherlands](#), and [Malta](#), have introduced integrity and screening programmes or oversight entities in law enforcement bodies, which contribute to strengthening integrity in the police.

##### *- Lobbying and revolving doors*

Lobbying is a legitimate act of political participation<sup>36</sup>. It needs to be accompanied by strong requirements of transparency and integrity to ensure accountability and inclusiveness in decision-making<sup>37</sup>. Some Member States have revised their frameworks to introduce more transparency and improve access to information about lobbying. [Germany](#), for instance, adopted a new law to introduce an electronic lobby register at federal level. New rules have entered into force in [Lithuania](#) which foresee a cross declaration scheme where lobbyists, politicians and civil servants have to report their meetings in a lobbying registry. In [Spain](#), discussions on the creation of a transparency register are ongoing. Non-binding guidelines on lobbying and on conflicts of interest have been put in place in [Estonia](#). In [Czechia](#), the adoption of new draft lobbying legislation remains pending.

Another area under public scrutiny in many Member States is the regulation and enforcement of rules on “revolving doors” between public and private functions. Introducing stricter post-employment restrictions, such as cooling-off periods, are under discussion, for example in [Finland](#) and [Italy](#). [France](#) has recently amended the law to include revolving doors in the mandate of the agency in charge of transparency and integrity in public life. Whereas new rules establishing relatively long cooling-off periods and dissuasive sanctions for non-compliance had recently introduced in [Portugal](#), they still need to be monitored and enforced.

##### *- Asset and interest disclosure*

All Member States have rules in place to ensure that categories of public sector officials are subject to asset and interest disclosure obligations. However, these vary in the scope, transparency and accessibility of disclosed information, or in the system of verification and

---

<sup>35</sup> In June 2021 the United States issued sanctions targeting certain Bulgarian citizens (including a former member of Parliament) for acts of corruption, in accordance with the US Global Magnitsky Act.

<sup>36</sup> OECD (2021) Lobbying in the 21<sup>st</sup> century

<sup>37</sup> OECD (2010), Recommendation of the Council on Principles for Transparency and Integrity in Lobbying; Council of Europe standards on lobbying transparency, Recommendation CM/Rec(2017)2.

enforcement. Recent reforms in a number of Member States aim to improve the system. [Estonia](#) extended the scope of persons obliged to submit a declaration of financial interests to include ministers' political advisers, and [Croatia](#) has made the asset declarations of judges and state attorneys publicly available. [Portugal](#) introduced obligations to publish complete and consolidated asset declarations online. In [Lithuania](#), a new registry is now operational allowing the information in interest declarations to be linked to several other national registers. Finally, other Member States which had introduced reforms in the past are establishing a track record of monitoring and verification. In [France](#), the competent authorities perform systematic and regular controls, some resulting in transmission to the prosecution service for possible criminal follow-up. In [Romania](#), the electronic submission of asset and interest disclosures became operational in April 2021 and is expected to further facilitate the verification work.

Shortcomings remain in some Member States. In [Belgium](#), declarations are not published or verified for accuracy and are only accessible to investigating judges in the framework of criminal investigations. In [Greece](#), while asset declarations from officials and Members of Parliament are made public, there are delays and data available for publication remains limited. In [Hungary](#), although there are extensive disclosure requirements, concerns remain regarding the lack of systematic checks and insufficient oversight of asset and interest declarations, and suspicions of unjustified increase in wealth may lead to verification by the tax authorities only if investigative authorities have also opened criminal enquiries. In [Slovenia](#), while the categories of officials under disclosure obligations keep expanding, the resources devoted to monitoring and verifications has not kept pace. Shortage of human resources persists also at the Commission for Resolution of Conflict of Interest in [Croatia](#).

- *Whistleblower protection*

In the context of the transposition of the 2019 EU Directive on whistleblower protection<sup>38</sup>, Member States are in the process of revising existing national legislation or introducing new rules. Some Member States have streamlined the institutional setting for handling whistleblower reports. This was the case in [Slovakia](#), where the Parliament appointed the head of a new independent Whistleblower Protection Office covering both the private and the public sector. In the [Netherlands](#), following an evaluation, the Whistleblowers Authority Act will be amended to increase the legal protection of the whistleblowers.

- *Political party financing*

Political party financing can be used as a conduit for corruption, making transparency and the rigour of regulation an important factor. Reforms to increase the transparency and oversight of political party financing have been carried out or are under discussion in several Member States. In [Luxembourg](#), the political party financing regulation has been revised to bring in more transparency. In [Finland](#), a parliamentary working group is reviewing the development of relevant legislation. In [Czechia](#), a more detailed analysis of the party financing system is envisaged, to identify legislative loopholes and challenges in practice. In the [Netherlands](#), proposed legislation currently under discussion in Parliament aims at protecting the functioning and organisation of political parties against foreign interference.

---

<sup>38</sup> Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law. The transposition deadline is 17 December 2021.

### *Countering the impact of the pandemic on corruption*

The COVID-19 pandemic affected the pace of reforms or the adjudication of corruption cases in some Member States, as authorities and courts were faced with the imperative of tackling the health emergency. GRECO recommended streamlining anti-corruption measures in pandemic-related processes such as the allocation and disbursement of recovery funds, emergency legislation and medical care<sup>39</sup>. At the same time, the Commission and the Council flagged the continued importance of tackling corruption<sup>40</sup>. Similarly, the OECD warned that integrity violations and corrupt practices could undermine recovery, flagging in particular the need to address immediate risks in emergency procurement and to integrate anti-corruption risk assessments in economic recovery measures<sup>41</sup>.

Corruption risks appear to have increased during the pandemic, in particular with the increased use of accelerated and simplified procurement procedures, resulting in direct awards or non-competitive procurement procedures. These exceptional circumstances prompted audit and control authorities in several Member States, for example [Cyprus](#), [Portugal](#), [France](#), [Italy](#), and [Lithuania](#), to issue guidelines for addressing these risks, or to carry out targeted audits like in [Austria](#) or [Romania](#).

### **3.3 Media pluralism and media freedom**

Media pluralism and media freedom are key enablers for the rule of law, democratic accountability and the fight against corruption. Member States have an obligation to guarantee an enabling environment for journalists, protect their safety and promote media freedom and media pluralism. This section focuses on areas where political decisions and policies can have a powerful impact on the ability of the media to play its role.

#### *The Media Pluralism Monitor*

The Media Pluralism Monitor<sup>42</sup> assesses the risks to media freedom and pluralism in all 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 2021) point to a deteriorating situation compared to MPM 2020 in three key indicators: freedom of expression, protection of the right to information and the journalistic profession, and protection of journalists. Once more, several governments' response to the COVID-19 pandemic has had a bearing on this result. While the results confirm 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, there has been a slight improvement. The transparency of media ownership continues to present on average a medium risk across Member States, due to a lack of effectiveness of legal provisions and to

---

<sup>39</sup> GRECO (2020) Corruption risks and useful legal references in the context of COVID-19.

<sup>40</sup> The 2020 Country Specific Recommendations highlighted for several Member States that continuing efforts to strengthen the framework to prevent and sanction corruption are key to ensuring recovery in the aftermath of the COVID-19 crisis and achieving an efficient, accountable and transparent allocation and distribution of funds and resources.

<sup>41</sup> OECD (2020) Policy measures to avoid corruption and bribery in the COVID-19 response and recovery.

<sup>42</sup> The Media Pluralism Monitor 2021 has been an important source for the 2021 Rule of Law Report. The Media Pluralism Monitor is a scientific and holistic tool that documents the health of media ecosystems, detailing threats to media pluralism and freedom in Member States and some candidate countries. It is co-financed by the European Union and has been implemented, in an independent manner and on a regular basis, by the Centre for Media Pluralism and Media Freedom, since 2013/2014. The Commission has used other sources, such as Reporters Without Borders' World Press Freedom Index, as referenced in the country chapters.



the fact that information is provided only to public bodies, but not to the public. As set out in the country chapters, for a number of reasons the political independence of the media is considered to be an area of high risk in the same six Member States identified in MPM 2020<sup>43</sup>.

#### *Ongoing reforms to strengthen the independence of media regulators*

National media regulators play a key role in upholding and enforcing media pluralism. As the 2020 Rule of Law Report emphasised, when implementing media-specific regulation and taking media policy decisions, their independence from economic and political interests has a direct impact on market plurality and on the political independence of the media environment. All Member States have legislation in place setting out the competences and independence of media regulators. The Audiovisual Media Services Directive (AVMSD)<sup>44</sup> includes specific requirements to strengthen the independence of national media authorities. Since the publication of the first report, in the context of the transposition of the Directive, some Member States, such as [Belgium](#), [Bulgaria](#), [Greece](#), [Latvia](#), [Luxembourg](#) and [Sweden](#), have introduced new legislation which is expected to further strengthen the independence of their media regulators. Other Member States ([Czechia](#), [Cyprus](#), [Estonia](#), [France](#) and [Poland](#)) have announced or are preparing such legislation.

Concerns remain with regard to the functional independence and effectiveness of some regulators. For example, in [Romania](#) the work of the regulator was hampered by the fact that no new members were appointed when several previous mandates expired, and due to insufficient resources. In [Spain](#) and [Slovenia](#) concerns as to the adequacy of the regulator's resources were also raised. Political influence in the nomination process or the absence of effective safeguards against political interference remain a matter of concern in some Member States, despite formal independence being enshrined in law. This is the case in Member States like [Croatia](#), [Malta](#), [Slovakia](#) and [Hungary](#).

#### *Improvements and obstacles related to the transparency of media ownership*

Transparency of media ownership is an essential precondition for any reliable analysis of the plurality of media markets and for enabling the public to evaluate the information and opinions disseminated by the media. International standards<sup>45</sup> and EU legislation<sup>46</sup> encourages Member States to adopt specific measures in this area. Since the last Report, new legislation to enhance the transparency of media ownership and public availability of media ownership information has been adopted in [Greece](#). In [Finland](#), new specific legislation obliges media service providers to make information on their ownership structure publicly accessible. In several other Member States, laws to enhance media ownership transparency are in preparation and a few have seen accessibility of the information enhanced. For example, [Ireland](#) has established a searchable database covering ownership information of media, facilitating public oversight. [Lithuania](#) is establishing a publicly accessible information system to disclose information on ownership and, progressively, income resulting from state advertising.

---

<sup>43</sup> Bulgaria, Hungary, Malta, Poland, Romania, Slovenia.

<sup>44</sup> Directive (EU) 2018/1808 of 14 November 2018.

<sup>45</sup> Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on media pluralism and transparency of media ownership.

<sup>46</sup> Directive (EU) 2018/1808 of 14 November 2018, article 5(2). General (non-sectoral) obligations of transparency of beneficial ownership also exist in the Anti-Money Laundering Directives (Directive (EU) 2018/843 of 30 May 2018 and Directive (EU) 2015/849 of 20 May 2015).

Concerns regarding the lack of transparency of the ultimate ownership structures exist in several Member States, due in particular to practical problems to identify ultimate owners. [Slovenia](#) has specific provisions on transparency, but concerns remain as the ultimate beneficial owners are not always identifiable in the Media Register. [Czechia](#) adopted legislation that guarantees public access via a registry to a limited amount of ownership information for all companies, including media, but concerns remain that the system does not oblige media companies to disclose their full ownership structure. Lack of transparency of media ownership remains a source of concern in [Bulgaria](#), as data on media ownership is still not fully disclosed to the public.

#### *Risks to transparency and fair allocation of state advertising*

Transparent rules and fair criteria lower the risk of favouritism in the distribution of state advertising. The absence of such rules increases the risk of public money being allocated to specific media outlets in a biased manner and may allow indirect political influence over the media, undermining its independence.

The 2020 Report noted the lack of specific legislation on this matter in many Member States. This remains the case, despite the fact that central or local authorities in a number of Member States continued to direct significant sums of advertising revenue to media. In [Austria](#), high amounts of state advertising to media are accompanied by continuing concerns about the transparency and fairness of the allocation and insufficient attention to media pluralism. In [Croatia](#), while state advertising is partly regulated, stakeholders report it often undermines the political independence of media outlets which are economically dependent on such funding, notably at local level. In [Bulgaria](#), the lack of regulatory safeguards for fair and transparent allocation of state advertising combines with concerns related to transparency in the allocation of public funding to media outlets. In [Hungary](#), the allocation of state advertising continues to permit the Government to exert indirect political influence over the media, with the state being the largest advertiser in the country and the large majority of revenue going to media companies supportive of the government. In [Poland](#), state advertising appears to be directed mostly to media outlets considered as supportive of the government.

#### *Political pressure and influence on the media*

Vulnerabilities and risks increase when the political independence of media is under threat, in the absence of regulation against political interference or when rules allow political actors to own media. Since the publication of the last report, political pressure on the media has been manifest in a number of cases. In [Czechia](#), political controversies have continued to affect the Czech TV supervisory board. In [Malta](#), in the light of the ownership by the two main political parties of their own television and radio stations, a constitutional case has been lodged challenging the relevant section of the Maltese Broadcasting Act, arguing against the way in which the rules are applied by the media regulator. In [Slovenia](#), possible changes in the funding of the public service broadcaster and the pressure on the national press agency are seen by stakeholders as politically motivated. In [Poland](#), the potential acquisition of a large privately owned press group by a state-controlled oil company has raised concerns as a potential threat to media market pluralism. In [Bulgaria](#), political influence on the media continues to be an issue of concern, also due to the lack of rules preventing politicians and political parties from owning media outlets. In [Hungary](#), the Media Council adopted a

number of decisions which had the effect of taking one of Hungary's last independent radio stations off air<sup>47</sup>.

#### *Access to information is a key tool for the media, civil society and public trust*

The right of access to information held by public authorities is a fundamental precondition for media, as well as civil society and citizens at large, to be able to play their role in democratic debate and scrutiny of public institutions. New legislation establishing the framework and conditions for access to public information came into force in [Cyprus](#) in 2020, and several other Member States are planning to introduce comprehensive legislation on access to information ([Austria](#)) or introducing mechanisms for mediation on complaints ([Netherlands](#)). While access to information is guaranteed by law in all Member States, practical obstacles remain in many cases. In [Romania](#), regular monitoring by the national authorities reveals differing implementation in the administration, as well as an insufficient prioritisation of transparency measures by public bodies, with compliance levels lowest for local authorities. In [Croatia](#), shortcomings were highlighted about enforcement of decisions of the Information Commissioner. In [Luxembourg](#), concerns remain about the lengthy procedures for access to official documents. In [Denmark](#), existing restrictions to the right of access to public files are under debate.

#### *Protecting journalists against threats and attacks*

The need to address the safety of journalists across the EU has been highlighted by recent cases currently under investigation, such as the murder of Greek journalist Giorgios Karaivaz in April 2021 and the murder of Dutch journalist Peter R. de Vries in July 2021. Many journalists remain subject to threats and attacks, in particular when investigating crime and corruption. In [Slovakia](#), a number of individuals involved in the 2018 assassination of investigative journalist Ján Kuciak and his fiancée were convicted, and trial of the alleged mastermind is ongoing. In [Malta](#), the public inquiry into the assassination of investigative journalist Daphne Caruana Galizia in 2017 has now concluded its work. There have been a number of developments in the criminal proceedings related to her murder.

In 2020, the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists recorded its highest number of alerts ever, an increase of 40% compared to 2019<sup>48</sup>. In 2020, the Mapping Media Freedom Platform<sup>49</sup> also monitored 280 cases of media freedom violations, affecting a total of 908 persons or media entities in 23 Member States. These violations included harassment or psychological abuse, legal threats, physical assaults, attacks on property, hate speech, smear campaigns and censorship. Physical attacks have been reported in particular in the context of public protests, and journalists in [France](#), [Germany](#), [Greece](#) and [Poland](#) have been subject to aggression from protesters, but also in some cases police forces. Online threats are on the rise across the EU, with female journalists and journalists of minority background particularly at risk. This situation is particularly concerning when politicians or powerful public figures are initiating such attacks. In [Slovenia](#), for example, a number of prominent cases have concerned online harassment and threats against journalists by politicians. In [Portugal](#), a case of police surveillance, seeking to identify journalists' sources and carried out without a judicial mandate, is under investigation. In [Italy](#), a recent alert concerns alleged wiretapping of several journalists working on

---

<sup>47</sup> In June 2021, the Commission launched an infringement procedure against Hungary following the Media Council's decisions to reject Klubrádió's application on the use of radio spectrum.

<sup>48</sup> <https://rm.coe.int/final-version-annual-report-2021-en-wanted-real-action-for-media-freed/1680a2440e>.

<sup>49</sup> [www.mappingmediafreedom.org](http://www.mappingmediafreedom.org)

migration issues as part of a public prosecutors' investigation into relations between NGOs and traffickers in human beings.

Mechanisms that provide practical support to journalists in need of help exist in several Member States. In the [Netherlands](#), the 'PersVeilig' project aimed at reducing threats, violence and aggression against journalists was reviewed in 2021, with proposals made for improvements. In [Italy](#), a Coordination Centre dealing with acts against journalists set up in 2017 continues to be considered best practice at EU level. Other Member States are considering introducing new legislative safeguards for the protection of journalists. In [Finland](#), the government is planning changes to the Criminal Code to facilitate the prosecution of unlawful threats and targeting of vulnerable victims, such as freelance journalists, and to increase the punishment for gender related crime, to address hate speech directed at female journalists. [Sweden](#) is also taking steps to improve journalists' protection, as part of the ongoing review of the criminal law protection for certain vital functions in society.

Strategic lawsuits against public participation (SLAPPs), a particular form of harassment used against journalist and others involved in protecting the public interest, often in combination with threats to physical safety, are a serious concern in several Member States. For example, in [Croatia](#), the extensive use of SLAPPs had a strong impact on media outlets, in particular smaller or local ones, as well as on freelance journalists. In other countries, such as [Poland](#), the news media community has observed an increase in lawsuits against journalists with intimidating effects, linked to warning letters addressed to journalists and newsrooms to stop critical reporting concerning companies or public institutions. This appears to affect in particular smaller news outlets and freelancers, with a high risk of self-censorship.

#### *The impact of the pandemic on media freedom and media pluralism*

Europe's news media have been critical in keeping citizens informed during the COVID-19 pandemic. The demand for fact-checked information and news has substantially increased, as noted in the Commission's Audiovisual and Media Action Plan.<sup>50</sup> At the same time, the pandemic triggered serious economic challenges for the media sector, as well as for individual journalists and media workers.

Several country chapters point to an unprecedented loss of revenue and financial liquidity issues for media houses, or even bankruptcy and closure. Regional and local media outlets appear to have been hit hardest, with of the result that some Member States now have large areas with no local news outlets. Individual journalists faced deteriorating economic and working conditions in several Member States. Unemployment has increased in the sector, and many media professionals and journalists – particularly those who are subject to precarious employment conditions or are freelancers – have found themselves with no income. All this has increased their vulnerability to pressure.

To counter and cushion the impact of the pandemic, about half of all Member States put in place specific media support schemes, primarily providing funds or grants to all or some media sectors. Local media were explicitly included in such schemes in Member States such as [Estonia](#), [Sweden](#), [Finland](#), [Denmark](#), [Netherlands](#), [France](#) and [Italy](#). Several Member States, such as [Cyprus](#), [Lithuania](#), [Portugal](#) and [Romania](#), supported both the media and public information through public advertising for COVID-19-related awareness campaigns. In some countries, journalists could benefit from generalised unemployment support ([Ireland](#)), whilst in some Member States the situation often proved difficult for freelance

---

<sup>50</sup> COM (2020) 784 final

journalists. The majority of these measures have been welcomed by media stakeholders, though certain aspects were questioned, like for example their transparency ([Malta](#)), the fairness of the distribution criteria ([Austria](#)) or the possible impact on citizen's trust in media ([Romania](#)).

However, the impact of the pandemic on the media and the measures taken to mitigate it are not limited to economic aspects. A series of restrictions put in place to fight the pandemic made journalists' work more difficult and at times affected their access to public information. While disruptions or derogations from general access to information rules were generally limited to the very early stages of the pandemic (e.g. [Spain](#), [Italy](#)), in Member States such as [Hungary](#) access to public information was tightened through emergency measures introduced during the pandemic, making timely access to such information harder for independent media outlets. Journalists also continued to face obstacles as regards access to venues or selective access to online or physical press conferences in some Member States. In [Poland](#), exercising the right of access to public information risks being further limited as a result of an ongoing constitutional challenge and the pandemic led to the suspension of deadlines stipulated by administrative law, thereby limiting or delaying access to public information. In [Romania](#), the pandemic was seen as being used to justify delays or refusals to provide information, and data protection rules were used to limit access. In contrast, Member States including [Lithuania](#) and the [Netherlands](#) exempted journalists from COVID-19 travel bans, so that they could continue following events and report first hand.

### ***3.4 Other institutional issues linked to checks and balances***

The rule of law in a democracy is based on institutional checks and balances between the organs of the State, guaranteeing their functioning, cooperation and mutual control so that power is exercised by one state authority under the scrutiny of others, in accordance with the political and legal tradition of each Member State. Civil society also plays a key role in the system of checks and balances.

This section examines significant developments related to such checks and balances. This includes the process for preparing, enacting and reviewing laws and the role of independent authorities in safeguarding the rule of law. An underlying theme in this regard is the quality of the public administration, and how authorities apply the law and implement court decisions. An enabling framework for civil society allows for debate and scrutiny of those in power; and when their space to operate shrinks, it is a sign that the rule of law is at risk. This section also presents developments on the legal regime under which COVID-19 measures were taken, and the roles of Parliaments, Constitutional Courts, the courts and ombudspersons.

#### *Constitutional reforms and debates to strengthen institutional checks and balances*

The constitutional reform processes to strengthen safeguards and checks and balances mentioned last year have continued to progress. In [Cyprus](#), the creation of a separate Constitutional Court taking over the review of the constitutionality of laws from the Supreme Court is now pending in Parliament. In [Malta](#), the Constitutional reform on the appointments to certain independent commissions has been finalised, but progress has been slow on the Constitutional Convention which would address the strengthening of the role of the Parliament. In [Luxembourg](#), the previously-announced constitutional reform will not be pursued further: the approach is now to introduce targeted revisions on specific topics, for example on the Council for the Judiciary. Extensive debates on the proper functioning of checks and balances are taking place in the [Netherlands](#), following a parliamentary investigation on the implementation of the childcare allowances system.

To help develop a balanced system, a number of Member States are drawing on different views and expertise, including international expert bodies such as the Venice Commission. The Commission considers this to be a constructive approach.

*The inclusiveness, quality and transparency of law-making remains a challenge*

A number of Member States are taking steps to further improve the processes to build evidence-based policies, for consultations and the involvement of stakeholders, so as to ensure that laws are the result of a broad discussion within society. The innovative project of the Citizens Convention for Climate in [France](#) attracted substantial attention and interest from other Member States. In [Portugal](#), Parliament took forward measures to improve the transparency of law-making and the quality of legislation. In [Greece](#), a new framework to examine the impact and the quality of draft laws is now under way, and stakeholders report improved quality and a significant reduction in unrelated last-minute amendments in Parliament. In [Estonia](#), [Latvia](#) and [Austria](#), steps are being taken to improve citizens' and stakeholders' involvement in policy-making. In [Spain](#), a new Fourth Open Government Plan (2020-2024) has been approved to strengthen the links between citizens and public authorities, as well as increasing citizen involvement in the development of public policies.

The dialogue with stakeholders has indicated challenges in a number of Member States to ensure that rules for the inclusiveness, transparency and quality of law-making policies are systematically applied in practice. In [Slovakia](#), stakeholders raised concerns about the absence of an extensive and informed debate on the main features of the recent constitutional reform, and regretted the authorities did not seek an opinion of the Venice Commission on its judicial and constitutional reform. In [Czechia](#), a high number of urgency procedures has been reported, and stakeholders raised concerns that these procedures were used also for acts that were not related to addressing the pandemic. In [France](#), the number of accelerated and fast-track procedures in Parliament has increased significantly, with consequences for consultation of stakeholders as well as for parliamentary work. In [Belgium](#), the Council of State experiences challenges in giving opinions on draft legislation due to insufficient resources and frequently shortened deadlines for consultation.

In a few Member States, the legislative process has raised concerns over the rule of law. In [Hungary](#), frequent and sudden changes of legislation continue to undermine the predictability of the regulatory environment, and in some cases the pace of new legislation has accelerated further. In [Poland](#), the expedited adoption of legislation continues to be used, including for significant structural reforms of the judiciary, such as the recent amendments to the law on the Supreme Court. In [Bulgaria](#), the practice of introducing important legislative amendments through amendments to other unrelated legal acts, which bypass public consultation and impact assessment requirements, continues to raise concerns. In [Romania](#), concerns remain on the stability and predictability of legislation, as legislation is changed often and the resulting laws can be contradictory, although encouraging signals have been given by Parliament during this legislature.

*Significant developments on Supreme and Constitutional Courts in the checks and balances*

Supreme Courts and Constitutional Courts play a key role in the system of checks and balances. However, developments in some Member States raise concerns. In [Slovakia](#), the Constitutional reform of December 2020 explicitly excludes the competence for the Constitutional Court to review Constitutional laws. This specific reform is now in turn being reviewed by the Constitutional Court. In [Hungary](#), concerns have been expressed about the role of the Constitutional Court in reviewing final court decisions, acting as another level of

appeal, adjudicating on the merits of the case in the same manner as ordinary appellate courts although it is not part of the court system, and raising questions as regards legal certainty.

A number of recent developments have also raised concerns with regard to the principle of primacy of EU law. Respect for the rule of law and the equality of Member States in the EU requires EU law to have primacy over national law and the rulings of the CJEU to be binding on all Member States' authorities, including national courts. On 9 June 2021, the Commission decided to initiate infringement proceedings against [Germany](#) for breach of the principle of primacy of EU law in relation to the 5 May 2020 judgment of the German Constitutional Court<sup>51</sup>. In [Poland](#), this ruling has been invoked to challenge the competence of the CJEU to deal with cases related to judicial independence, and the Government has seized the Polish Constitutional Tribunal for a declaration of the precedence of the Polish Constitution over EU law. On 14 July 2021, the Constitutional Tribunal held that interim orders issued by the CJEU that affect the organisation of Polish courts are not compatible with the Polish Constitution<sup>52</sup> and on 16 July 2021 the First President of the Polish Supreme Court repealed a decree implementing a previous CJEU order to suspend the activities of the Disciplinary Chamber of the Supreme Court in disciplinary cases against judges<sup>53</sup>. In [France](#), a ruling of the Council of State on data retention has raised concerns as regards its interplay with the EU legal order<sup>54</sup>. In [Romania](#), a decision of the Constitutional Court did not accept the findings of a CJEU preliminary ruling and questioned the principle of primacy of EU law, which may constitute a significant obstacle for courts called upon to apply the EU law requirements set out in the preliminary ruling when adjudicating on cases.

#### *The key role of the Ombudsperson and the National Human Rights Institutions*

The Ombudsperson and the National Human Rights Institutions play an important role in providing checks and balances, defending the right to good administration and fair treatment, and pointing to violations of fundamental rights. In the [Netherlands](#), the Ombudsman was one of the first to alert the administration of unfair treatment in relation to reimbursements of child subsidies, and has criticised a lack of government follow-up. In [Greece](#), the powers of the Ombudsperson Institution have been reinforced, notably in investigating incidents of arbitrariness by law enforcement authorities, and it has intervened in instances of violations of fundamental rights<sup>55</sup>. In [Malta](#), a Constitutional reform strengthened the appointment, suspension and dismissal of the Ombudsperson, and the new rules will be applied for the first time with the appointment of a new Ombudsperson, which is pending.

In certain Member States, the appointment and dismissal of the Ombudsperson have been the point of political and legal disputes. In [Poland](#), the Ombudsperson continued to play a key role as a rule of law safeguard. The mandate of the last incumbent ended in 2020, but he stayed in his position as political agreement could not be found on a replacement. The continued exercise of powers by the outgoing Ombudsperson ended in July 2021 following a decision of the Constitutional Tribunal and parliamentary proceedings now point to an

---

<sup>51</sup> Judgment of the Federal Constitutional Court of 5 May 2020, 2 BvR 859/15.

<sup>52</sup> Case P 7/20, brought by the Disciplinary Chamber of the Supreme Court.

<sup>53</sup> [https://www.sn.pl/en/actualities/SitePages/Actualities.aspx?ItemSID=31-0d89abd2-8bba-4029-999a-feb44dcfa88b&ListName=current\\_events](https://www.sn.pl/en/actualities/SitePages/Actualities.aspx?ItemSID=31-0d89abd2-8bba-4029-999a-feb44dcfa88b&ListName=current_events).

<sup>54</sup> In this last judgment, referring to the binding nature of rulings of the Court of Justice, the Council of State nevertheless rejected the request of the Government to consider whether a ruling from the CJEU could be in breach of the principle of conferral and the division of competences between the Union and its Member States.; such a request is in itself problematic.

<sup>55</sup> In particular, it investigated the increasing number of allegations about incidents of pushbacks of migrants at external borders.

appointment with cross-party support<sup>56</sup>. In [Romania](#), the Constitutional Court found unconstitutional the decision of the Parliament to dismiss the ombudsperson appointed under a previous parliamentary mandate, and she was reinstated in her functions.

#### *Civil society organisations as essential actors for the rule of law*

In the majority of Member States, there is an enabling and supportive environment for civil society, and the civil society space continues to be considered open<sup>57</sup>. Moreover, in some Member States, the authorities provided additional financial support in order to support civil society organisations. In [Estonia](#), a new government programme for 2021-2024 was set up to further build strategic partnership between Civil Society Organisations and public institutions. In several Member States, civil society is investing more in grass-root work on the rule of law.

However, in some Member States, civil society organisations are facing serious challenges. Examples include deliberate threats, including through financial restrictions or controls, from the authorities, or inadequate protection against physical or verbal attacks, against arbitrary decisions, against SLAPPs, or when the level of protection of fundamental rights guaranteeing the work of civil society are lowered. For example, in [Hungary](#), pressure remains on civil society organisations critical towards the government, and, while the law on transparency of foreign-funded civil society organisations was repealed following the CJEU ruling, new measures were introduced. In [Poland](#), NGOs critical of Government policies are subject to harassment and intimidation by public authorities and officials. In [Greece](#), the registration process of NGOs active in the area of asylum, migration and social inclusion continues to raise questions. While some progress has been made, challenges regarding registration are also a concern in [Cyprus](#). In [Malta](#) civil society organisations have expressed concerns about new fundraising rules, which would make it more difficult for associations to conduct their activities. In [Slovakia](#), verbal attacks from public authorities and politicians on activists and civil society organisations, as well as reduction of public funds for organisations that promote gender equality, raise concern about respect for civil society's democratic role. In [France](#) and [Spain](#), there are concerns about the impact of public security legislation on the work of civil society organisations, in relation to the freedom of expression and information and the right to protest.

#### *The impact of the COVID-19 pandemic on checks and balances and public debates*

There were different legal regimes under which COVID-19 measures, including restrictions on fundamental rights, were adopted: a constitutional emergency regime, a new emergency regime specific for the pandemic, public health laws, or no special regime at all. These legal regimes were often modified over time. In the [Netherlands](#) and [Sweden](#), for example, the regimes were strengthened to ensure that restrictive measures would be based on a robust legal basis. In [Belgium](#), a 'pandemic law' to provide a new legal basis for emergency measures has been adopted. In a number of Member States, the constitutionality of the emergency regimes and public health laws were subject to review. In [Slovakia](#), the Constitutional Court reviewed the constitutionality of the emergency regime, at the beginning and when extended, confirming its conformity with the Constitution. In most Member States,

---

<sup>56</sup> According to the Constitution of Poland, the Ombudsperson is appointed by the Parliament for 5 years. The Constitutional Tribunal considered it against the Constitution for the Ombudsperson to continue fulfilling its function beyond the 5-year period prescribed by the Constitution.

<sup>57</sup> According to the evaluation done by CIVICUS non-governmental organisation. Ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.



the special regimes have an end date, with many already ended in spring 2021 or are about to end.

Continued democratic oversight by Parliaments has been shown through regular debates on the prolongation of emergency regimes. Parliament oversight of individual COVID-19 measures has varied. In [Italy](#), all decree-laws taken by the government in case of urgency have immediate effect but need to be converted into law by the Parliament within 60 days. In [Finland](#), all emergency measures are subject to approval by the Parliament and to constitutionality review by the Chancellor of Justice and the Constitutional Law Committee. In [Portugal](#), an *ad hoc* parliamentary committee was created to monitor the measures adopted to respond to the pandemic, with the Government required to report on each period of the state of emergency, enabling the Parliament to exercise also an *ex post* control.

In a number of Member States, parliamentary oversight of COVID-19 measures was strengthened over time. In [Germany](#), parliamentary control was enhanced by introducing a standard list of measures that can be taken by ordinance. [Austria](#) required that more restrictive ordinances should be validated by Parliament before entering into force, and be limited in time, as well as strengthening the obligations to consult. Parliament in [Croatia](#) requested a report three times a year on COVID-19 measures. In [Denmark](#), in February 2021, new legislation was adopted with strengthened parliamentary control, and in particular a special parliamentary committee was set up to review executive orders.

As regards Parliaments themselves, their functioning was also affected by the pandemic, but most adapted their rules of procedure to ensure continuity of debates, voting and adequate representation, even when rules required a reduced number of persons present and when Members of Parliament had to self-isolate. Some Member States had already very well developed IT platforms which allowed a better transition, as was the case in [Latvia](#).

Scrutiny of the legality, justification and proportionality of COVID-19 measures by the courts has been an essential counterweight to Government powers to take decisions which could disproportionately affect citizens' fundamental rights. In [Estonia](#), all COVID-19-related orders of the Government contain information on how they can be legally challenged, and citizens have seized administrative courts in a number of cases. In [Germany](#), measures have been subject to comprehensive judicial review, primarily by the higher administrative courts and constitutional courts of the *Länder*, with over 6000 cases registered by the end of 2020. In [France](#), the Council of State ruled in many urgent proceedings challenging the Government's management of the pandemic and ordered a number of measures or suspensions of acts, in particular related to fundamental rights. In [Poland](#), courts consider that certain measures are unlawful, as the Polish constitution explicitly provides that any curtailment of fundamental rights and freedoms can be imposed only under a state of emergency (which had not been declared).

Independent authorities have played an active role throughout the pandemic, by assessing the impact on fundamental rights of the specific measures and alerting authorities. In [France](#), the National Human Rights Commission scrutinised COVID-19 measures and published several opinions. In [Lithuania](#), parliamentary Ombudspersons assessed the compliance with fundamental rights and freedoms of emergency measures. In [Ireland](#), the Irish Human Rights and Equality Commission recommended shorter extensions of COVID-19 measures and that the maximum length of any extension should be specified in law.

Civil society organisations were impacted by the pandemic, not only due to the limits on the freedom of movement and assembly, but also in terms of funding. The involvement of civil society in the design and implementation of COVID-19 measures has generally been very

limited. In [Austria](#), the Government made efforts to further develop dialogue with civil society, notably consulting them on the support allocated during the pandemic.

In some Member States, the experience has already triggered reflections for (constitutional) changes, to be better prepared for future crisis. In [Finland](#), the constitutional Law Committee has asked for a thorough review of the regulation of the state of emergency after the end of the pandemic. In [Sweden](#), a committee of inquiry will be set up to examine the need to add provisions on a state of emergency during peacetime to the Constitution. In [Italy](#), the Senate proposed to set up a special bicameral consultative Commission to ensure a central role for Parliament during emergencies. In [Hungary](#), a constitutional change will limit the powers of the government as regards special legal order regimes as of July 2023. The current constitutional emergency regime, which gives extensive powers to the Government, is still in place and will remain until the Government decides to terminate it.

#### 4. DEVELOPMENTS AND ACTIONS AT EU LEVEL ON THE RULE OF LAW

Over the past year, the rule of law remained high on the agenda of the EU. The publication of the first annual Rule of Law Report in September 2020 was followed by important debates in the European Parliament and the Council. Outreach was also undertaken with civil society and the Member States, including with national parliaments. These developments at EU level can be seen as a gradual consolidation of the rule of law process along several axes: inter-institutional dialogue, dialogue with and among Member States, dialogue with stakeholders, and international cooperation. In parallel, work on the enforcement of the rule of law continued at the CJEU, with the Commission fulfilling its role as guardian of the Treaties, via infringement procedures. The rule of law toolbox was also further developed after an agreement was reached on a general conditionality regime to protect the EU budget.

##### *Strengthening the inter-institutional response*

A key objective of the Rule of Law Report has been to raise awareness and promote an open discussion among Member States on rule of law issues. As noted in the 2020 Report<sup>58</sup>, a review of the Council's own annual rule of law dialogue in 2019 resulted in a wide consensus on strengthening this dialogue, on the basis of the Commission's report. As a result, in autumn 2020, the Presidency organised a two-step process, with a horizontal discussion on general rule of law developments as well as a separate country-specific discussion, looking first at five Member States<sup>59</sup>, based on the Rule of Law Report. In the spring of 2021, the country-specific dialogue continued, covering an additional five Member States<sup>60</sup>. This sets 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. Discussions in the Council so far have shown a clear interest from Member States to share developments and best practices, to contribute to the prevention of problems in an inclusive and constructive manner. In parallel, thematic exchanges have also taken place in different Council formations on rule of law issues, including to share good practices.

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. In October 2020, Parliament adopted a resolution inviting the Commission and the Council to enter into negotiations on an

---

<sup>58</sup> 2020 Rule of Law report, p. 25.

<sup>59</sup> Belgium, Bulgaria, Czech Republic, Denmark and Estonia.

<sup>60</sup> Germany, Greece, Spain, France and Ireland. In general, the selection of countries follows the protocol order, except that Germany was replaced by Estonia during its presidency.

inter-institutional agreement on Reinforcing Union Values<sup>61</sup>. The Commission welcomed the resolution and fully agrees with the European Parliament on the importance of strengthening the EU's capacity to monitor and uphold the common EU values. The annual Rule of Law Report plays an important role in this regard, covering issues with a direct relevance also for other Union values such as democracy and fundamental rights, which also links to the work on the European Democracy Action Plan, on supporting the Charter of Fundamental Rights, and on the promotion of a Union of Equality. The evolving dialogue between the institutions on the rule of law should be seen in this broader context and will continue to develop in the coming years. The European Parliament adopted a Resolution welcoming the 2020 Rule of Law Report, while reiterating its previous calls for improvements, notably on the inclusion of country-specific recommendations<sup>62</sup>. The Commission welcomes the resolution, and will carefully reflect on it in the preparation of future Reports. The Commission remains committed to deepening the dialogue with the European Parliament.

As regards the situation in specific Member States, the European Parliament has in the past year adopted resolutions on the situation of the rule of law in Bulgaria, Malta, and Poland<sup>63</sup>. The Democracy, Rule of Law and Fundamental Rights Monitoring Group<sup>64</sup> of the European Parliament's committee on civil liberties, justice and home affairs (LIBE) has played an important role in deepening the rule of law debate in the European Parliament. The Monitoring Group held exchanges of views on the situation in Bulgaria, Malta, Poland, Slovakia and Slovenia, on a specific case in Belgium, and on the space for civil society in the EU. The Monitoring Group has also actively followed the situation in the Union as regards COVID-19 related measures<sup>65</sup>.

Finally, the European Economic and Social Committee, through its Ad hoc group on Fundamental Rights and the Rule of Law<sup>66</sup>, and the Committee of Regions, through its Commission for Citizenship, Governance, Institutional and External Affairs (CIVEX)<sup>67</sup>, have also contributed to the rule of law dialogue at EU level.

#### *Strengthening dialogue with Member States*

Following the publication of the 2020 Rule of Law Report, a particular effort has been made to reach out to Member States. At political level, national parliaments play a key role in upholding the rule of law, both as lawmakers and in holding the executive accountable. Over the past year, the Commission<sup>68</sup> visited most national Parliaments in order to present and discuss the methodology and the country specific findings of the 2020 Rule of Law Report.

---

<sup>61</sup> European Parliament resolution of 7 October 2020 on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights.

<sup>62</sup> European Parliament resolution of 24 June 2021 on the Commission's 2020 Rule of Law Report (2021/2025(INI)).

<sup>63</sup> European Parliament resolutions of 8 October 2020 on Bulgaria, P9\_TA(2020)0264; of 29 April 2021 on the Assassination of Daphne Caruana Galizia and the rule of law in Malta, P9\_TA(2021)0148; and of 17 September 2020 on Poland, P9\_TA(2020)0225.

<sup>64</sup> The Monitoring Group is focused on threats to democracy, the rule of law and fundamental rights, as well as the fight against corruption across all Member States. It can recommend specific actions to LIBE, such as meetings with stakeholders, hearings and missions, as well as making proposals for resolutions and reports.

<sup>65</sup> Activity report of the Democracy, Rule of Law and Fundamental Rights Monitoring Group, 16 June 2021.

<sup>66</sup> The ad hoc group on Fundamental Rights and the Rule of Law (FRRL) is a horizontal body within the EESC tasked to provide a forum for European civil society organisations to meet and share their assessment on the state of fundamental rights, democracy and rule of law in the Member States.

<sup>67</sup> The remit of the CIVEX Commission includes Constitutional Affairs, and Governance, better Law-Making, Subsidiarity and Proportionality.

<sup>68</sup> Vice-President Jourová or Commissioner Reynders represented the Commission in these meetings.

The Commission also conducted bilateral meetings, including both dialogue at political level and technical meetings to gather information on the state of play on key reforms as a follow up to the findings of the 2020 Rule of Law Report. Such contacts were limited to a few Member States this first year but could become a more prominent feature in the future.

The network of rule of law contact points continued to meet regularly, gathering representatives from all Member States. Initially focussed on helping set up the mechanism and its methodology, this forum is now increasingly acting as a channel for ongoing communication with and between the Member States for the preparation of the Rule of Law Report. It is also envisaged that these meetings could increasingly serve as a platform for sharing good practices and exchanging information on envisaged rule of law-related reforms between Member States at technical level.

#### *Strengthening dialogue with stakeholders at national and EU level*

Civil society is a key partner for the EU in its work to promote a stronger European rule of law culture. In preparation of the report, the Commission held meetings to discuss rule of law developments with stakeholders such as European networks, national and European civil society organisations and professional organisations<sup>69</sup>. Civil society organisations also made a large number of written contributions as input for the Report<sup>70</sup>.

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 on the theme of the rule of law in Europe, 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 and focussed on the role of civil society, challenges linked to the communication of rule of law issues, and rule of law in the context of the pandemic and the economic recovery.

The strong participation of civil society in the preparation of this second report has given recognition to civil society organisations at national level and has further encouraged links and networks beyond national borders. The Commission will continue to reflect on ways to mobilise civil society, professional networks and other stakeholders in the rule of law debate at national and European level.

#### *Strengthening international cooperation*

The rule of law is also a guiding principle for the EU beyond its borders. Guided by the universal values and principles embedded in the UN Charter and international law, including international humanitarian 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<sup>71</sup>, and in line with the Sustainable Development Goals<sup>72</sup>. The EU will continue to pursue a coherent approach in its cooperation with candidate countries and potential candidates, countries across the neighbourhood as well as in all its external action, at bilateral, regional and multilateral level. The EU addresses rule of law issues regularly in human rights dialogues with partner countries and at multilateral level, in particular the United Nations.

---

<sup>69</sup> These include the Human Rights and Democracy Network, Fundamental Rights Agency, EuroCommerce, ENNHRI, Civil Society Europe, Transparency International.

<sup>70</sup> <https://ec.europa.eu/info/files/2021-rule-law-report-stakeholder-contributions>

<sup>71</sup> <https://www.consilium.europa.eu/media/46838/st12848-en20.pdf>.

<sup>72</sup> <https://www.un.org/sustainabledevelopment/>.

Upholding the rule of law at global level includes strengthening cooperation on rule of law issues with international and regional organisations<sup>73</sup>. The assessments of specialised international bodies has provided an important input to the Commission's analysis, and closer cooperation and exchange has helped deepen the Commission's understanding of the situations in the Member States. At technical level, contacts between Commission services and the different Council of Europe bodies have become a regular element in the preparation of the report<sup>74</sup>.

The Commission aims to further strengthen this key element in its rule of law work, building on its close relations with the Council of Europe and other international bodies. On 26 January 2021, the Commission presented the 2020 Rule of Law Report before the Parliamentary Assembly of the Council of Europe. The Commission has also taken part in events organised by the Organisation for Economic Co-operation and Development (OECD) where the topics covered by the rule of law mechanism were presented and discussed.

#### *Other institutional developments related to the rule of law*

The CJEU continued to develop its case law on the rule of law, notably in relation to the Treaty's requirement that Member States are to provide remedies sufficient to ensure effective legal protection in the fields covered by Union law<sup>75</sup>, where the CJEU has further clarified the guarantees of judicial independence under EU law. Through the preliminary ruling mechanism, national courts continued to bring rule of law relevant questions to the attention of the CJEU. It has ruled on requests for preliminary rulings on rule of law related matters by courts from Malta, Poland, the Netherlands and Romania. These rulings were related in particular to judicial appointment procedures, the execution of European Arrest warrants in case of persistent deficiencies as regards judicial independence in a Member State, the disciplinary regime for judges, the personal liability of judges, the creation of a special prosecution section dealing with judges, and the principle of primacy of EU law<sup>76</sup>.

The Commission also continued to exercise its role as guardian of the EU Treaties by launching infringement procedures. In some specific cases, the Commission has requested the CJEU to order interim measures to prevent irremediable harm<sup>77</sup>.

Besides infringement proceedings, which aim to address specific breaches of EU law, Article 7 of the Treaty on European Union provides the more general procedure for upholding the common values of the Union, including the rule of law. The Council remains seized in two procedures, brought by the Commission against Poland in 2017 and by the European Parliament against Hungary in 2018, with a view to determining that there is a clear risk of a

---

<sup>73</sup> Such as the United Nations, the Council of Europe, the Organisation for Economic Cooperation and Development (OECD) and the Organisation for Security and Cooperation in Europe (OSCE).

<sup>74</sup> Such as the Venice Commission, Group of States against Corruption, Department of execution of judgements and Media department. To reinforce the cooperation, the Council of Europe has appointed a contact person to coordinates the work.

<sup>75</sup> Article 19(1) TEU, second subparagraph.

<sup>76</sup> Key judgments since the last report include the judgments of 6 October 2020, *Commission v Hungary*, C-66/18, ECLI:EU:C:2020:792; of 24 November 2020, *AZ (Forgery of documents)*, C-510/19, EU:C:2020:953; of 17 December 2020, *Openbaar Ministerie*, C-354/20 PPU and C-412/20 PPU, ECLI:EU:C:2020:1033; of 2 March 2021, *A.B. and Others*, C-824/18, ECLI:EU:C:2021:153; of 20 March 2021, *Repubblika v Il-Prim Ministru*, C-896/19, ECLI:EU:C:2021:311; of 18 May 2021, *Asociația 'Forumul Judecătorilor Din România' v Inspecția Judiciară and others*, C-83/19, C-127/19, C-195/19, C-291/19, C-397/19, ECLI:EU:C:2021:393; of 15 July 2021, *Commission v Poland*, C-791/19 ECLI:EU:C:2021:596.

<sup>77</sup> See in particular Commission press release of 31 March 2021 IP/21/1524. Case registered as C-204/21. The CJEU ordered interim measures in that case (order of the vice-president of the Court of Justice of 14 July 2021, *Commission v Poland*, C-204/21 R, ECLI:EU:C:2021:593).

serious breach of the Union's values. In September 2020, the Commission updated the Council on the latest developments in the areas covered by the reasoned proposals. In June 2021, the Council held hearings for both Hungary and Poland.

The rule of law is a precondition for the proper management of EU funds and in May 2018 the Commission proposed to accompany its proposals for the new budgetary framework with a legislative proposal for a dedicated mechanism to protect EU funds against risks arising due to rule of law breaches in individual Member States. The resulting Regulation was adopted in December 2020<sup>78</sup>. The Commission is fully committed to enforcing the Regulation and is actively working on its concrete application. The Commission is currently consulting the European Parliament and the Member States on guidelines, which will set out in more detail how the Commission envisages to apply the Regulation in practice. At the same time, the Commission has begun monitoring possible cases. The Regulation applies as of 1 January 2021, and any breach that occurs from that day onwards will be covered.

1 June 2021 marked the operational start-date of the European Public Prosecutor's Office (EPPO), which is competent to investigate, prosecute and bring to judgment fraud and other criminal offences relating to the EU budget<sup>79</sup>, complementing the role of the European Anti-Fraud Office (OLAF)<sup>80</sup>. The EPPO undertakes criminal investigations, carries out acts of prosecution, and exercises the functions of prosecutor in the competent courts of the participating Member States, until the cases have been finally disposed of. The effectiveness of the national justice systems analysed in this report will be a key factor for ensuring that cases are brought to conclusions and effective sanctions apply.

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 Commission is also providing technical support to Member States, notably provided through the Technical Support Instrument, to improve efficiency, quality and independence of public administration and justice systems.

## 5. CONCLUSIONS AND NEXT STEPS

The COVID-19 pandemic has further underlined the importance of the rule of law for our democracies, our fundamental rights and for Europeans' daily lives. It has also been a stress test for the rule of law. The experience of the pandemic has shown the strong resilience in national systems overall, while also exposing a number of specific areas where the rule of law has been under pressure. The rule of law is an important component in preparedness for times of crisis.

---

<sup>78</sup> Regulation (EU, Euratom) 2020/2092 of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, OJ L 433I, 22.12.2020, p. 1. Hungary and Poland have challenged the validity of the Regulation before the Court of Justice of the European Union, see, respectively, cases C-156/21 and C-157/21.

<sup>79</sup> This includes EU expenditures and revenues, VAT (above €10 million and cross-border), money laundering, active and passive corruption, misappropriation of EU funds or assets by a public official and organised crime linked to the EU budget. The Member States currently participating 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.

<sup>80</sup> New rules (Regulation (EU, Euratom) 2020/2223 (OJ L 437, 28.12.2020, p. 49–73)) that strengthen the role of OLAF and ensure smooth collaboration with the EPPO entered into force in 2021.

This Report has been able to show many positive rule of law developments in the Member States, where challenges previously identified are being followed up. It also shows where challenges and concerns, sometimes serious, remain or have intensified. The Commission welcomes the participation of all Member States, with continued engagement and cooperation and a willingness to enter into a dialogue on sensitive issues.

The adoption of the 2021 Rule of Law Report marks the start of new cycle of dialogue and monitoring. The Commission invites the Council and the European Parliament to have general and country-specific debates on the basis of this report, as well as national parliaments and other key actors to intensify national debates. The Commission invites Member States to effectively take up the challenges identified in the Report and stands ready to assist Member States in these efforts. It is a common commitment of the Member States and the EU to protect, promote and strengthen the rule of law and make it a vibrant element of our political culture.

The Commission looks forward to continuing the dialogue with key actors for the rule of law. Respect for the rule of law, as well as democracy and human rights, are seen by Europeans as amongst the EU's main assets. This gives a sense of responsibility and direction for all Member States and EU institutions in playing their part.