

Commission's First Rule of Law Report



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News

On 30 September 2020, the Commission presented its first Rule of Law Report, which is to be published annually in the future. The report aims to highlight the most important – positive and negative – developments within the EU and in the individual member states. The Rule of Law Report consists of a [general report](#) in the form of a Commission Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions as well as [27 country chapters](#) presenting specific assessments Member State by Member State. Next to a [press release](#), the Commission also provided for [factsheets on the 2020 rule of law report](#) and the [EU's rule of law toolbox](#).

The aim of the report is to identify possible problems in relation to the rule of law as early as possible, as well as best practices, so that problems can timely be discussed in individual Member States, Member States can exchange good experiences, inter-institutional cooperation is stimulated, and a rule of law culture can be developed across the EU. To this end, a coherent and equivalent approach is also intended to establish comparability among the member states.

The Commission stresses that the report is a preventive tool and does not contain a sanction mechanism – although it could serve as the basis for further scrutiny of specific EU countries. No recommendations are made either. It is also stressed that the report is not a comprehensive compendium on the rule of law in the Union, but presents trends and specific challenges on the basis of developments since January 2019. The rule of law assessment focuses on four pillars:

- The national judicial system;
- The fight against corruption;
- Media pluralism and freedom;
- Institutional issues related to the checks and balances.

Rule of law-related issues in the context of overcoming the COVID-19 pandemic are also reflected.

For each pillar, the methodology brings to mind the EU law provisions relevant for the assessment. It also refers to opinions and recommendations from the Council of Europe, which provide guidance. The report was prepared by a targeted stakeholder consultation. A variety of EU agencies, European networks, national, European civil society organisations and professional associations and international and European actors provided general and country-specific contributions. Furthermore, it builds on a series of studies and reports,

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such as the [Media Pluralism Monitor](#) or the [EU Justice Scoreboard](#) (à eucrim 2/2020, 74-75). The main findings of the report are:

- *As to justice systems:*

The functioning of the justice system is high on national political agendas; almost all EU Member States are engaged in justice reforms, although their objective, scope, form and state of implementation vary. Efforts are under way in a number of Member States aiming at strengthening judicial independence and reducing the influence of the executive or legislative power over the judiciary. The appointment of judges (procedures and methods) is one of the key points of discussion and reforms in most Member States. The right of the executive to give formal instructions to the prosecution, including in individual cases, has been a matter of debate in certain Member States, e.g. Austria, Germany, Poland and Bulgaria. Judicial independence remains an issue of concern in some Member States. The Commission refers here to Hungary and Poland against which infringement proceedings and Art. 7(1) procedures have been initiated, but also to Bulgaria, Romania, Croatia and Slovakia. Initiatives in the digitalisation of justice systems are ongoing in most EU Member States, but the COVID-19 crisis made aware of the needed efforts.

- *As to the anti-corruption framework:*

Several EU Member States have good national anti-corruption strategies in place or are at least developing ones. Some Member States have also carried out reforms to strengthen corruption prevention and integrity, others strengthened the capacity of the criminal justice system to fight corruption. However, concerns remain as regards the effectiveness of the investigation, prosecution and adjudication of corruption cases, including high-level corruption cases, in several Member States.

- *As to media pluralism and media freedom*

All Member States have legal frameworks in place to protect media freedom and pluralism and EU citizens broadly enjoy high standards of media freedom and pluralism. Media proved essential during the COVID-19 pandemic in fighting against disinformation and in maintaining democratic accountability. However, concerns have been raised in some Member States as regards the independence of media authorities and the transparency of media ownership. Some country chapters have identified a number of cases in which stakeholders voiced serious concerns over political pressure on the media, e.g. in Bulgaria, Hungary, Malta, and Poland. In few Member States, also repeated difficulties and obstacles in obtaining information were reported. In a number of Member States, journalists and other media actors increasingly face threats and attacks (physical and online) in relation to their publications and their work, in various forms; nonetheless, some countries have developed good practices and structures to support and protect journalists.

- *As to institutional checks and balances:*

There are several good examples that promote the debate on a rule of law culture., Constitutional reforms to strengthen institutional checks and balances, in particular constitutional review, are underway in a number of Member States. However, excessive use of accelerated and emergency legislation, particularly in response to the COVID-19 pandemic, has given rise to concerns over the rule of law. Civil society is an important element in defending the rule of law and ensuring participation in the legislative processes. In most Member States, there is an enabling and supporting environment for civil society. However, there are a number of examples which show that civil society organisations increasingly operate in an unstable environment, e.g. by limiting access to foreign funding or smear campaigns in some Member States.

The report concludes that many EU Member States have high rule of law standards. Nevertheless, important challenges remain in all four pillars under scrutiny. The Commission calls on the European Parliament and

the Council to take the report as a solid basis for further rule of law discussions. National parliaments and national authorities are invited to discuss the report, especially the findings in the country chapters, “and seek support from one another, as an encouragement to pursue reforms and an acceptance of European solidarity.”

Background: The Commission’s first Rule of Law Report is at the centre of the new European Rule of Law Mechanism (ERLM). This mechanism was announced as one of the top priorities of the political agenda of Commission President *Ursula von der Leyen*. The ERLM is designed as a process for an annual dialogue on the rule of law between the Commission, the Council and the European Parliament together with Member States as well as national parliaments, civil society and other stakeholders. It will be complemented by a set of upcoming initiatives, including the [European Democracy Action Plan](#), a renewed [Strategy for the Implementation of the Charter of Fundamental Rights](#), and targeted strategies to address the needs of the most vulnerable in European societies.

The ERLM will be another element in the so-called EU rule of law toolbox, which is mainly to prevent and promote rule of law issues throughout the EU. It is a separate measure and must be distinguished from the EU’s means to *respond* to rule of law threats which are dealt with via the Article 7 procedure, infringement proceedings, the rule of law framework (an early warning tool developed by the Commission in 2014 to enter into dialogue with Member States where systemic threats to the rule of law have emerged), and – possibly in the future – the conditionality mechanism to protect the EU budget because of generalised deficiencies of the rule of law in a particular Member State. The latter is currently negotiated between the EP and the Council (for the Commission proposal --> [eucrim 1/2018, 12](#), and [L. Bachmaier, eucrim 2/2019, 120](#); see also the current news items under “Protection of Financial Interests”).

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