

The European Commission's annual rule of law reports

A new monitoring tool

SUMMARY

The annual rule of law reports, launched by the Commission in September 2020, are a new addition to the European institutions' rule of law toolbox. The exercise can be described as a monitoring tool, as it collects data on the state of the rule of law in each of the 27 EU Member States but without drawing legal conclusions or giving specific recommendations. The second rule of law report was published in July 2021 and the third is expected in 2022, with the annual exercise becoming a permanent mechanism.

The methodology adopted by the Commission provides for reporting on four subject areas in all 27 Member States: (i) justice systems; (ii) the anti-corruption framework; (iii) media pluralism; and (iv) other institutional issues related to checks and balances. This methodology underlines the close involvement of Member States in the preparation of the annual reports and their follow-up.

The Member States are involved throughout the process by way of: (i) a network of contact persons on the rule of law that meets regularly with the Commission; (ii) contact persons providing written contributions to the report; (iii) dialogue between the Commission and Member States through the network of contact persons, the group of contact persons on national justice systems, the national contact points on corruption, and bilaterally at political and technical level; (iv) country visits; and (v) the opportunity for each Member State to comment on the part of the report concerning them.

The reports have met with some criticism from academics, who draw attention to the purely descriptive, rather than prescriptive nature of the reports and the lack of concrete follow-up.



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Introduction

The rule of law is one of the **founding values** of the European Union and, by virtue of [Article 2](#) of the Treaty on European Union (TEU), is binding on all its Member States.¹ Any country wishing to accede to the Union must abide by the rule of law as one of the **essential criteria for EU membership**, as prescribed by the [Copenhagen Criteria](#) (1993) and enshrined in [Article 49 TEU](#).

Under the **principle of non-regression**, as found by the Court of Justice in the [Repubblika and Romanian Judges judgments](#), a Member State may not lower the level of protection of the rule of law (e.g. by undermining judicial independence) following its accession to the EU.² The value of the rule of law is given concrete expression in the principle of effective judicial protection ([Article 19\(1\) TEU](#)) and in the right to an effective remedy and a fair trial ([Article 47 of the Charter of Fundamental Rights of the EU](#)).

[Various instruments](#), such as notably the [Justice Scoreboard](#) and the [European Semester](#), allow the EU institutions to **monitor** the observance of certain aspects of the rule of law. If violations are found, **preventive** mechanisms are available, such as the [rule of law framework](#) and the preventive arm of Article 7 TEU.

There are also **sanctions** mechanisms, including [infringement proceedings](#) which can lead to the imposition of penalties on recalcitrant Member States ([Article 260 TFEU](#)), interim measures pending a final judgment ([Article 279 TFEU](#)), and the sanctions arm of Article 7 TEU which can lead to suspension of voting rights in the Council. In addition, there is the [2020 general conditionality regulation](#); in cases where rule of law breaches affect EU financial interests, this regulation allows the suspension or withdrawal of EU funding, especially structural and cohesion funds, directed to that Member State.

In this context, the [annual rule of law report](#) has been described by academic experts as an '**after-the-event reporting mechanism making no concrete recommendations**',³ and could therefore be regarded as a **monitoring mechanism** within the EU rule of law toolbox. In fact, for many years, the European Parliament has been proposing to supplement the existing mechanism with a [rule of law review cycle](#). This proposal has never been taken up in its entirety by the European Commission, but the [launch of the annual rule of law reports](#) in September 2020 can be seen to have been inspired by the Parliament's idea of a review cycle.⁴ Indeed, in her [Political Guidelines](#), European Commission President Ursula von der Leyen committed to setting up a comprehensive European rule of law mechanism covering all Member States, with objective annual reporting by the Commission. This was followed up in July 2019 by the Commission [communication on Strengthening the rule of law within the Union - A blueprint for action](#), setting out some of the features of such a mechanism.

The first annual rule of law report was followed by a [second report](#) published in July 2021.

Methodology for preparing the annual rule of law reports

The methodology for preparing the annual rule of law reports was laid down in 2020 in a document entitled [European Rule of Law mechanism: Methodology for the preparation of the Annual Rule of Law Report](#), published on the European Commission's website. The **same methodology** was applied both in 2020 and in 2021.

Scope: Four main pillars

The methodology adopted by the Commission provides for reporting on **four subject areas** in all 27 Member States: (1) justice systems; (2) the anti-corruption framework; (3) media pluralism; and (4) other institutional issues related to checks and balances. The scope of the report therefore addresses the rule of law within its entire 'ecosystem', encompassing various aspects of the functioning of Member States which could effectively undermine the rule of law, particularly

corruption, lack of media pluralism, the undermining of checks and balances, and the suppression of civil society.

However, another fundamental element of the rule of law ecosystem, respect for fundamental rights, is not covered by the report. This could seem surprising, but can be explained by the fact that fundamental rights are included in a separate series of [annual reports on the application of the Charter](#) (since 2010), with a [new strategy](#) for their development adopted by the Commission in 2020.

Sources of data

The annual rule of law reports are, by definition, chiefly based on secondary (existing) data, and the Commission services do not undertake investigations in the Member States as their leading source for compiling the reports. As the official methodology indicates, the rule of law report is based on **existing sources**, especially reports by the Group of States against Corruption (GRECO), the OECD, the United Nations Convention against Corruption (UNCAC), the Venice Commission, Council of Europe reports, and ECJ case law. However, although the main sources are secondary, the methodology for preparing the reports includes taking into account contributions from stakeholders and from the Member States provided specifically for the annual report, as well as **country visits** undertaken by Commission representatives in the Member States.

Assessment methodology

The annual rule of law reports offer a critical review of the rule of law situation in each Member State. Therefore, there is a need to set a clear yardstick against which the existing situation will be evaluated. The Commission's methodology explicitly provides that the reports will assess the situation taking into account three principal standards: (1) relevant obligations under EU law, including ECJ case law; (2) ECtHR case law; and (3) Council of Europe recommendations and resolutions.

In its statement on methodology, the Commission indicates that it undertakes a **qualitative assessment**, focusing on a synthesis of **significant developments** introduced by a brief factual description of the legal and institutional framework relevant to each pillar, and presenting both challenges and positive aspects, including good practices. As announced by Ursula von der Leyen in her State of the Union address in September 2022, and [repeated](#) by Commissioner Didier Reynders, speaking before the LIBE committee's [Democracy, Rule of Law and Fundamental Rights Monitoring Group](#) (DRFMG), from the third edition (2022) onwards, the annual rule of law reports **will also include 'specific recommendations for the Member States'**.

Involvement of the Member States

The methodology underlines the **close involvement of Member States** in the preparation of the annual reports and their follow-up. The Member States are involved throughout the process by way of: (1) a network of contact persons on the rule of law that meets regularly with the Commission; (2) contact persons providing written contributions to the report; (3) dialogue between the Commission and Member States through the network of contact persons, the group of contact persons on national justice systems, the national contact points on corruption, and bilaterally at political and technical level; (4) country visits/virtual meetings; and (5) the opportunity for each Member State to comment on the part of the report concerning them. The Commission has published [written observations](#) from each Member State concerning the draft report.

Involvement of stakeholders

For each edition of the annual rule of law report, the Commission seeks contributions from stakeholders. According to the official methodology, the **key stakeholders** include the main pan-European professional legal associations, as well as organisations fighting against corruption and those engaged with media regulation.⁵ The Commission pre-selected the key stakeholders

(‘targeted stakeholder consultation’), choosing not to opt for an open consultation whereby any interested parties could contribute.

First annual rule of law report (September 2020)

The [first annual rule of law report](#) was published at the end of September 2020. Summarising its findings, the Commission noted that ‘many Member States have high rule of law standards and are recognised, including globally, as providing best practices’ in this area, but at the same time highlighted ‘important challenges, when judicial independence is under pressure, when systems have not proven sufficiently resilient to corruption, when threats to media freedom and pluralism endanger democratic accountability, or when there have been challenges to the checks and balances essential to an effective system’. The Commission also stressed the challenges to the resilience of the rule of law posed by the Covid-19 pandemic and the ensuing measures adopted by the Member States.

Explaining the rationale and purposes of the exercise in the [accompanying communication](#), the Commission indicated that it ‘is designed as a yearly cycle to promote the rule of law and to prevent problems from emerging or deepening. It focuses on improving understanding and awareness of issues and significant developments in areas with a direct bearing on the respect for the rule of law.’

In the Commission’s view, the report would ‘**stimulate a constructive debate** on consolidating the rule of law and encourage all Member States to examine how challenges can be addressed, learn from each other’s experiences and show how the rule of law can be further strengthened in full respect for national traditions and national specificities’. In the conclusion to its communication, the Commission indicated that it looks forward to the further engagement of the European Parliament and the Council on rule of law issues, considering its first annual report to be ‘**a solid basis for further inter-institutional work**’. The Commission also committed to starting work on the second edition of the report immediately.

Second annual rule of law report (July 2021)

The Commission’s [second annual rule of law report](#), unveiled in July 2021, follows in the footsteps of the first report, covering four subject areas: justice systems; the anti-corruption framework; media pluralism and media freedom; and other institutional checks and balances (for an overview of the findings, see the Annex at the end of this briefing). A special place in the 2021 report was given to the challenges for the rule of law brought about by the **Covid-19 pandemic**. The Commission stressed that the pandemic ‘has further underlined the importance of the rule of law for our democracies’ but, at the same time, observed that it has been ‘**a stress test for the rule of law**’. Comparing the 2020 and 2021 editions, the Commission noted that there have been ‘many **positive rule of law developments** in the Member States, where challenges previously identified are being followed up’ (see the Annex).

European Parliament position

EP resolution of 24 June 2021

On 24 June 2021, the European Parliament adopted its [resolution](#) on the first annual report. Parliament **welcomed the report**, considering it ‘vital to establish a European rule of law monitoring and enforcement architecture in the Union’, and encouraged the Commission to **further develop** the new tool. Parliament praised the report for its scope, covering not only justice systems but also the anti-corruption framework, media pluralism and certain institutional issues related to checks and balances. It called upon the Commission to include within the report certain important elements of the [Venice Commission’s 2016 Rule of Law Checklist](#), such as legal safeguards to prevent arbitrariness and abuse of power by public authorities, the independence and impartiality of the legal profession, equality before the law and non-discrimination. Concerning the methodology,

Parliament urged the Commission to devote **more time to country visits** to achieve broader engagement and dialogue with national authorities and civil society.

However, Parliament was bemused by the fact that breaches of a different qualitative weight are put on the same level in the report, without sufficient distinction between isolated breaches, on the one hand, **and systemic breaches**, on the other. The report could, in particular, have 'provided more in-depth and transparent assessments, stating whether there were serious deficiencies, a risk of a serious breach or an actual breach of EU values in each of the pillars analysed in the country chapters'. On a more general note, Parliament found the report to be too descriptive and not analytical enough. Furthermore, the four pillars analysed in the report could be more integrated in the analysis, particularly to show the interlinkages between those areas. The 2020 report, according to Parliament, **lacked an EU-wide perspective** as it did not identify cross-cutting trends at EU level.

In the future, the Commission should develop its **country-specific expertise** and capacity so as to react more swiftly to negative developments in the Member States. In its resolution, Parliament returned to its idea of concluding an interinstitutional agreement under Article 295 TFEU to complete existing tools by establishing a **rule of law mechanism**. Under such a mechanism, the three institutions would commit themselves to a more transparent and regularised process, involving a panel of independent experts to advise the working group and the three institutions, in close cooperation with the EU Agency for Fundamental Rights. Such a mechanism would be complementary to other mechanisms, especially Article 7 TEU procedures. Since the annual report is a **monitoring tool**, it should lead to the adoption of **clear recommendations** to the Member States and be the basis for deciding whether to **activate other mechanisms**, notably Article 7, the conditionality regulation and the rule of law framework, or to launch infringement proceedings before the ECJ.

Parliament's evaluation of the 2021 report

The parliamentary procedure to adopt an own-initiative resolution on the second rule of law report was launched on 7 October 2021 (reference: [2021/2180\(INI\)](#)). The lead committee is the **Civil Liberties, Justice and Home Affairs Committee** (LIBE) (rapporteur: Terry Reintke, Greens/EFA, Germany) and two committees have been associated for opinion – the Legal Affairs Committee (JURI) and the Budgetary Control Committee (CONT). Opinions will also come from the Committee on Budgets (BUDG) and the Committee for Petitions (PETI). As preparation for the resolution, the LIBE Committee requested a study on the Commission's 2021 report from Professors **Laurent Pech** and **Petra Bárd**. The second rule of law report was also discussed at an open meeting of the [Democracy, Rule of Law and Fundamental Rights Monitoring Group](#) on 28 October 2021, where Commissioner **Didier Reynders** presented the findings of the report to the Members, and Professor Pech [presented](#) the preliminary findings of the report he is working on with Professor Bárd for the LIBE committee.

Council position

The annual rule of law reports have impacted the format of discussions on the rule of law in the Council. Following the first report, the Council [decided](#) to address rule of law issues according to the structure proposed by the Commission (justice systems, the anti-corruption framework, media pluralism, and other institutional issues linked to checks and balances), and to discuss the state of the rule of law country by country, following the protocol order of Member States. Thus, on [17 November 2020](#) a discussion was held focusing on five Member States: Belgium, Bulgaria, Czechia, Denmark and Estonia. Half a year later, [on 20 April 2021](#), the Council held country-specific discussions on five further Member States: Germany, Ireland, Greece, Spain and France. After the publication of the second rule of law report, the Council held a horizontal discussion on [19 October 2021](#). On 23 November 2021, country-specific discussions resumed, focusing on the situation in Croatia, Italy, Cyprus, Latvia and Lithuania. The format of country-specific discussions in the Council provides for around 30 minutes per Member State, with a short introduction by the Commission,

followed by the Member State's delegation presenting key developments and particular aspects of their national rule of law framework, after which other delegations share their experiences and best practices.

Expert and stakeholder views

Following the publication of the first annual rule of law report, on 19 March 2021 the LIBE committee convened a [workshop](#) with Professor Petra Bárd and Professor Laurent Pech. In his report for the LIBE committee, [Professor Pech](#) argued that 'simply publishing an annual report will not help contain and address rule of law backsliding in countries such as Hungary and Poland. Indeed, an annual reporting cycle will not, in and of itself, help prevent deliberate/systemic violations of the rule of law or deter legal hooligans, as the Report is a mere after-the-event reporting mechanism making **no concrete recommendations**.' Furthermore, he criticised the report for: using euphemistic language (e.g. the term 'reform' to denote legislative acts intentionally undermining judicial independence); denying what he describes as 'autocratic reality' in Poland and Hungary; and its focus on too short a period of time, which does not allow for sufficient perspective.

For Professor Pech, the authors of the report have committed a 'category error' by placing countries under the Article 7 procedure (Poland, Hungary) alongside healthy democracies, risking to 'normalis[e] the abnormal'. In conclusion, he observes: 'While well-intentioned, the new Rule of Law Report has, for now, primarily resulted in giving autocrats a new excuse to say: "look, there are rule of law problems everywhere..." And while we are discussing reports or, worse, placating autocrats, the EU legal order is slowly disintegrating with, for instance, Polish judges being punished, threatened with jail, for upholding the rule of law.'

[Professor Bárd](#), in turn, highlighted that the report '**does not foresee remedies**, it solely aims to give an assessment of the rule of law situation in the Member States, which may or may not feed into procedures that are designed to respond to rule of law violations'. Like Professor Pech, Professor Bárd also ended with a rather sceptical conclusion regarding the rule of law report: 'Unless EU institutions make better use of their tools designed to respond to violations of EU law, documents like the Commission's 2020 Annual Report turn into an autopsy of former democracies. It is the coroner who gives the best diagnosis, it is only too late.'

Professor **Alina Mungiu-Pippidi** (Hertie School, Berlin), writing for [Carnegie Europe](#), presented a thorough critique of the methodology and outlook of the annual rule of law report. In her view, the methodological assumptions of the report are flawed because there is no 'one fact-based problem statement for each country, stating clearly whether there is a problem with rule of law and if so, what does it consist of?'; instead, the report 'offers snapshots of judicial reforms in every country' and fails to show the link between problems and means to address them. Furthermore, Professor Mungiu-Pippidi thinks the report assumes that 'the organisation of the judiciary is the source of its independence from government and private interests' which, in her view, 'goes against academic evidence' because judicial independence 'stems from the historically developed power balance in every given country'. She is also critical of the way in which the report tackles the problem of corruption, especially the idea of an 'anti-corruption framework', which assumes that each country should have a similar one. This, in her view, is against the empirical evidence because 'the most successful national integrity frameworks in the EU (and the world) are not the most regulated, but the other way around. Hungary has far more extensive public accountability mechanisms than Finland. Yet still, it is Finland that better manages to control abuse of office for undue profit. Keeping track of all changes in regulation certainly has a value in itself, but it cannot replace a sound diagnosis of each problem and a matching policy solution, relevant to the context of every country.'

According to legal expert Linda Ravo (writing on [Liberties.eu](#)), the report is **too restrictive**, especially by omitting human rights violations, which are interlinked closely with democracy and the rule of law. According to the same website, the drafting process of the report was not sufficiently transparent. [Greenpeace](#), in turn, argues that 'the Commission glosses over several troubling

developments which are eroding democracy, affecting fundamental rights such as freedom of assembly, access to information and freedom of association'. They also consider that the report would benefit from clear benchmarks and indicators for enabling civic space. The [European Center for Not-for-Profit Law](#) draws attention to what it perceives as the lack of clear benchmarks in the report, without which 'it is difficult to contextualise both the identified deficiencies and good practices in country files'. Most experts agree that a **major drawback of the report is the lack of conclusions** (Professor Mungiu-Pippidi) and clear recommendations (Linda Ravo, the European Center for Not-for-Profit Law, and Professor Pech and Professor Bárd).

Legal researcher [Sonja Priebus](#) (University of Magdeburg), writing on the *Verfassungsblog*, came to the conclusion that the report 'might be a useful instrument to provide policy-makers and the public with a comprehensive picture of the rule of law situation in the EU member states' and 'could indeed become an **early warning system**' for the EU institutions. However, despite these 'high expectations' she considered it doubtful the report would 'become a game changer in the Union's efforts to safeguard the rule of law on national level'.

In December 2020, the **Council of Bars and Law Societies of Europe** (CCBE) published a [statement on the first rule of law report](#), regretting that it did not focus sufficiently on protecting the independence of lawyers (advocates) and bar associations. CCBE called upon the Commission to recognise 'that the independence of lawyers and Bars is an indispensable component of the independence of justice systems and of the rule of law'. In its contribution to the second rule of law report, CCBE reiterated this call, stressing 'the importance for all lawyers to have the independence and freedom to carry out their professional duties without fear of reprisal, hindrance, intimidation or harassment in order to preserve the independence and integrity of the administration of justice and to maintain the rule of law'.

Conclusions

The Commission's annual rule of law reports present, in a synthetic but **descriptive** way, the state of the rule of law, media freedom, the anti-corruption framework, and checks and balances in each EU Member State, with a Union-wide overview in the general introduction. Their importance is, therefore, **political**, as they do not produce any legal effects as such, nor do they *directly* feed into any legal procedures such as the Article 7 TEU procedure, infringement proceedings or the triggering of the conditionality regulation. The first and second reports did not contain explicit recommendations, but this is expected to change from the third report onwards, expected in 2022. An overview of all 27 Member States in one exercise has its merits but also, as highlighted by experts, has **shortcomings**. These are due to putting together, formally on the same level: firstly, those Member States which can be considered as role models concerning the rule of law; secondly, those which have incidental but isolated issues with the rule of law; and, thirdly, those where breaches of the rule of law have a systemic and deliberate character, and could be seen as problematic.

Despite these reservations, the fact that both positive and negative examples are put together in one exercise leads to a **comprehensive picture of the state of the rule of law** in the EU (as can be seen from the overview in the Annex). While such an exercise has a precedent in the guise of the annual fundamental rights report and the Justice Scoreboard, it is unique thanks to the fact that it focuses not only on the purely legal aspects of how the judiciary is organised, but also encompasses the anti-corruption framework, media freedom, and a comprehensive context of 'other checks and balances', thereby putting the rule of law in its **broader context**. As such, the annual rule of law reports are capable of playing an important role in fostering what the European Commission has described as a '**rule of law culture**',⁶ i.e. embedding this chief value, enshrined in Article 2 TEU, within the broader political and societal context. Whether this role will indeed be fulfilled by the reports will depend not only on their content (which, as of now, has been mainly descriptive and based on second-hand reports), but also on the **methodology** used, the **intensity of dialogue** with the Member States and with stakeholders, especially civil society, and, most importantly, on the role

given to the report in the **political narrative** of the European institutions, especially the Parliament and the Commission. The fact of collecting in one monitoring exercise a wealth of information on all the Member States, analysed according to the same criteria, certainly provides an **excellent starting point** to foster an EU-wide rule of law culture.

ANNEX: Overview of the main findings of the 2021 report as regards judicial independence

Member State	Summary of Commission findings
Belgium	<ul style="list-style-type: none"> reforms to digitalisation are on-going, but little progress has been made in the past year by 2024, the judiciary is to manage its resources autonomously High Council for Justice issued recommendations on judicial investigations into law enforcement authorities and promoting the integrity framework for judges insufficient human and financial resources remains a challenge persistent lack of consistent, reliable and uniform court data remains a challenge particularly lengthy delays in certain appeal courts
Bulgaria	<ul style="list-style-type: none"> new law on the Prosecutor General adopted, but the Constitutional Court found it unconstitutional; accountability and criminal liability of the Prosecutor General remains a challenge concerns related to the composition and functioning of the Supreme Judicial Council Inspector General and Inspectors of the Inspectorate to the Supreme Judicial Council continue their work despite their mandate ending in April 2020 promotion regime within the judiciary raises concerns, as appointments of judges to higher positions have not been carried out as per the ordinary procedure of open competition digitalisation of justice is lagging behind efficiency of the administrative justice system is showing significant progress
Czechia	<ul style="list-style-type: none"> reforms to the selection procedure and the disciplinary regime for judges are advancing; they could strengthen the independence of the judiciary by increasing transparency in the selection of judges and offering additional safeguards in disciplinary proceedings against judges continued efforts to digitalise justice, including publication of judgments and preparation of a digital file management system improved efficiency of civil, commercial and administrative justice no major disruptions despite Covid-19
Denmark	<ul style="list-style-type: none"> perception of judicial independence remains very high reforms improving efficiency and quality put forward by the National Court Administration Government is taking steps to speed up criminal cases courts face limited resources and cases are taking more time than before due to Covid-19, in March 2020 courts were closed by the Government, raising concerns about judicial independence
Germany	<ul style="list-style-type: none"> perception of judicial independence remains very high efficient justice system, with improvements in administrative cases legislative proposal is under discussion to limit the rarely used power of Ministers of Justice to issue instructions to prosecutors in individual cases proposal is under way to change selection criteria for presidents of the federal courts (the discussion is focusing on the proposed removal of experience requirements) long-term challenges as regards recruitment in the judiciary persist, also in light of upcoming retirement waves of judges digitalisation is progressing specialised commercial courts for transnational cases, able to work in English, are being created in several <i>Länder</i>
Estonia	<ul style="list-style-type: none"> advanced digitalisation allowed for resilience in the face of Covid-19

	<ul style="list-style-type: none"> • powers of court presidents have been extended: where necessary for the good administration of justice, to transfer judges without consent; in extraordinary situations and for a limited time, to transfer cases and to request secondment of judges with their consent • promotion of judges was made more transparent by amending the criteria for evaluating first-instance judges to include a procedure for collecting information on candidates
Ireland	<ul style="list-style-type: none"> • high level of perceived judicial independence • draft law reforming the system for judicial appointments and promotions is under way; reform would still leave broad discretion to the Government, given there is no ranking of the candidates and the Government is not bound by this list, although its decisions must be published • disciplinary regime for judges is being established • Judicial Conduct Committee is preparing draft guidelines on conduct and ethics • final decision on dismissal of judges remains a prerogative of the Parliament • measures are being taken to address challenges in relation to digitalisation, the low number of judges per inhabitant and the length of proceedings
Greece	<ul style="list-style-type: none"> • Code of Judicial Staff was adopted on 24 April 2021 • development of the Code of Conduct for Administrative Justice is ongoing • measures are being implemented to improve collection of judicial statistics and the creation of specialised chambers in courts and measures related to e-justice • reforms of civil procedure are ongoing, which improve efficiency • concerns remain over the procedure for appointments of senior judges and prosecutors
Spain	<ul style="list-style-type: none"> • lack of renewal of the Judiciary Council persists in the absence of an agreement in Parliament to renew a number of constitutional bodies • proposed reform of the system for the selection of judges-members of the Judiciary Council was withdrawn; discussion on allowing judges to elect judicial members of the Judiciary Council • concerns over Supreme Court's competence to conduct criminal trials of high-level officials • concerns over incompatibilities regime for judges and prosecutors and autonomy of the prosecution service from the Government • digitalisation of justice is progressing • low number of judges per inhabitant remains a challenge
France	<ul style="list-style-type: none"> • reforms aiming to strengthen the High Judiciary Council stalled in Parliament • significant increase in resources for judiciary • new draft laws under way addressing professional secrecy for lawyers, the creation of disciplinary courts for law professionals, and the broadcasting of court hearings • President of the Republic asked the High Judiciary Council to provide an opinion on ways to improve the regime for liability and protection of magistrates
Croatia	<ul style="list-style-type: none"> • level of perceived judicial independence remains very low • improvements in reducing length of proceedings and backlogs, but more progress is needed • gradual digitalisation of justice is ongoing • ongoing process for appointing the new Supreme Court President has given rise to controversy and to repeated disparaging public statements against judges • State Judicial Council made proposals to strengthen its role in selecting judges • series of alleged ethical breaches and disciplinary violations by judges led to proceedings before the State Judicial Council and Judges' Councils, and to a criminal investigation • persistent human resources shortages in the State Judicial Council, State Attorneys' Councils
Italy	<ul style="list-style-type: none"> • draft laws to streamline civil and criminal procedures are being discussed by the Parliament • digitalisation of the justice system continues to be developed • human resources have been increased, with plans to further expand them • backlogs and length of proceedings remain a challenge • draft law on the High Judiciary Council (modifying the appointment of its members) and other aspects of the justice system, which aim to strengthen judicial independence, still under discussion in Parliament
Cyprus	<ul style="list-style-type: none"> • draft law splitting the current Supreme Court into a Supreme Constitutional Court and a High Court, and on the appointment procedures of the judges and presidents of these two new

	<p>jurisdictions, is pending before Parliament (appointments would be made by the President of the Republic upon the non-binding advice of the Advisory Judicial Council)</p> <ul style="list-style-type: none"> • establishment of a Court of Appeal is also being discussed before the Parliament • establishment of specialised courts and the restructuring of the courts are ongoing • new rules of civil procedure approved, aimed at accelerating judicial proceedings • civil, commercial and administrative judicial proceedings remain very lengthy
Latvia	<ul style="list-style-type: none"> • new procedure for selecting candidate judges, which was established to strengthen judicial independence, started to be applied • Judicial Council approved the new 2021-2025 strategy to boost judicial independence • new Code of Ethics for judges has been adopted • level of digitalisation of courts and the prosecution services is high • newly created Economic Court is becoming operational
Lithuania	<ul style="list-style-type: none"> • good results in terms of efficiency, and further measures to improve this • broad use of digital tools enabled resilience in the face of Covid-19 • delays in high judicial appointments (interim president of Supreme Court since 2019)
Luxembourg	<ul style="list-style-type: none"> • high level of perceived judicial independence and an overall good level of efficiency • constitutional revision procedure aimed at further strengthening judicial independence is advancing (includes plans to create a Judiciary Council, and to guarantee independence not only of the judiciary but also the prosecution service) • need to further develop digitalisation to improve resilience of the justice system • proposals for amendments are being prepared to improve the legal aid system
Hungary	<ul style="list-style-type: none"> • high efficiency in terms of length of proceedings and digitalisation • gradual increase in salaries of judges and prosecutors continues • concerns over judicial independence expressed in the Article 7(1) TEU procedure (new rules allowing for appointment of members of the Constitutional Court to the Supreme Court outside the normal procedure; strengthening of the Supreme Court president, who was elected despite a negative opinion of the National Judiciary Council) • recommendation to strengthen judicial independence, made in the context of the European Semester, remains unaddressed, especially as regards the need to formally reinforce the powers of the independent National Judicial Council to enable it to counter-balance the powers of the President of the National Office for the Judiciary
Malta	<ul style="list-style-type: none"> • judiciary reforms of 2020 increased independence (they affected the system of judicial appointments and of judicial discipline) • perception of judicial independence has notably improved • depoliticisation of the Chief Justice appointment procedure still needs to be fully addressed • transfer of prosecutions from the police to the Attorney General is progressing • ongoing discussions to enhance the independence of specialised tribunals • serious challenges remain as regards the efficiency of the justice system, particularly the length of court proceedings, the impact of the low number of judges and the digitalisation of justice
Netherlands	<ul style="list-style-type: none"> • very high level of perceived judicial independence • constitutional revision of appointment procedure to Supreme Court is under way • digitalisation has been accelerated by Covid-19 • pandemic created a backlog for 2020 and 2021 • concerns persist as to the adequate funding of the current system for legal aid, and the reform of the legal aid system is planned to be completed by 2025
Austria	<ul style="list-style-type: none"> • very high level of perceived judicial independence • discussions are ongoing on making the prosecution service independent • concerns remain about recruitment standards at the administrative courts, particularly the appointment of vice-presidents and presidents • efforts to further improve the digitalisation of justice • efficient justice system, with improvements regarding administrative cases

Poland	<ul style="list-style-type: none"> reforms carried out since 2015 increased the influence of the executive and legislative powers over the justice system to the detriment of judicial independence and led the Commission to launch the Article 7(1) TEU procedure in April 2021, the Commission referred Poland to the ECJ in view of a law on the judiciary which undermines the independence of judges and is incompatible with EU law; in July 2021, the Court ordered interim measures in that case Polish Constitutional Court held that interim measures ordered by the Court of Justice in the area of the judiciary are inconsistent with the Polish constitution ECJ found that the disciplinary regime for judges in Poland is not compatible with EU law National Judiciary Council continues to operate despite its contested independence the functioning of the Supreme Court was further affected, including by changes in legislation in May 2021, the European Court of Human Rights found irregularities in an appointment procedure to the Constitutional Court
Portugal	<ul style="list-style-type: none"> efficiency of the justice system remains a challenge, especially for administrative and tax courts administrative arbitration centres are being reinforced measures to address human resources deficit and to invest in digitalisation are under way High Judiciary Council is taking steps to improve case management, through enhanced transparency in the allocation system codes of conduct for magistrates are being drafted discussion on hierarchical relations within the prosecution service ongoing reforms of criminal procedure are under discussion to accelerate proceedings
Romania	<ul style="list-style-type: none"> judiciary reforms of 2017-2019 had a negative impact on independence, quality and efficiency of justice in a preliminary ruling of 18 May 2021, the Court of Justice of the EU examined several aspects of these reforms and confirmed those concerns, particularly in relation to the Section for the Investigation of Offences in the Judiciary; a draft law to dismantle this Section is being examined in Parliament legislative procedure has been initiated to amend the justice laws human resources shortages have been accentuated by the lack of recruitment of new magistrates, combined with the retirement of a significant number of magistrates
Slovenia	<ul style="list-style-type: none"> Constitutional Court found rules governing parliamentary inquiries unconstitutional due to lack of safeguards on judicial independence discussion on improving the framework for disciplinary proceedings against judges started within the judiciary delays in appointing prosecutors failure to nominate European Delegated Prosecutors on time insufficient digitalisation exposed by the Covid-19 pandemic access to court and prosecution documents has become a sensitive matter, leading to a Supreme Court judgment and a legislative amendment
Slovakia	<ul style="list-style-type: none"> level of perceived independence of the judiciary remains very low among the general public in December 2020, Parliament adopted an extensive reform of the Constitution and implementing legislation regarding the justice system, particularly the Constitutional Court and the Judicial Council reform of the judicial map is under preparation, involving the Council of Europe, which has generated a number of comments from stakeholders new Supreme Administrative Court has been established new Prosecutor General and a Special Prosecutor were elected through a new transparent procedure
Finland	<ul style="list-style-type: none"> very high level of perceived judicial independence newly established National Courts Administration has become fully operational and assisted the courts in their response to the COVID-19 pandemic reform of the National Prosecution Service helped to increase its efficiency projects to improve the digitalisation of the justice system and to make the system of legal aid more accessible are under way

Sweden

- a **committee of inquiry** is working on strengthening democracy and judicial independence
- targeted reform of the system for **security clearances** for judges was implemented
- further digitalisation, setting up a **council on digitalisation** focused on criminal proceedings
- concerns about the long-term **resources** of the justice system persist
- justice system has continued to function efficiently, including during the Covid-19 pandemic

MAIN REFERENCES

van Ballegooij, W. and Navarra, C., [An EU mechanism on democracy, the rule of law and fundamental rights](#), EPRS study, 2020.

Bárd, P., [Diagnostic Autopsy: The Commission's 2020 Annual Rule of Law Report](#), RECONNECT expert briefing, 2020.

Díaz Crego, M., Mańko, R. and van Ballegooij, W., [Protecting EU common values within the Member States: An overview of monitoring, prevention and enforcement mechanisms at EU level](#), EPRS study, 2020.

Pech, L., [Doing more harm than good? A critical assessment of the European Commission's first Rule of Law Report](#), RECONNECT expert briefing, 2020.

ENDNOTES

¹ See e.g. Lane Scheppelle, K., Kochenov, D.V. and Grabowska-Moroz, B., [EU Values Are Law, after All: Enforcing EU Values through Systemic Infringement Actions by the European Commission and the Member States of the European Union](#), *Yearbook of European Law*, Volume 39, 2020, pp. 3-121, <https://doi.org/10.1093/yel/yeaa012>.

² Leloup, M., Kochenov, D.V. and Dimitrovs, A., [Non-Regression: Opening the Door to Solving the 'Copenhagen Dilemma'? All the Eyes on Case C-896/19 *Repubblika v Il-Prim Ministru*](#), RECONNECT Working Paper No 15, June 2021.

³ Pech, L., [Doing more harm than good? A critical assessment of the European Commission's first Rule of Law Report](#), RECONNECT expert briefing, December 2020.

⁴ Díaz Crego, M., Mańko, R. and van Ballegooij, W., [Protecting EU common values within the Member States: An overview of monitoring, prevention and enforcement mechanisms at EU level](#), EPRS study, p. 73, September 2020.

⁵ The full list of key stakeholders, as mentioned in the official methodology, includes the following: Network of the Presidents of the Supreme Courts of the EU; [European Network of Councils for the Judiciary](#); Association of the Councils of State and the Supreme Administrative Jurisdictions; European Association of Judges (EAJ); Magistrats Européens pour la Démocratie et les Libertés (MEDEL); [Association of European Administrative Judges](#) (AEAJ); Council of Bars and Law Society of Europe (CCBE); Conference of European Constitutional Courts; European Network of National Human Rights Institutions (ENNHRI); European Partners against Corruption/European contact-point network against corruption; Network of Corruption Prevention Agencies; European Federation of Journalists (EFJ); European Regulators Group for Audiovisual Media Regulation (ERGA).

⁶ [2020 Rule of Law Report](#), COM(2020) 580 final, p. 6.

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