

# Review 02

EN

## The Commission's rule of law reporting



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## Executive summary

I This review aims to contribute to a **better understanding** of the EU's rule of law landscape and of one specific tool in particular: the Commission's annual [Rule of Law Report](#) ("the Report"). The Report is one of the most recent rule of law tools, having been introduced by the [2019 Commission Communication](#) and issued for the first time in September 2020. We clarify the Report's place and purpose within that landscape and explain the processes underlying its production and follow-up.

II We carried out a review of publicly available information and material specifically collected for this purpose to inform our stakeholders about this new and complex tool. In contrast to audits, our reviews provide a descriptive and informative analysis and do not seek to provide assurance or formulate recommendations. Our review instead identifies potential challenges and opportunities or issues for further scrutiny.

III The **rule of law** is a universal principle of governance and one of the founding values of the EU. It is enshrined in the treaties and further interpreted in the case law of the Court of Justice of the EU. In addition, the European Parliament and the Council, as the EU's co-legislators, recently agreed on a definition of this principle in a regulation.

IV To promote and uphold the rule of law, the EU has a **toolbox** of various procedures, measures and instruments. They can be used in complementarity, and the choice of the most appropriate tool, or combination of tools, can be tailored to the specific context. That, in turn, may require additional communication and justification of these choices to ensure the transparency of EU action.

V The **Rule of Law Report** is a preventive tool that is not legally enforceable. It provides the Commission's assessment of significant rule of law developments each year in all 27 member states and, since 2022, also includes recommendations. The Report is interlinked with the rest of the toolbox and provides examples of cases in which some of the other tools were applied. However, it does not provide a comprehensive picture of all cases and measures relating to the rule of law or of the interconnections between them.

VI The Report is structured around **four thematic areas**: justice systems, anti-corruption framework, media pluralism and freedom and other institutional issues related to checks and balances. It builds on dialogue with member states and

stakeholders, and on input from other EU bodies and relevant international organisations.

**VII** The Commission performs a **qualitative assessment** of rule of law developments, based on EU law and other European standards. The issues identified are then classified according to their nature and seriousness. We noted that besides the questions for country visits and the country chapters themselves, the Commission did not prepare any working documents demonstrating how it decided which issues to report on or how it assessed their seriousness.

**VIII** As from 2022, the Report includes **recommendations** to each member state and the Commission follows up on them to assess the progress made in their implementation. In 2023, the first year of follow-up, 11 % of recommendations were implemented in full, 55 % were implemented partially and there was no progress on 34 % of them.

**IX** The Report's publication is **followed by numerous initiatives**, both at EU level and in the member states. These include the Council's annual rule of law dialogue based on the Report, the European Parliament's resolution on each edition of the Report, and the Commission's national dialogues on the rule of law in the member states.

**X** During our review, we identified **challenges and opportunities** relating to:

- the way the different tools of the rule of law toolbox are used;
- a comprehensive overview of all tools relating to the rule of law and the measures applied under each of them;
- the methodology for the preparation of the Report;
- the number and level of detail of recommendations and the seriousness of issues identified;
- the implementation rate of recommendations.

# Introduction

**01** The principle of the [rule of law](#), one of the EU's founding values anchored in Article 2 of the [Treaty on European Union](#) (TEU), has become increasingly prominent in recent years. Researchers, civil society and international organisations have reported backsliding on the rule of law and even systematic breaches in some member states<sup>1</sup>. The EU has reacted by increasing its scrutiny of developments relating to the rule of law, and by making use of the existing instruments, procedures and measures within its toolbox and adding new ones.

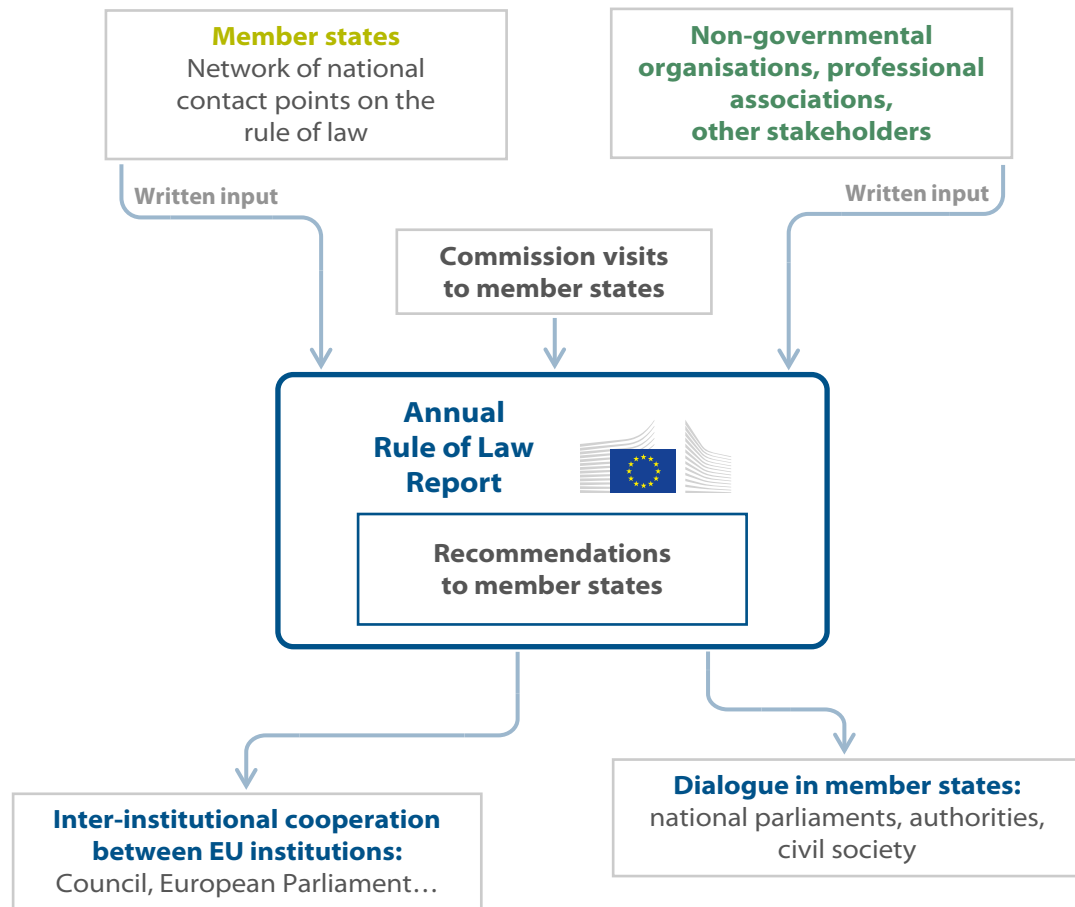
**02** One of the latest additions is the **Commission's annual Rule of Law Report** (hereinafter referred to as "the Report"), designed as a preventive and awareness-raising tool. The Report, first published in 2020, monitors and assesses significant rule of law developments in all 27 member states and at EU level and makes recommendations to each member state to help them uphold the rule of law.

**03** The Report is based on dialogue with member states and stakeholders that does not finish with Report's publication but continues with follow-up activities both at EU level and in the member states. At the same time, member states start implementing the Report's recommendations. [Figure 1](#) summarises all these processes, from the collection of inputs to the follow-up activities.

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<sup>1</sup> Pech, L. and Bárd, P., [The Commission's Rule of Law Report and the EU Monitoring and Enforcement of Article 2 TEU Values](#), Study requested by the LIBE and AFCD committees, EP IPOL: Policy Department for Citizens' Rights and Constitutional Affairs, 2022; Gora, A. and De Wilde, P., [The essence of democratic backsliding in the European Union: deliberation and rule of law](#), Journal of European Public Policy, Volume 29, Issue 3, 2022, pp. 342-362; Freedom House, [Freedom in the World 2023](#).

**Figure 1 – Rule of Law Report mechanism**



Source: ECA, based on the Commission's [Factsheet on 2023 Rule of Law Report: toolbox](#).

## Scope and approach

**04** The ECA has so far examined the rule of law only in the context of cooperation programmes with specific non-EU countries<sup>2</sup>. The first time we examined rule of law issues in relation to the EU's internal policies was in our [opinion](#) on the Commission's proposal for regulation on a general regime of conditionality for the protection of the EU budget (which would become the "[Conditionality Regulation](#)"<sup>3</sup>). This opinion was followed by our special report on the rule of law in the EU<sup>4</sup>. However, we have never previously covered the other broader tools from the rule of law toolbox. The present review fills this gap by focusing on the Commission's **Rule of Law Report**.

**05** This is not an audit report; it is a review based mainly on publicly available information as well as material specifically collected for this purpose. In contrast to audits, our reviews provide a descriptive and informative analysis and do not seek to provide assurance. For that reason, we have not assessed the accuracy of the content of the Commission's Rule of Law Report, nor provided assurance on the Commission's work or assessment presented therein. Reviews also do not formulate recommendations, and instead may identify potential challenges and opportunities or issues for further scrutiny.

**06** Our review is intended to contribute to a **better understanding** of the processes underlying the **annual production and follow-up cycle** for the Commission's Report and of **its place within the EU's rule of law toolbox**. In particular, it covers:

- the **rule of law landscape in the EU**, focusing on how the Report relates to other EU tools concerning the rule of law;
- the **process** of producing the Report, step by step, including its methodology;

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<sup>2</sup> [Special report 18/2012](#): "European Union assistance to Kosovo related to the rule of law"; [Special report 23/2021](#): "Reducing grand corruption in Ukraine – several EU initiatives, but still insufficient results"; [Special report 01/2022](#): "EU support for the rule of law in the Western Balkans – despite efforts, fundamental problems persist".

<sup>3</sup> [Regulation \(EU, Euratom\) 2020/2092](#).

<sup>4</sup> [Special report 03/2024](#): "The rule of law in the EU – an improved framework to protect the EU's financial interests, but risks remain".



- o the Commission's **follow-up** of the first generation of recommendations from the 2022 Report, and the main dissemination activities following the Report's publication.

**07** The review focused on the latest complete annual cycle, following the publication of the **2022 edition of the Report** in July 2022. In addition, to provide insight into the Commission's follow-up process, we considered **specific parts of the 2023 edition** published in July 2023.

**08** Our **reviewee is the Commission**, specifically the Directorate-General for Justice and Consumers (DG JUST) and Secretariat-General. We further met representatives of the Directorates-General for Migration and Home Affairs (DG HOME) and Communications Networks, Content and Technology (DG CNECT), which are also involved in drafting the Report. In addition, we held information meetings with representatives of the network of national contact points on the rule of law, the European Parliament and other stakeholders involved in the public consultation for the Report, such as European professional networks, and academia.

**09** We analysed the information collected from public sources, together with the Commission's documents. In addition, we focused on **three specific topics** from different pillars of the Report and the Commission's work on these topics for a selection of **eight country chapters**. We selected these country chapters so that the member states concerned represented the upper, middle and lower parts of the global rule of law rankings (e.g. World Justice Project [Rule of Law Index](#)). We also considered their number of appearances in the Report's Communication and ensured a geographical spread. [Table 1](#) summarises the topics and country chapters selected.

**Table 1 – Topics and country chapters for targeted analysis**

Pillar of the Report	Topic	Country chapter
(1) Justice systems	Councils for the judiciary and procedures for judicial appointments as key safeguards for judicial independence	Denmark, Spain, Hungary
(2) Anti-corruption framework	Strengthening the capacity of institutions and the legal framework to combat corruption	Bulgaria, Germany, Malta
(3) Media pluralism and media freedom	Threats against the safety of journalists	Netherlands, Slovakia

**10** We also performed a general analysis of all recommendations and a more detailed analysis of a subset of 12 recommendations, which relate to the pillars and country chapters selected.

# The EU's rule of law landscape

## Definitions and legal framework

### Rule of law as a constitutional principle

**11** The rule of law is a universal principle of governance that is fundamental to international peace, security and political stability<sup>5</sup>. With the development of the rule of law policy at EU level, the Commission issued a [Communication](#) in 2014 on the new EU framework to strengthen the rule of law, recognising the **rule of law as a constitutional principle** and identifying a non-exhaustive **list of its essential components**.

**12** Two subsequent Communications from 2019<sup>6</sup> further refined the definition of the rule of law, which the Commission then used in the first edition of **its Rule of Law Report** in September 2020<sup>7</sup> ([Box 1](#)). In parallel, in December 2020, the EU co-legislators (the European Parliament and the Council) codified a **legally binding definition** of the rule of law for the purpose of the [Conditionality Regulation](#) (Article 2). While the core elements of these two definitions are identical, the Report's definition additionally recalls explicitly that all public powers must act within the constraints set out by law.

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<sup>5</sup> [Resolution adopted by the General Assembly](#) on 16 September 2005, 60/1, 2005 World Summit Outcome, 24.10.2005, paragraph 134; [UN website on rule of law](#).

<sup>6</sup> [Communication COM\(2019\) 163](#): "Further strengthening the rule of law within the Union"; [Communication COM\(2019\) 343](#): "Strengthening the rule of law within the Union – A blueprint for action".

<sup>7</sup> [Communication COM\(2020\) 580](#): "2020 rule of law report".

### Box 1

#### The definition of the rule of law in the Report

The rule of law is enshrined in Article 2 TEU as one of the **common values** for all member states. Under the rule of law, **all public powers always act within the constraints set out by law**, in accordance with the values of democracy and fundamental rights, and under the control of independent and impartial courts.

The rule of law includes **principles** such as:

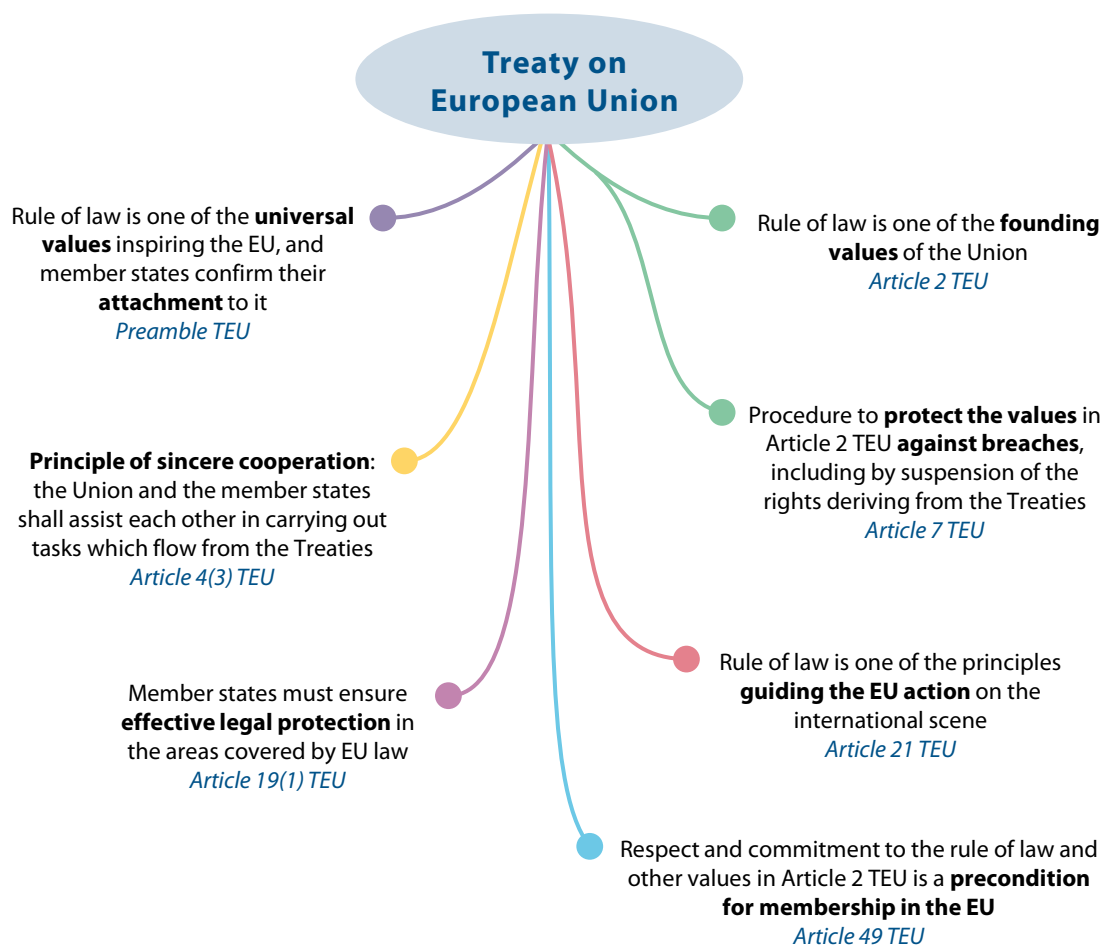
- **legality**, implying a transparent, accountable, democratic and pluralistic process for enacting laws;
- **legal certainty**;
- **prohibiting the arbitrary exercise** of executive power;
- **effective judicial protection** by independent and impartial courts, effective judicial review including respect for fundamental rights;
- **separation of powers**; and
- **equality** before the law.

Source: [Communication COM\(2020\) 580](#).

### EU legal framework on the rule of law

**13** In addition to **Article 2 TEU** ([Box 1](#)), several other TEU articles mention the rule of law directly or define other related principles. [Figure 2](#) provides an overview of these TEU articles.

Figure 2 – Provisions relating to the rule of law in the TEU



Source: ECA, based on the TEU.

**14** Other relevant provisions are found in the **Treaty on the Functioning of the European Union** (TFEU). These include infringement procedures (**Articles 258 and 259 TFEU**) and preliminary rulings (**Article 267 TFEU**) to ensure uniform interpretation of EU law, as well as corrective measures in the event of infringements.

**15** The **Charter of Fundamental Rights of the EU** (Article 51) confers rights upon individuals and applies to member states when they are implementing EU law. Thus, read in conjunction with Article 19 TEU, **Article 47** of the Charter, which explicitly provides for the “right to an effective remedy and to a fair trial”, ensures the existence of an effective judicial remedy when the rights and freedoms guaranteed by EU law are violated.

**16** The secondary legislation (directives, regulations, decisions, etc.) referring to the rule of law mostly includes EU funding regulations<sup>8</sup>. A notable exception is the **Conditionality Regulation**, which lays down the rules necessary for the protection of the EU budget in the case of breaches of the principles of the rule of law in the member states.

**17** The Court of Justice of the EU (CJEU) has produced an extensive body of **case law** on the rule of law, dealing both with questions of principle and with concrete EU law violations in member states. **Annex I** presents some examples of particularly influential cases that helped form the EU's rule of law landscape.

## EU's rule of law toolbox

### Variety of tools used in complementarity

**18** The Commission considers that promoting and upholding the rule of law is “a central imperative” of its work as **guardian of the treaties**<sup>9</sup>. According to the Commission, when the relevant mechanisms at national level cease to operate effectively, there is a systemic threat to the rule of law and the EU needs to act to protect it as one of its common values<sup>10</sup>. To do so, the EU uses various procedures, measures and instruments with different purposes and scopes, different ways of operating, and different consequences for non-compliance. All these tools collectively make up the EU's “rule of law toolbox”. **Annex II** provides a brief overview of the EU tools that we consider most relevant for the rule of law.

**19** The **choice of the most appropriate tool** in each situation depends on the aim of each tool and the conditions for its use. At the same time, these conditions leave space to tailor the choice of the most appropriate tool, or combination of tools, to the specific context. There is no automatic link between individual tools such that the use

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<sup>8</sup> [Regulation \(EU\) 2021/947](#) establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe (NDICI); [Regulation \(EU\) 2021/1529](#) establishing the Instrument for Pre-Accession assistance (IPA III); [Regulation \(EU\) 2021/692](#) establishing the citizens, equality, rights and values programme; [Regulation \(EU\) 2021/693](#) establishing the justice programme.

<sup>9</sup> [Communication COM\(2019\) 343](#), p. 1.

<sup>10</sup> [Communication COM\(2014\) 158](#), p. 5; and [Communication COM\(2019\) 343](#), p. 9.

of one of them would trigger the use of another. The toolbox is therefore a set of complementary tools that can be used in parallel rather than hierarchically.

**20** This set-up allows the Commission to react based on the broad context of each situation and any other political considerations. However, it may require additional justification and communication to enhance the transparency of the Commission's choice of which tools to use and when.

**21** The terminology that each tool uses varies depending on its specific nature and purpose. A "serious concern" in the Report does not automatically equal a "serious and persistent breach of the values" under the Article 7 TEU procedure, nor a "breach of the principles of the rule of law" under the Conditionality Regulation. There is no official document explaining how all these terms relate to each other even though all refer to deviations from the rule of law principle.

## Rule of Law Report in a nutshell

### Commission's own assessment

**22** The annual Rule of Law Report is "a preventive mechanism, aimed at improving the rule of law situation across the EU, raising awareness of challenges and facilitating solutions early on to prevent deterioration"<sup>11</sup>.

**23** The Report is managed by the **Commission**. DG JUST and the Secretariat-General lead its preparation and any follow-up activities, while DG HOME contributes expertise on the anti-corruption framework, and DG CNECT on media pluralism and media freedom. In addition, other Commission DGs and services are invited to participate in **country teams**, where they can comment on drafts from their early stages.

**24** The Report presents the Commission's **own assessment** and opinion. The Commission designed its own methodology for monitoring and assessing rule of law developments in member states, which is a six-page publicly available document<sup>12</sup>, and complements it with internal guidance, regular meetings of the Interservice Steering Group on the rule of law and meetings with the network of the national contact points on the rule of law.

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<sup>11</sup> [Communication COM\(2022\) 500: "2022 Rule of Law Report"](#), p. 29.

<sup>12</sup> [Methodology for the preparation of the Annual Rule of Law Report](#), European Commission, 2022.

**25** The Commission takes a consultative approach to preparing the Report, giving a central role to dialogue with member states and stakeholders (such as professional associations and networks, NGOs and academia). Based on these elements, it provides a **qualitative assessment of significant developments**, both positive and negative, in relation to the rule of law in member states. The Report is not intended to provide an exhaustive description of the rule of law situation in each member state, but rather an update on developments over the past year, taking the 2020 Report as a baseline.

**26** The Parliament considers that this approach “fails to clearly recognise the deliberate process of backsliding on the rule of law in several member states”<sup>13</sup>. One research study has also pointed out that it “relies on generic statement of principles, (...) and enumeration of enacted or planned reforms”, rather than “undertaking analysis of the systemic parameters of the rule of law institutional framework”<sup>14</sup>.

#### Four-pillar structure

**27** The Report consists of a horizontal Communication and 27 country chapters. The **horizontal Communication** provides the Commission’s view of the situation across all member states and an overview of developments and actions at EU level. It is accompanied by an annex listing the recommendations to each member state. The **27 country chapters** provide detailed information for each member state and take the form of staff working documents (SWDs).

**28** The Report is structured around four thematic areas or “pillars”, as shown in [Figure 3](#). The four pillars do not stem directly from the definition of the rule of law presented in [Box 1](#) but the Commission considers them key interdependent pillars for ensuring the rule of law, as explained in its 2019 Communication and the first edition of the Report<sup>15</sup>.

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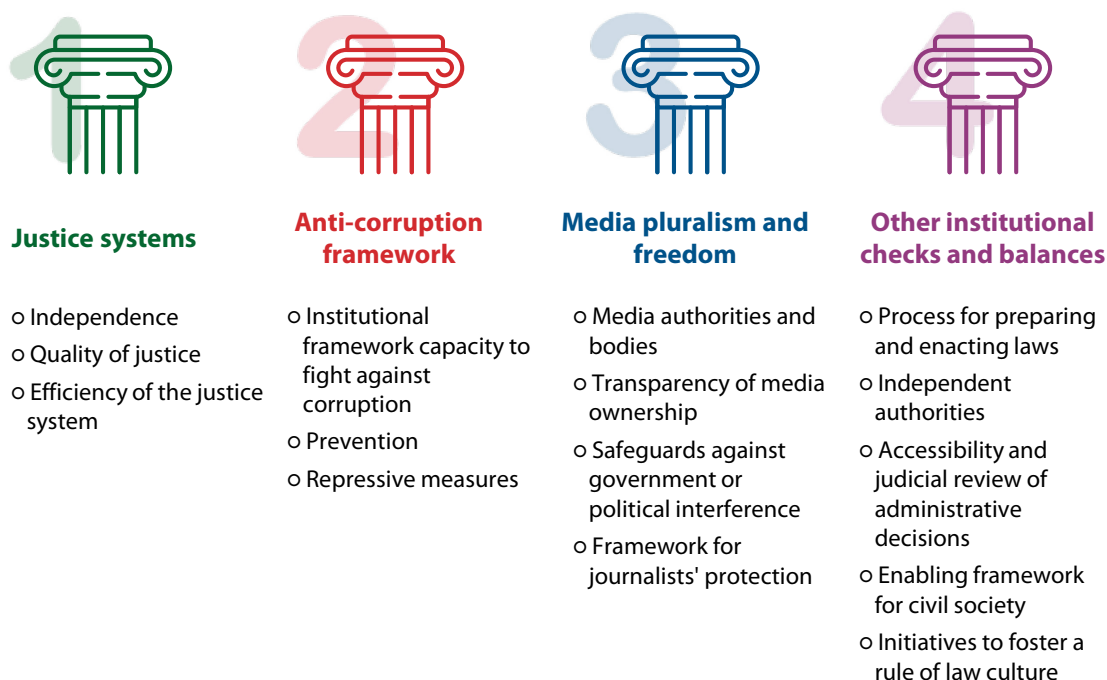
<sup>13</sup> [European Parliament resolution of 30 March 2023](#) on the 2022 Rule of Law Report, paragraph 26.

<sup>14</sup> Azmanova, A. and Bethany, H., [Binding the Guardian: On the European Commission’s Failure to Safeguard the Rule of Law](#), Project report, European Parliament, Brussels, 2021, p. 15.

<sup>15</sup> [Communication COM\(2019\) 343](#), p. 9; and [Communication COM\(2020\) 580](#), p. 4.



Figure 3 – Four pillars of the Report



Source: ECA, based on Commission documents.

**29** The Parliament has been calling for an **extension of the Report's scope**, to cover all the values enshrined in Article 2 TEU<sup>16</sup> in addition to the rule of law. The Commission is wary of such an expansion as it does not want to turn the Report into an all-encompassing "report of reports", and points out that it is only one piece of a larger picture at EU level: the Report is complemented by other initiatives, including the [European Democracy Action Plan](#) and the [Strategy to strengthen the application of the Charter of Fundamental Rights in the EU](#) and the annual reports on the application of the Charter<sup>17</sup>.

## The Report's place in the toolbox

**30** The Report is interlinked with the other tools from the rule of law toolbox (paragraph 18). It uses some of these as sources, is in turn used by others as a source, and refers to some others either for overview or in relation to the recommendations. All these tools inform each other where they cover related or similar topics. [Figure 4](#)

<sup>16</sup> [European Parliament resolution of 30 March 2023](#) on the 2022 Rule of Law Report, paragraph 19.

<sup>17</sup> [Follow up to the European Parliament non-legislative resolution](#) on the 2022 Rule of Law Report, European Commission, 2023, pp. 2-3.

illustrates these links between the Report and the other tools, while [Annex II](#) provides further details on each tool.

**Figure 4 – The Report and the other tools concerning the rule of law**



Source: ECA.

**31** The data from the [Justice Scoreboard](#) informs the Report, e.g. on perceptions of judicial independence, or on the quality and efficiency of justice. The **European Anti-Fraud Office (OLAF)** is invited to participate directly in country teams preparing the Report, whereas the **European Public Prosecutor's Office (EPPO)** was first consulted for the 2023 Report.

**32** The **Conditionality Regulation** establishes a procedure that allows concrete protective measures to be taken in cases where breaches of the principles of the rule of law affect or seriously risk affecting the sound financial management of the EU budget or the protection of the EU's financial interests in a sufficiently direct way. The Report is one of the sources of information used to identify breaches of the principles

of the rule of law under this procedure<sup>18</sup>. However, it does not specify whether the rule of law issues identified affect or risk affecting the sound financial management of the EU budget or the EU's financial interests – a key criterion for the Conditionality Regulation procedure. The Report can therefore only be a starting point for the Commission's further assessment under the procedure.

**33** The Parliament has reiterated that the Report should serve as input to trigger the other instruments and has specifically called on the Commission to create a direct link between the Report and the Conditionality Regulation procedure<sup>19</sup>. While acknowledging the need for synergies between the tools, the Commission stresses that it would not seem appropriate to pre-empt a future decision to use one of the tools and thereby restrict the EU's ability to react to developing situations<sup>20</sup>. At the same time, the Report as a tool is not legally enforceable, and the Commission relies on the sincere cooperation of member states.

**34** The Report further mentions examples of the application of the **other tools**, such as the Article 7 TEU procedure or infringement procedures. For instance, the Report mentions the ongoing infringement procedures concerning investor citizenship schemes (**Box 2**), while at the same time classifying this issue as a serious concern under the anti-corruption framework (pillar 2) in several country chapters<sup>21</sup>. In addition, investor residence schemes are highlighted in the horizontal Communication as a corruption risk<sup>22</sup>.

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<sup>18</sup> Recital 16 to the [Regulation \(EU, Euratom\) 2020/2092](#).

<sup>19</sup> [European Parliament resolution of 30 March 2023 on the 2022 Rule of Law Report](#), paragraph 28.

<sup>20</sup> [Follow up to the European Parliament non-legislative resolution on the 2022 Rule of Law Report](#), European Commission, 2023, p. 5.

<sup>21</sup> [SWD\(2022\) 502](#), [SWD\(2022\) 513](#) and [SWD\(2022\) 518](#): country chapters on the rule of law situation in Bulgaria, Cyprus and Malta.

<sup>22</sup> [Communication COM\(2022\) 500](#), p. 16.

## Box 2

### Infringement procedures on “golden passports”

Under an **investor citizenship scheme** (ICS), also known as the “golden passport” scheme, a state grants its nationality in return for pre-determined payments or financial investments and without requiring the applicant to have any genuine link to that country. When operated by a member state, such schemes impact the whole EU: a person holding the nationality of one member state automatically enjoys EU citizenship and all the rights that come with it.

The Commission considers that ICSs **breach EU law**. They are not compatible with the principle of sincere cooperation (Article 4(3) TEU) or with the concept of EU citizenship (Article 20 TFEU) and therefore need to be repealed.

Until recently, there were three member states operating ICSs: Bulgaria, Cyprus, and Malta. In October 2020, the Commission opened infringement procedures against Cyprus and Malta. Cyprus suspended its ICS in November 2020, but its legal framework remains in force. Bulgaria abolished its ICS in April 2022. Malta suspended its ICS only for Russian and Belarussian nationals due to Russia’s war on Ukraine. As Malta kept operating its ICS for all other nationalities, in September 2022 the Commission decided to refer it to the CJEU (case [C-181/23](#)).

Although there are only a few ICSs in the EU, many member states operate some form of **investor residence scheme** (IRS). The IRSs work on a similar principle, granting residence permits in return for a financial investment. IRSs also have implications for the whole EU as the holders of residency permits enjoy certain rights under EU law. The Commission has taken measures to address the risks stemming from IRSs, for instance under the proposal to recast the [Long-Term Residents Directive](#), in the [anti-money laundering legislative package](#), and in the [Recommendation](#) on immediate steps in the context of the Russian invasion of Ukraine in relation to ICSs and IRSs.

*Source:* ECA, based on [Report from the Commission COM\(2019\) 12: Investor Citizenship and Residence Schemes in the EU](#); and [European Parliament resolution of 9 March 2022](#).

**35** In addition, there are **tools from other EU policies** that do not specifically focus on the rule of law but may nevertheless have significant influence on it. These include the [Common Provisions Regulation](#)<sup>23</sup> (CPR), which applies to cohesion policy and some other funds, as well as the [RRF Regulation](#)<sup>24</sup> and the [European Semester](#). The CPR and RRF Regulation include payment conditions linked to the rule of law, while the

<sup>23</sup> [Regulation \(EU\) 2021/1060](#).

<sup>24</sup> [Regulation \(EU\) 2021/241](#).

European Semester’s country-specific recommendations can also address some rule of law issues when they are of macroeconomic relevance (see [Annex II](#)).

**36** In the Report, the Commission states that it will provide a **summary** of the use of the key rule of law tools<sup>25</sup>. The horizontal Communication section on developments at EU level includes a selection of cases in which some of these tools were applied, with additional details in country chapters, but it does not provide a comprehensive picture of all cases and measures relating to the rule of law. For example, the horizontal Communication refers to selected cases of ongoing infringement procedures, but it does not provide an overview of all relevant ongoing infringement procedures. The Report also does not always include complete references, which would give readers easy access to detailed information.

**37** All these tools must work in **complementarity and synergy** to ensure that EU action on the rule of law is effective. This requires consistency between all these tools and coordination across the relevant Commission DGs and services. [Box 3](#) shows an example of the challenge that this task may entail.

### Box 3

#### Consistency: Rule of Law Report vs European Semester

The Commission’s country-specific assessments and recommendations for the Report may partially overlap with those for the European Semester, especially in relation to justice systems, anti-corruption frameworks and law-making processes.

For example, the European Semester country report on Spain concludes that “as regards judicial independence, **no systemic deficiencies have been reported**”. However, the country chapter for Spain in the Report identifies **several concerns** regarding judicial independence. These include delays of several years in the renewal of the council for the judiciary, and questions surrounding the autonomy of the country’s prosecution service.

Taken together, these two messages may appear contradictory, and they demonstrate the challenge of ensuring complementarity and synergies within the rule of law toolbox.

*Source:* ECA, based on [SWD\(2022\) 610](#): 2022 country report – Spain, p. 48; [SWD\(2022\) 509](#): country chapter on the rule of law situation in Spain, pp. 3-6.

<sup>25</sup> [Communication COM\(2022\) 500](#): “2022 Rule of Law Report”, p. 3.

**38** To ensure consistency when drafting the Report’s recommendations, the Commission’s internal guidance specifies the circumstances under which the Report can make new recommendations on issues already covered under other tools, such as infringement procedures, the Article 7 TEU procedures or the RRF. However, the Commission stresses that the Report’s recommendations are without prejudice to any proceedings under other instruments<sup>26</sup>. **Box 4** gives an example of alignment between a Report recommendation and a measure under another EU tool. It also demonstrates the challenge of balancing consistency and independent assessment when addressing identical rule of law issues through different tools.

#### **Box 4**

##### **Consistency: Rule of Law Report vs RRF**

Hungary’s national recovery and resilience plan under the RRF includes a milestone on “strengthening the role and powers of the National Judicial Council to counterbalance the powers of the President of the National Office for the Judiciary”, which is identical to one of the recommendations in the Report. This shows alignment between these two tools on this point.

As regards the assessment of these two measures, the 2023 country chapter for Hungary includes a disclaimer stating that its assessments of the implementation of the Report’s recommendations “do not prejudice any future assessment” under Article 24 of the RRF Regulation. The fulfilment of the RRF milestones will be assessed in accordance with the specific procedures set up for this purpose, but the Commission must still ensure the overall consistency in all its actions relating to the rule of law.

*Source:* ECA, based on [annex to the proposal for a Council Implementing Decision](#) on the approval of the assessment of the recovery and resilience plan for Hungary, pp. 94-95 and p. 131; and [SWD\(2023\) 817](#): country chapter on the rule of law situation in Hungary, pp. 2-4.

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<sup>26</sup> [Communication COM\(2022\) 500](#), pp. 2 and 4.

## Challenges and opportunities in the EU's rule of law landscape

### **The rule of law toolbox and the way its different tools are used**

The development and diversification of the rule of law toolbox further highlight the challenge of ensuring complementarity and synergies among all these tools. There are opportunities to address this challenge, for instance by better explaining the interdependencies and overlaps between the tools relating to the rule of law (paragraphs [37-38](#)) and the Commission's choices of which tool to use and when (paragraphs [19-20](#)). Another opportunity might lie in clarifying the relationship between the different terminologies used by the different tools (paragraph [21](#)).

### **A comprehensive overview of all tools relating to the rule of law and the measures applied under each of them**

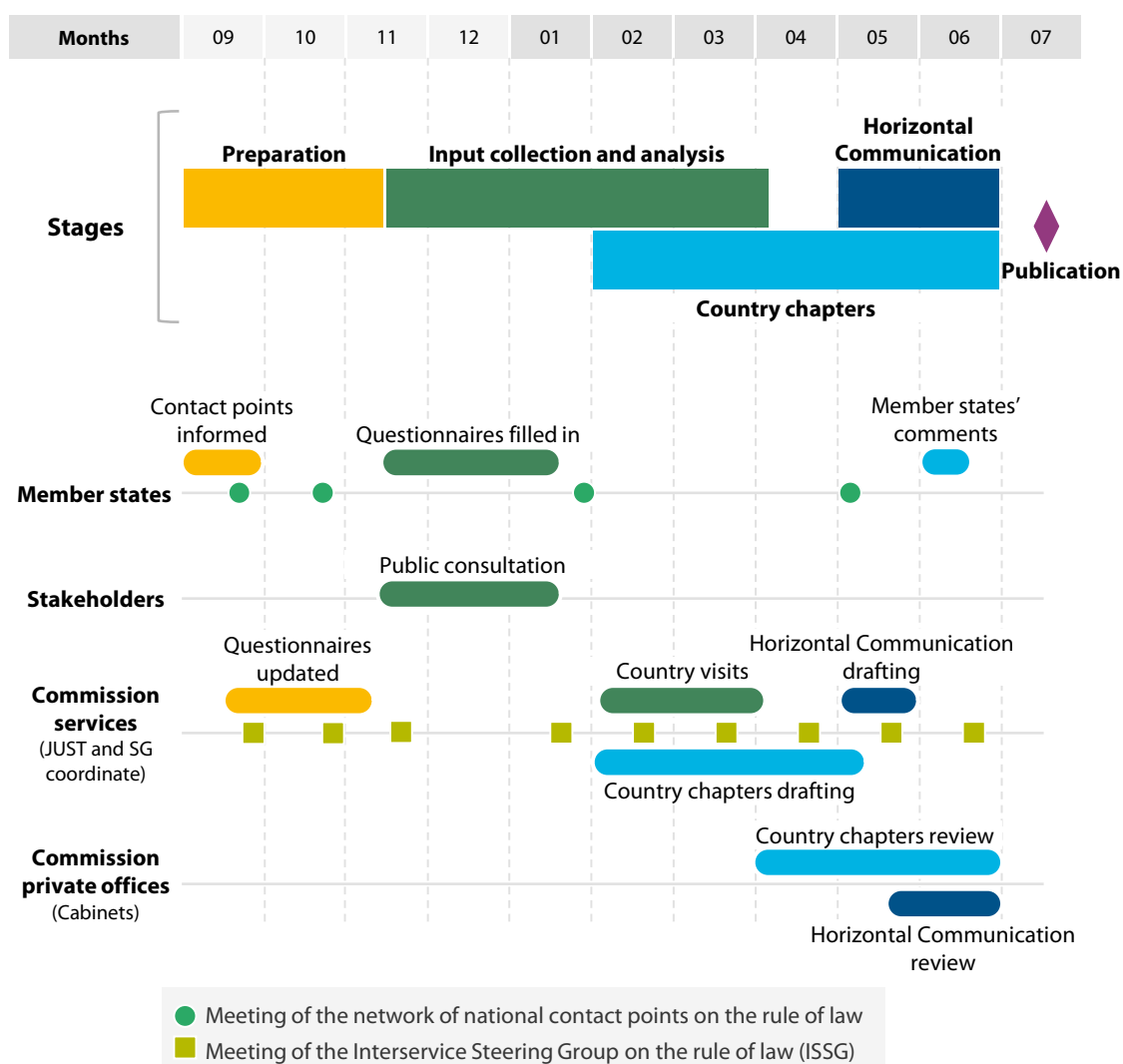
There is an opportunity to make the information on rule of law developments and rule of law measures applied under other EU tools presented in the Report and its annexes more comprehensive and complete. For example, it could include or make reference to a complete overview of ongoing infringement procedures relating to the rule of law and/or a list of all measures concerning the rule of law applied under other EU tools, such as the European Semester, the RRF or the CPR (paragraph [36](#)).

# The Report production process

## Overview

**39** The following section describes, step by step, the process of producing the Report, as summarised in [Figure 5](#).

**Figure 5 – The Report production process**



Source: ECA, based on the Commission's timeline documents.



## Preparation

**40** The Report production cycle starts in the early autumn of the year preceding publication. The Commission gives member states the opportunity to comment on the updated questionnaires used to collect their contributions and informs them about the planning of the whole exercise.

## Input collection

### Questionnaires and public consultation as key sources of information

**41** The Commission invites member states and stakeholders (such as professional associations and networks, NGOs and academia) to provide their written contributions through standardised questionnaires, which follow the four pillars of the Report split in more detailed sub-topics<sup>27</sup>. The member states and stakeholders complete their respective questionnaires in parallel at the turn of each year.

**42** For the 2022 Report, all member states except Hungary and Poland filled in the questionnaires<sup>28</sup>. For the 2023 Report, all member states except for Poland did so<sup>29</sup>. The number of stakeholders providing input to the Report increased from around 220 stakeholders for the 2022 Report to around 250 for the 2023 Report<sup>30</sup>.

### Inputs from the Fundamental Rights Agency, Council of Europe and United Nations

**43** In addition, the Commission receives yearly contributions from the **Fundamental Rights Agency** (FRA). These contributions comprise extracts from the FRA's EU Fundamental Rights Information System<sup>31</sup>, and the agency's own research on the rule of law aspects of civic space.

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<sup>27</sup> [European rule of law mechanism](#): 2022 rule of law report, template.

<sup>28</sup> [SWD\(2022\) 517](#): country chapter on the rule of law situation in Hungary, p. 38; and [SWD\(2022\) 521](#): country chapter on the rule of law situation in Poland, p. 39.

<sup>29</sup> [SWD\(2023\) 821](#): country chapter on the rule of law situation in Poland, p. 45.

<sup>30</sup> Summary of the targeted stakeholder consultation for the [2022](#) and [2023](#) Rule of Law Reports.

<sup>31</sup> FRA's [submission to the Commission](#) for the preparation of the 2022 Report, p. 2.

**44** The Commission also receives yearly contributions from international organisations. The **Council of Europe** and its bodies, such as the **European Commission for Democracy through Law** (Venice Commission) or the **Group of States against Corruption** (GRECO), provide lists of their recent reports, opinions, recommendations, judgments, and other published documents. The **United Nations** (UN) provides its yearly contribution through the UN Human Rights Regional Office for Europe, and we also found references to **Organisation for Economic Co-operation and Development** reports received during the public consultation.

### Country visits in the form of online meetings with member states and stakeholders

**45** After its initial analysis of these inputs, the Commission prepares follow-up questions. It uses these to structure its virtual country visits, which typically take place in February and March and comprise more than 500 online meetings with national authorities, independent bodies and stakeholders<sup>32</sup>.

**46** The Commission discloses the organisations met in Annex II to each country chapter. It also publishes some of the additional inputs received during country visits. The amount of documentation collected during these visits varies significantly from country to country. The Commission does not systematically prepare minutes or other reports from these meetings but uses the information collected orally in the Report directly.

## Analysis

### Qualitative assessment approach based on detailed standards and professional expertise and judgment

**47** The Commission's assessment approach is mainly **qualitative**, with some references to quantitative indexes such as Transparency International's **Corruption Perceptions Index**, or the **Eurobarometer surveys**, and other quantitative data, e.g. on the efficiency of justice systems, or statistics on corruption cases. According to the Commission, quantitative indices are of limited direct use for the Report, especially due to their composite nature, which does not reflect the specific scope of the Report.

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<sup>32</sup> Commission's web pages for the **2022 Report** and **2023 Report**.

**48** The Commission aims to assess all the sources of information against EU legal requirements and other **standards**, as summarised in *Figure 6*:

**Figure 6 – Standards for the Commission’s rule of law assessment**



*Note:* “PIF Directive” refers to [Directive \(EU\) 2017/1371](#); “Audiovisual Media Services Directive” refers to [Directive \(EU\) 2010/13](#). The Venice Commission is an advisory body of the Council of Europe that issues authoritative opinions on the rule of law and created the Rule of Law Checklist (2016).

*Source:* ECA, based on [Methodology for the preparation of the annual Rule of Law Report](#), European Commission, 2022, pp. 3-4.

**49** The Commission breaks these broad categories of standards down further into more than 50 sub-categories under the four main pillars. Some sub-categories include more than ten detailed standards. The standards used for the Commission’s assessment are referenced in the Report, at the end of the relevant paragraphs or in footnotes. The Commission bases its assessment directly on these standards, some of which are specific while others are more general. However, the Commission does not communicate or document specific indicators used to assess compliance with these standards in cases where the standards themselves are not already sufficiently specific or directly measurable.

**50** Researchers examining the Report also point out that the Report does not identify specific indicators used to measure each of the characteristics listed under the

four pillars<sup>33</sup>. Similarly, the European Parliament, in its 2022 resolution, called on the Commission “to elaborate on its indicators used to assess the member states’ rule of law situation”<sup>34</sup>.

**51** The Commission’s approach relies on the professional expertise and judgment of the country teams preparing each country chapter. It also relies on internal discussions both at a technical level, within the relevant Commission DGs and services, and at a political level, within the relevant Commissioners’ private offices and the College of Commissioners itself.

**52** The Commission starts its work by following up on the issues covered in the previous year’s Report and then looking into new issues. It then assesses these issues according to the relevant EU or wider European standards. The more an issue deviates from or violates a standard, and the higher its impact, the more likely it is to be classified as a concern. If a standard has been blatantly and/or repeatedly violated and the impact is high, the issue will be classified as a “serious concern”.

**53** In this context, the Commission uses the following classifications of rule of law issues (known as “**qualifiers**”):

- (1) **concerns**, which are further subdivided, depending on their seriousness, into:
  - (a) serious concerns
  - (b) concerns
  - (c) some concerns;
- (2) **challenges**: a general qualifier that denotes outstanding issues to be addressed that are not severe enough to be concerns;
- (3) **shortcomings**: of similar seriousness to challenges but more specific.

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<sup>33</sup> Closa, C. and Hernández, G., [From scrutiny to implementation: reinforcing the impact of the Rule of Law Report](#), STG Policy Papers, Issue 2023/05, 2023, pp. 3-4; Pech, L. and Bárd, P., [The Commission's Rule of Law Report and the EU Monitoring and Enforcement of Article 2 TEU Values](#), Study requested by the LIBE and AFCE committees, 2022, pp. 13 and 103.

<sup>34</sup> [European Parliament resolution of 19 May 2022 on the Commission’s 2021 Rule of Law Report](#), paragraph 4.

**54** We noted that the strongest qualifier, “**serious concerns**”, was used in three of the eight country chapters from our selection: once in pillar 1, three times in pillar 2 and once in pillar 4. In the horizontal Communication, covering all 27 member states, the Commission used the “serious concerns” qualifier only three times overall. Not all “serious concerns” identified in country chapters were therefore included in the horizontal Communication.

**55** We also noted that the Commission systematically distinguished, in the Report, between new issues and ones ongoing from previous years. The Commission has so far not attempted to present **trends** in rule of law developments over the years, given that the Report is a relatively new tool. The Parliament, however, has stated that the Report should identify clearly positive and negative trends in the rule of law situation as well as cross-cutting trends, including possible systemic vulnerabilities, at EU level<sup>35</sup>.

### Assessment documentation based on inputs, questions and draft Report

**56** We noted that the Commission publishes nearly all inputs received on its website, subject to the agreement of each contributor. Based on analysis of these inputs, the Commission prepares questions for country visits, during which it collects additional information and documents. Following that, drafting of country chapters starts.

**57** Besides this, the Commission does not produce any other working documents that would show how it selected the issues to report on from all the inputs collected or how it assessed their seriousness. In the Report’s footnotes, the Commission provides the sources of information quoted directly in the text. Additional sources that were used to support the Commission’s analysis and corroborate information are not always identified. According to the Commission, due consideration is given to all information from the sources listed in the methodology, “taking into account their factual correctness, comprehensiveness, quality, reliability and relevance”<sup>36</sup>.

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<sup>35</sup> [European Parliament resolution of 19 May 2022 on the Commission’s 2021 Rule of Law Report](#), paragraphs 8-9.

<sup>36</sup> [Methodology for the preparation of the annual Rule of Law Report](#), European Commission, 2022, p. 1.

## Country chapters

### Aiming for consistency and proportionality

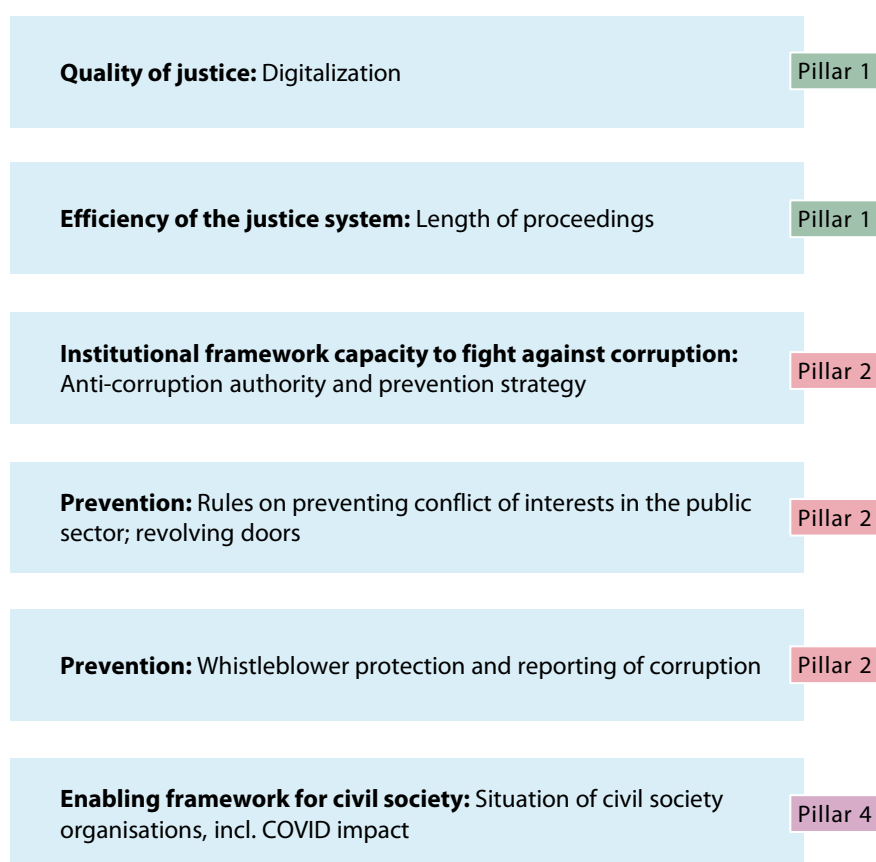
**58** Each country chapter has the same structure, with a one-page abstract, a page with recommendations (as of 2022) and with conclusions on the progress made in their implementation (as of 2023), the main body of the text, and annexes listing the sources used and organisations met. The main body of the chapter includes an introductory paragraph at the beginning of each section, and the subsequent analytical paragraphs are then each introduced by a lead sentence.

**59** To ensure **consistency** in its approach to country chapters, the Commission breaks down its work on the four pillars into 81 detailed sub-topics. The Commission's methodology requires a proportionate approach while ensuring equal treatment of all member states<sup>37</sup>. In practice, this means that the Commission monitors the developments under all these sub-topics for all member states but can adjust the depth of analysis and the information reported depending on the seriousness of the problems identified, on whether they are systemic, and on actual developments during the year. Consequently, the Report itself does not necessarily reflect all the sub-topics monitored. In the 2022 Report, on average about half of these sub-topics were developed in more detail in each country chapter. The most frequent sub-topics are highlighted in [Figure 7](#).

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<sup>37</sup> Ibid, p. 4.

**Figure 7 – Most frequently developed sub-topics in country chapters**



Source: ECA, based on Commission data.

## Internal and external review

**60** The Commission’s internal review of the Report is structured into **three main layers**: lead services (DG JUST and the Secretariat-General), director level (contributing services) and private office level. In addition, dedicated staff members monitor the consistency of drafting across the Report as a whole and its compliance with the guidance.

**61** All these reviews and checks are done directly in the text of draft country chapters. The Commission does not use any checklists or similar documents to conduct quality control, and instead follows regularly updated internal guidance.

**62** At the beginning of June, the Commission shares the draft country chapters with **member states for comments**, usually with a two-week deadline. The number of comments received varies greatly. For the eight country chapters in our selection, the Commission received on average 39 comments, ranging between 19 and 83 comments per chapter.

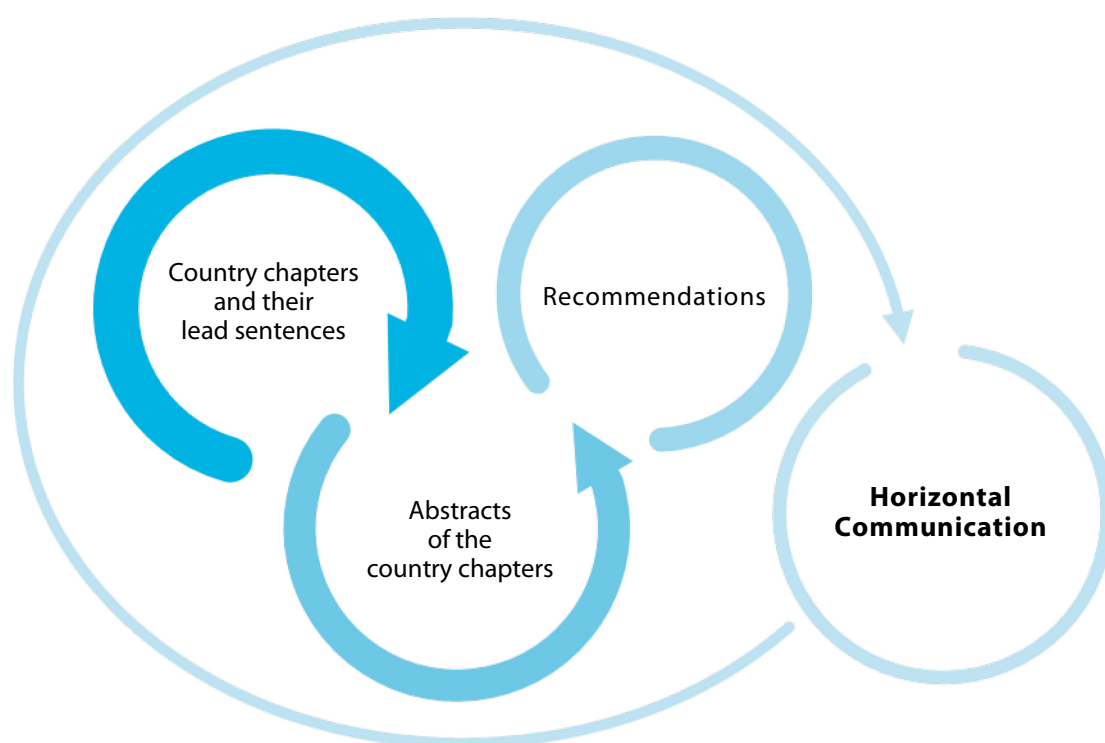
**63** The Commission generally takes on board comments from member states relating to factual correctness, while rejecting most comments that change its assessment unless they are justified by additional evidence. The Commission does not send specific feedback to member states, and the changes made are reflected directly in the published Report.

## Horizontal Communication

### Aiming for balance

**64** In parallel to the country chapters, the Commission, under the responsibility of the Secretariat-General, also drafts the horizontal Communication, covering the situation in the EU as a whole. The Commission does not have internal guidance specific to the horizontal Communication, as it considers the guidance on country chapters sufficient to cover both. The Communication is based on the assessment in the country chapters and should reflect it appropriately. [Figure 8](#) presents the Report drafting flow, from the country chapters to the horizontal Communication.

**Figure 8 – Report drafting flow**



Source: ECA, based on Commission documents.



**65** In our analysis, we noted that:

- o If an issue is subject to a recommendation, the Commission includes it in the horizontal Communication and in the relevant country chapter's abstract. The abstract in turn builds on lead sentences from the relevant country chapter.
- o In some cases, the horizontal Communication includes issues that are not mentioned in the relevant country chapter's abstract – contrary to the above drafting flow. Such issues therefore appear more important in the context of the Communication than they do in the context of the country chapter. For example, the Commission used such an approach when similar challenges occurred in several member states, mentioning them all in the Communication even though they were not in the relevant abstracts.
- o The Commission explained that it aimed to achieve balanced coverage of all member states (9-15 mentions each) and all four pillars in the horizontal Communication, providing both positive and negative examples.

### Internal review and consistency tables

**66** The horizontal Communication follows the same review process as the country chapters. However, it also undergoes a wide interservice consultation before its adoption by the College of Commissioners.

**67** Similar to the country chapters, there are no specific checklists or similar documents for conducting quality control of the Report. Instead, to ensure consistency and balance, the Commission relies on three comprehensive overview tables:

- (1) **an examples table**, which records the number of both positive and negative mentions of each member state;
- (2) **a consistency table**, showing which sub-topics are covered in each country chapter;
- (3) **a recommendations table**, providing an overview of all recommendations.

## Challenges and opportunities in the Report production process

### The methodology for the preparation of the Report

The publicly available six-page methodology offers limited value to interested readers or researchers who wish to understand better the Commission's assessment approach. There is an opportunity to increase the amount of publicly available information on the Commission's methodology (e.g. on qualifiers and typologies used, and on standards and indicators – paragraphs 48 and 53), thus increasing transparency and accountability.

In addition, opportunities might lie in further clarifying the Commission's assessment approach as regards the way the degree of compliance with the standards is assessed and the seriousness of any issues classified (paragraphs 49-54), and in improving the evidence trail of the assessment process by documenting better how the Commission decides which inputs to rely on and which issues to report on, and how it assesses the seriousness of those issues (paragraph 57).

Furthermore, with the upcoming fifth edition of the Report, the Commission might use the opportunity to present a multiannual overview of the rule of law issues monitored under the various annual Report cycles (paragraph 55).

# Recommendations and follow-up activities

## Commission's rule of law recommendations in the Report

### Recommendations to each member state

**68** The Commission first included recommendations to each member state in the 2022 Report. Overall, the Report contained **145 recommendations** across all four pillars, with 40 on justice systems (pillar 1), 52 concerning anti-corruption frameworks (pillar 2), 32 on media pluralism and media freedom (pillar 3) and 21 on other checks and balances (pillar 4). Some of these recommendations addressed multiple issues within one recommendation (see [Annex III](#)).

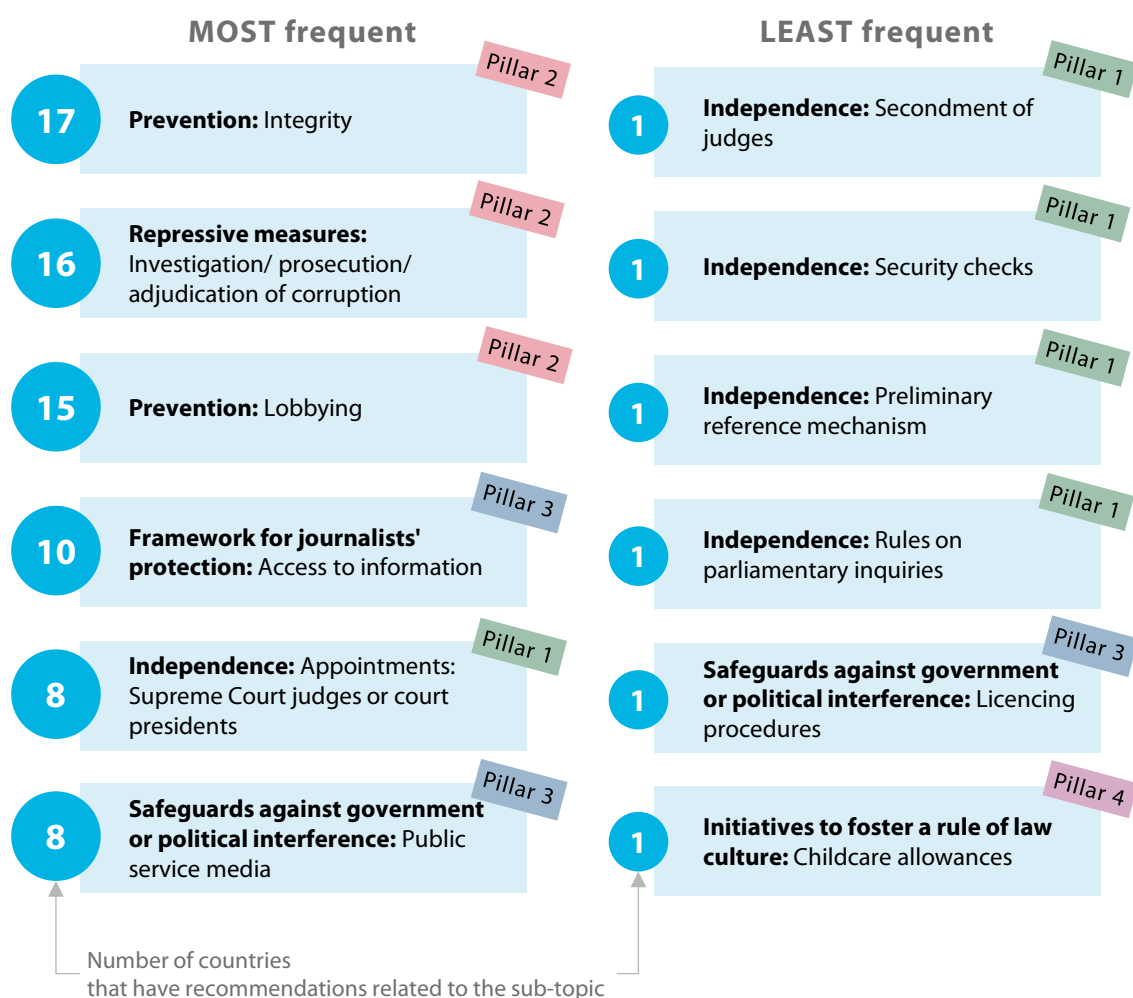
**69** The Commission aims to make recommendations to each member state while keeping their number within certain limits. The number of recommendations in the 2022 Report varies between four and eight<sup>38</sup> per member state and in the 2023 Report between two and seven<sup>39</sup> per member state. The sub-topic with the highest number of recommendations, addressed to 17 member states, is “Integrity (conflict of interest, revolving doors, code of conduct, asset declaration)” under pillar 2, which reflects the composite nature of this category. Pillar 2, on anti-corruption frameworks, was at the same time the most frequent subject of recommendations. [Figure 9](#) provides an overview of the most and least frequent sub-topics addressed by the recommendations.

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<sup>38</sup> Four recommendations: Belgium, Denmark, Estonia, Latvia, Netherlands, Finland and Sweden; eight recommendations: Hungary.

<sup>39</sup> Two recommendations: Estonia, Latvia; seven recommendations: Hungary, Malta, Poland, Romania, Slovakia.

**Figure 9 – Most and least frequent sub-topics addressed by recommendations**



Source: ECA, based on Commission's documents.

**70** The Parliament has raised concerns “about the lack of consistency between the horizontal report (Communication) and the recommendations, in particular that the country-specific concerns expressed in the horizontal report do not fully correspond to the country-specific recommendations”. The Parliament has asked for a clear link between the concerns expressed and the recommendations put forward<sup>40</sup>. Where serious concerns exist, the Commission aims, in principle, to make recommendations that ask for a concrete remedy. Based on our analysis of the selected recommendations from the 2022 Report, we noted that of the four recommendations

<sup>40</sup> European Parliament resolution of 30 March 2023 on the 2022 Rule of Law Report, paragraph 8.

asking for a concrete remedy<sup>41</sup>, none was linked to an issue explicitly classified as a “serious concern”. The Commission considers that in each case, the country chapter provides a clear assessment of the concerns, including the standards that have not been complied with, and of their impact in practice, which forms the basis for the choice of recommendation.

**71** We noted that none of the 12 recommendations we reviewed had a concrete timeline for implementation. Instead, the Commission assesses the progress of each recommendation every year, in the following edition of the Report. Some recommendations ask for specific actions, for example to adopt concrete rules on the supreme court (Hungary) or renew the council of judiciary (Spain). Others only provide a general direction, for instance to improve the integrity of specific sectors of public administration (Bulgaria), giving the member state concerned the discretion to find appropriate solutions to address the issues identified. The recommendations typically do not have quantitative targets, making the country chapter text necessary for the Commission to explain the reasoning behind its assessment.

**72** The draft recommendations are not included in the final consultation with the member states. The member states can comment on the draft country chapters and the issues identified therein, but they do not see the recommendations in advance, so do not have the opportunity to accept or reject them. The Commission considers that the recommendations, which are non-binding, are the result of its own assessment and assumes political responsibility for issuing them.

### **Progress after recommendations’ first year of implementation**

**73** As from the 2023 Report, the Commission has introduced an assessment of the implementation of the recommendations. Both member states and stakeholders can provide information on measures taken to implement the recommendations in the questionnaires (paragraph 41) that serve as input for the Commission’s assessment.

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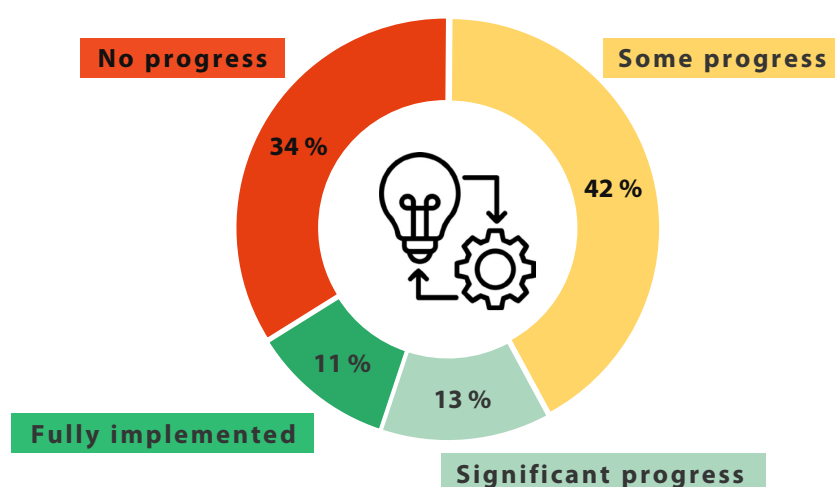
<sup>41</sup> Both recommendations concerning Hungary in pillar 1, the second recommendation concerning Spain in pillar 1, and the recommendation concerning Malta in pillar 2.

**74** We noted that the follow-up of recommendations had enhanced the structure of the Commission’s assessment, because the implementation status of each recommendation provided a clear conclusion. The Commission uses a four-step scale to assess the implementation of recommendations:

- (1) **fully implemented;**
- (2) **significant progress;**
- (3) **some progress;**
- (4) **no progress.**

**75** *Figure 10* shows the progress made in implementing the 2022 Report recommendations, as assessed in the 2023 Report, while *Annex III* provides a detailed overview of the implementation status of all 2022 recommendations for each pillar and member state.

**Figure 10 – Implementation of 2022 recommendations as of July 2023**



Source: ECA’s own calculation based on [Communication COM\(2023\) 800](#): “2023 Rule of Law Report”.

**76** In our analysis of recommendations from the country chapters and pillars selected, we noted one case in which the Commission acknowledged “some progress” on the basis that the member state concerned (Germany) had informed the Commission only of its plan to adopt a guideline. The Commission considered this step to be a preliminary measure in pursuit of the recommendation’s overall objectives (*Box 5* presents this case in detail).

## Box 5

### Follow-up of 2022 recommendations: “some progress”

**Recommendation:** Strengthen the existing rules on revolving doors by increasing consistency of the different applicable rules, the transparency of authorisations for future employment of high-ranking public officials, and the length of cooling-off periods for federal ministers and federal parliamentary state secretaries.

Commission’s assessment:  
**Some progress**

**Country chapter text:** Supplementary guidelines on post-employment are under preparation but **do not address the need** to ensure more consistency in the various existing rules. (...) The Federal Government does **not plan to legislate to address the persistent concerns** as to the different application of Germany’s ‘revolving doors’ rules, including varying cooling-off periods and the large discretion in the decision of superiors regarding future employment of state secretaries and directors general, **despite international recommendations**. (...) New preventative **guidelines** will be prepared for the Federal Government **to sensitise** retiring public officials. As limited action has been taken to strengthen the existing rules on revolving doors, some progress has been made regarding the recommendation in the 2022 Rule of Law Report.

Source: [SWD\(2023\) 805](#): country chapter on the rule of law situation in Germany, pp. 16-17.

**77** Another recommendation had been assessed as “fully implemented” on the basis that the member state concerned (Hungary) had adopted a new law. However, this recommendation had been to strengthen the role of a particular institution<sup>42</sup> – something which may also depend on how this law is implemented in practice. According to the Commission’s guidance, a recommendation can be considered fully implemented once the member state has adopted and/or implemented (as relevant in the concrete context) all measures needed to address the recommendation appropriately.

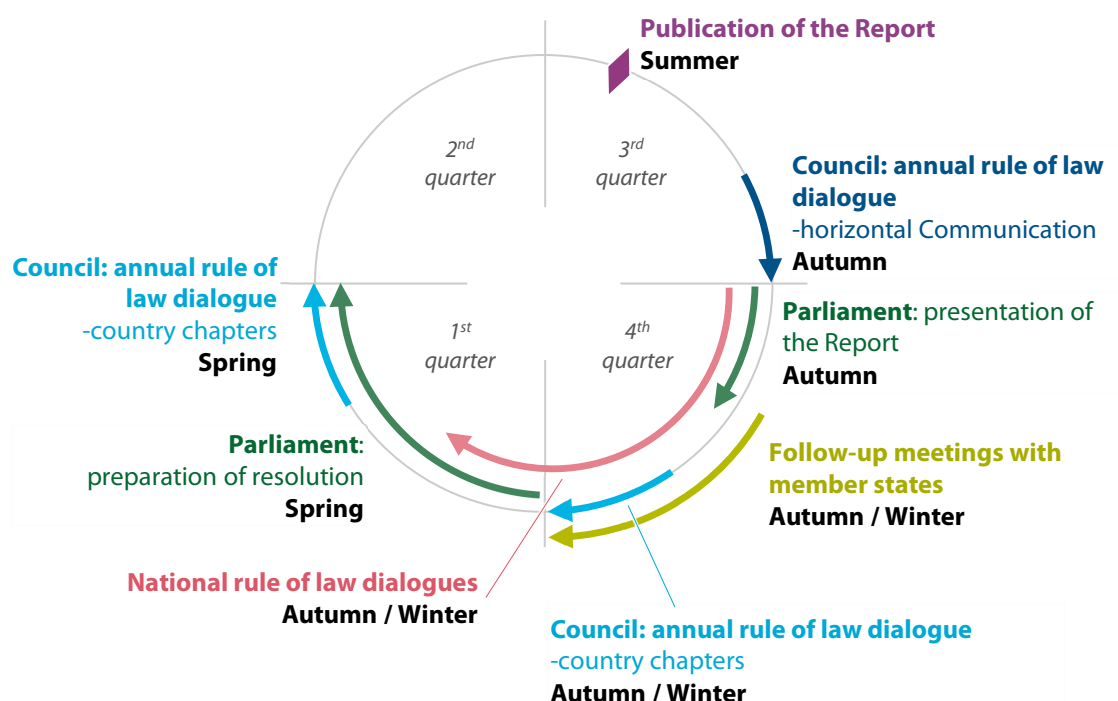
## Dissemination activities

**78** The rule of law cycle extends beyond the publication of the Report, continuing until the spring months of the following year, as illustrated in [Figure 11](#). The most prominent of these activities are the annual rule of law dialogue in the Council of the EU, where member states discuss the horizontal Communication and several country

<sup>42</sup> [SWD\(2023\) 817](#): country chapter on the rule of law situation in Hungary, pp. 2-4.

chapters, and the own-initiative resolutions of the European Parliament, prepared so far on each edition of the Report. In addition, the Commission continues its dialogue with member states, inviting them all for a technical follow-up meeting to discuss the implementation of recommendations and organising national rule-of-law dialogues and other bilateral meetings directly in several member states. [Annex IV](#) provides further details on these and other activities following the Report's publication.

**Figure 11 – Annual cycle of dissemination activities**



Source: ECA, based on Europa website and Commission documents.



## Challenges and opportunities concerning the Report's recommendations

### **The number and level of detail of recommendations and the seriousness of issues identified**

The rule of law situation and issues identified differ significantly between member states. Deciding on the number and level of detail of recommendations in a way that is proportionate to the seriousness of the issues identified may therefore pose a challenge for the Commission (paragraphs [68-71](#)). In this sense, the Commission could also take the opportunity to develop its guidance on the assessment of the recommendations further, building on the experience from their first follow-up conducted in 2023 (paragraphs [76-77](#)).

### **The implementation rate of recommendations**

After the first year of follow-up of the recommendations that were made in the 2022 Report, there had been no progress on 34 % of recommendations, some progress on 42 % and significant progress on 13 %, while 11 % had been implemented in full. Given the role that the member states play in implementing the recommendations, and that some recommendations may concern issues that require sustained action over several years, increasing the implementation rate and thus ensuring the desired impact of the Report may be a challenge for the Commission in the future (paragraph [75](#)).

## Closing remarks

**79** Since 2020, the Commission has been systematically monitoring the rule of law situation in all member states and publishing an annual Rule of Law Report. Our review provides a comprehensive insight into this process.

**80** The first part of this review describes the legal setting for the EU's rule of law landscape and introduces the **Rule of Law Report in relation to the other EU tools** dealing with the rule of law. The EU has a set of complementary tools that can be used in parallel rather than hierarchically, leaving space to tailor the choice of the tools to the specific context. The Report is a preventive tool, providing the Commission's assessment of significant rule of law developments in the member states and an overview of developments at EU level (paragraphs [11-38](#)).

**81** We identified challenges and opportunities concerning:

- the rule of law toolbox and the way its different tools are used:
  - the challenge of ensuring complementarity and synergies among all these tools,
  - the opportunity to better explain the interdependencies between the tools and the Commission's choices of which tool to use and when;
- a comprehensive overview of all tools relating to the rule of law and the measures applied under each of them:
  - the opportunity to make the information on rule of law developments under other tools presented in the Report more comprehensive.

**82** The core part of our review provides detailed insight into **the way the Commission prepares the Report** and explains the Report production process step by step. The Commission uses questionnaires to member states and a public consultation with stakeholders as key sources of information. Its assessment approach is qualitative, based on EU law requirements and other European standards, but it does not communicate or document further the indicators used to assess compliance with these standards. The Report has so far not presented any trends in rule of law developments over the years (paragraphs [39-67](#)).

**83** The main opportunities we identified in the process concern:

- the publicly available information on the Commission's methodology;
- the further clarification of the Commission's assessment approach;
- the documentation of the assessment process;
- a multiannual overview of rule of law issues.

**84** The last section of our review examines the **Report's recommendations** and the first follow-up exercise and provides a brief overview of dissemination activities linked to the Report. The Report includes a set of recommendations to each member state that are followed up in the next edition. After the first year of implementation, 11 % of recommendations had been implemented in full, 55 % partially and there had been no progress on 34 % of them. Following its publication, the Report serves as a basis for the Council's annual rule of law dialogue and for discussions in the European Parliament. The Commission engages in further dissemination activities for the Report, both at EU level and in the member states (paragraphs [68-78](#)).

**85** Concerning the recommendations and their follow-up, we highlighted the following challenges:

- the challenge of determining the number and level of detail of recommendations in a way that is proportionate to the seriousness of the issues identified;
- the challenge of increasing the implementation rate of recommendations.

This review was adopted by Chamber V, headed by Mr Jan Gregor, Member of the Court of Auditors, in Luxembourg at its meeting of 16 January 2024.

*For the Court of Auditors*

Tony Murphy  
President

# Annexes

## Annex I – Examples of CJEU case law concerning the rule of law

Although the founding treaties of the European Economic Community (EEC) from 1957 did not specifically mention the rule of law, the CJEU pointed out in the **Les Verts case** (294/83 from 1986) that the EEC was “a community based on the rule of law”. In its 2014 **Opinion** (2/13), reflecting the current EU treaties, the CJEU underlined that the rule of law, together with the other common values enshrined in Article 2 TEU, are shared by all member states, which in turn “implies and justifies the existence of mutual trust that those values will be recognised and, therefore, that the EU law implementing them will be respected”.

In the “**Portuguese judges**” or **Sindical case** (C-64/16 from 2018), the CJEU explicitly stated that the judicial independence of national courts is one of the essential requirements for effective judicial protection as per Article 19(1) TEU. This implies that member states must ensure judicial independence to guarantee effective judicial protection and the uniform interpretation and application of EU law.

The Portuguese judges case set a precedent for other cases such as the **Commission v Poland** (C-619/18 from 2019). The CJEU concluded that Poland had failed to fulfil its obligations under Article 19(1) TEU, with regard to measures lowering the retirement age of judges and with regard to the discretion of the President of the Republic to decide on the extension of mandates of judges<sup>43</sup>. Subsequently, the CJEU issued numerous other judgments dealing with the restructuring of the judiciary in Poland<sup>44</sup>.

In February 2022, the CJEU dismissed actions by Hungary and Poland for **annulment of the Conditionality Regulation** (cases **C-156/21** and **C-157/21**). The CJEU confirmed that the Regulation’s legal basis is appropriate, that it does not circumvent Article 7 TEU, that it respects the limits of powers conferred upon the EU, and that it does not violate the principle of legal certainty. The CJEU underlined that “the values contained in Article 2 TEU (...) define the very identity of the EU as a common legal order. Thus, the EU must be able to defend those values”.

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<sup>43</sup> Torres Perez, A., **From Portugal to Poland**: The Court of Justice of the European Union as watchdog of judicial independence, Maastricht Journal of European and Comparative Law, Vol. 27(1), 2020, p. 118.

<sup>44</sup> Cases **C-192/18**, **C-487/19**, **C-508/19**, **C-791/19**, etc.

## Annex II – Rule of law toolbox

### EU tools focusing on the rule of law

#### Annual Rule of Law Report

The [Rule of Law Report](#) is a preventive mechanism to monitor and assess significant developments, both positive and negative, relating to the rule of law in member states. It covers four pillars: justice systems, anti-corruption frameworks, media pluralism and media freedom, and other institutional issues related to checks and balances. Neither the Report nor its recommendations are legally enforceable.

#### Conditionality Regulation

The [Conditionality Regulation](#) establishes a general regime of conditionality to protect the EU's budget and financial interests in the case of breaches of the principles of the rule of law in the member states. It provides for specific protective measures, including suspension of payments or prohibition on entering into new legal commitments. The protective measures can be taken only in cases of breaches of the rule of law principles which affect, or seriously risk affecting, the sound financial management of the EU budget or the protection of the EU's financial interests in a sufficiently direct way. The procedure was applied for the first time in 2022, in respect of Hungary<sup>45</sup>. For more details on this procedure, see the ECA's special report on the rule of law in the EU<sup>46</sup>.

#### Article 7 TEU procedures

[Article 7 TEU](#) establishes procedures to address the risk of a serious breach, or the existence of a serious and persistent breach, of the values referred to in Article 2 TEU. Its scope therefore includes but goes beyond the rule of law, also covering respect for human dignity, freedom, democracy, equality, and respect for human rights. It has three paragraphs, each introducing a distinct procedure as shown in [Figure 12](#).

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<sup>45</sup> Council Implementing Decision (EU) 2022/2506.

<sup>46</sup> Special report 03/2024.

## Figure 12 – Article 7 TEU procedures



### Article 7(1)

Determine if there is a **clear risk** of a serious breach of the values by a member state:

- Proposal by 1/3 of member states, or by the Parliament, or by the Commission;
- Decision by the Council – **4/5 majority**, with a consent of the Parliament.



### Article 7(2)

Determine the **existence** of a serious and persistent breach of the values by a member state:

- Proposal by 1/3 of member states, or by the Commission
- Decision by the European Council – **unanimity** (without the member state concerned), with a consent of the Parliament.



### Article 7(3)

Decide on **suspension of the rights** deriving from the Treaties to the member state concerned, including the voting rights in the Council:

- Decision by the Council – **qualified majority**.

Source: ECA, based on Article 7 TEU.

The procedure under Article 7(1) has been triggered in two cases: in December 2017 in relation to Poland (by the Commission) and in September 2018 in relation to Hungary (by the European Parliament)<sup>47</sup>. As of November 2023, the Council has not voted on either procedure.

## EU framework to strengthen the rule of law

The Commission established the [framework to strengthen the rule of law](#) with the aim of preventing emerging threats to the rule of law from escalating to the point where the Commission must trigger the Article 7 TEU procedure. It operates through a dialogue with the member state concerned, followed by an assessment of the situation at issue. Finally, it indicates actions which could be taken to address the systemic threat<sup>48</sup>. The Commission applied the framework in relation to Poland before launching the Article 7 TEU procedure. This tool is not legally enforceable.

<sup>47</sup> [Press release](#): Rule of law: Commission launches infringement procedure against Poland for violations of EU law by its Constitutional Tribunal, 22.12.2021.

<sup>48</sup> [Communication COM\(2014\) 158](#), p. 7.

## Justice Scoreboard

The [Justice Scoreboard](#) is a Commission Communication that provides comparative information for assessing the efficiency, quality and independence of national justice systems. While the Rule of Law Report presents a qualitative assessment, the Scoreboard presents a set of primarily quantitative data.

## Cooperation and Verification Mechanism (CVM) – closed in 2023

In 2007, following the accession of Bulgaria and Romania to the EU, the Commission set up the [Cooperation and Verification Mechanism](#) (CVM), a transitional measure to help the two countries remedy shortcomings in the fields of judicial reform, anti-corruption and, in the case of Bulgaria, organised crime<sup>49</sup>. Following the final reports for Bulgaria (2019) and Romania (2022), the CVM was formally ended in September 2023<sup>50</sup>. See our special report on the rule of law in the EU and the Commission replies, which also refer to the CVM<sup>51</sup>. Since 2020, Bulgaria and Romania have been subject to the monitoring under the Rule of Law Report like all member states.

## EU tools in other policies impacting the rule of law

### European Semester

The [European Semester](#) is the EU's framework for coordinating and monitoring member states' economic and social policies. Under the annual European Semester cycle, the Commission issues country reports with assessment of each member state and proposes country-specific recommendations for adoption by the Council. These recommendations can also cover issues relating to member states' justice systems and anti-corruption frameworks or the quality of their legislative process in so far as these matters affect a country's macroeconomic situation, or business environment, investment, growth and jobs. They tend to be broader and more general than the recommendations made in the Rule of Law Report. All recommendations from the European Semester are stored in the Commission's [Country Specific Recommendations database](#). For more information on this tool, see our special report on the European Semester<sup>52</sup>.

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<sup>49</sup> Decisions [2006/928/EC](#) and [2006/929/EC](#).

<sup>50</sup> [Communication COM\(2023\) 800](#), p. 32; Decisions (EU) [2023/1785](#) and [2023/1786](#).

<sup>51</sup> [Special report 03/2024](#) and the [Replies of the European Commission](#).

<sup>52</sup> [Special report 16/2020](#).

## Common Provisions Regulation and Recovery and Resilience Facility

The [Common Provisions Regulation](#) (CPR), which applies to the cohesion funds and some other funds, and the [RRF Regulation](#) are the key EU tools for strengthening economic, social and territorial cohesion and recovering from the economic impacts of the COVID-19 pandemic. Both have a certain impact on the rule of law due to the funding conditions they lay down. The CPR includes a horizontal enabling condition requiring the existence of effective mechanisms to ensure compliance with the Charter of Fundamental Rights, while some national recovery and resilience plans under the RRF include milestones relating to the rule of law. In addition, the RRF is closely interlinked with the European Semester, as RRF national plans are meant to contribute to addressing all or a significant subset of the challenges identified in the European Semester's country-specific recommendations<sup>53</sup>. For more details on application of these conditions in both policies, see the ECA's special report on the rule of law in the EU<sup>54</sup>.

### Infringement procedures

Under Article 258 TFEU, the Commission can launch [infringement procedures](#) to deal with any situation in which a member state has failed to fulfil an obligation under the treaties. However, many infringement cases relate to matters that fall within the scope of the Report, such as the recent cases on judicial independence (see [Annex I](#) for examples) and investor citizenship schemes ([Box 2](#)). The procedure includes several steps for remedying infringements even before the trial stage. If these fail, the Commission may refer the matter to the **CJEU** and even ask the Court to impose penalties.

### CJEU preliminary rulings

CJEU [preliminary ruling proceedings](#) (Article 267 TFEU) allow national courts to refer to the Court questions relating to the interpretation and uniform application of EU law. The national courts' right and discretion to refer preliminary questions to the CJEU is an essential feature of EU law that safeguards judicial cooperation between the EU and member states, as recently confirmed by the CJEU (cases [C-564/19](#) and [C-791/19](#)).

### OLAF and EPPO cases

The work of the [European Anti-Fraud Office](#) (OLAF) and the [European Public Prosecutor's Office](#) (EPPO) protects the EU's financial interests. Their actions against

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<sup>53</sup> Annex V to the [RRF Regulation](#).

<sup>54</sup> [Special report 03/2024](#).



fraud, corruption and money laundering are often relevant for the Report's four pillars, especially anti-corruption frameworks.

## Annex III – Implementation of 2022 recommendations (as of July 2023)

[illegible]

	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	HR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	N°
<b>Pillar 3 - Media pluralism and freedom</b>	<b>32</b>																											
Media authorities and bodies									■								■											
Transparency of media ownership			●							■																		
Safeguards against government or political interference		■	■								■		■				■	■		●●	■		■	■	■	■		
Framework for journalists' protection	■			■	■	■	■	■	■		■	■			■	■		■	■	■	■				■	■	■	
																	■	■		■	■			■	■	■		
																		■	■		■	■			■	■		
<b>Pillar 4 - Checks and balances</b>	<b>21</b>																											
Process for preparing and enacting laws						■							■			■						■	■					
Independent authorities			■								■	■			■		■				■	■	■	■	■			
Enabling framework for civil society					■		■	■						■			■				■	■					■	
Initiatives to foster a rule of law culture																			■									

Legend:

No progress	■	Significant progress	■
Some progress	■	Fully implemented	■

The colours show the level of implementation of recommendations. Each coloured square indicates one recommendation. Circles (●) highlight recommendations that address two or more separate topics at once. Further such recommendations for the same country are indicated with '●●', '●●●' and '●●●●'. To count the total number of recommendations (last column of each table), we counted each recommendation addressing more than one topic (labelled with circles ●) as one.

*Note:* The Report's recommendations must be considered in the larger context of all the other measures relating to the rule of law applied under other EU tools and should not be read separately from them. The level of implementation refers only to the concrete recommendation and does not reflect the overall rule of law situation in each member state.

*Source:* ECA, based on [Communication COM\(2023\) 800](#): "2023 Rule of Law Report".

## Annex IV – Dissemination activities

### Interinstitutional activities: Council and Parliament

The **Council** has held an annual political dialogue on rule of law since 2014, and since 2020 has taken the Report as a basis for these discussions. The General Affairs Council (GAC) discusses the horizontal Communication soon after the summer, while country-specific discussions based on country chapters follow in two rounds at the end of the year and in early spring of the next year. Each round covers five member states, following the protocol order<sup>55</sup>. The Council does not issue any official documents from these discussions. In summer 2023, the Council launched an evaluation of its annual rule-of-law dialogue, based on a [questionnaire for member states](#). However, in December 2023, the Council did not reach a consensus on conclusions on the evaluation, as only 26 delegations supported or did not object to the text. The conclusions confirmed, among other things, that the dialogue would continue to be based on the Rule of Law Report and noted the inclusion of recommendations as a way of highlighting specific issues requiring further attention from member states. The conclusions also establish a change to the frequency of the country-specific discussions, which from 2024 onwards will take place three times a year – twice in the first half of the year and once in the second half – each focusing on the situation in four member states<sup>56</sup>.

The **Parliament** also discusses the Report and has so far prepared own-initiative resolutions on each edition. The process starts with the Commission's presentation of the Report in the Parliament in summer or early autumn. Parliament then nominates a rapporteur and the work in committees starts. Usually in spring of the following year, the Parliament issues a resolution<sup>57</sup>, highlighting selected rule of law issues, presenting its assessment of the Report and recommending improvements.

To further formalise cooperation between the Commission, the Council and the Parliament in the area of rule of law, the Parliament has repeatedly proposed concluding an **interinstitutional agreement on the rule of law**<sup>58</sup>. The Commission

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<sup>55</sup> Presidency note to Delegations: [Annual rule of law dialogue](#), 11510/22, 2.9.2022.

<sup>56</sup> Presidency conclusions: [Evaluation of the annual rule of law dialogue](#), 16547/23, 12.12.2023; [Press release](#): Evaluation of the Council's rule of law dialogue – Presidency conclusions, updated 21.12.2023.

<sup>57</sup> [European Parliament resolution of 30 March 2023](#) on the 2022 Rule of Law Report.

<sup>58</sup> *Ibid*, paragraph 19.

considers that this could be difficult to negotiate and prefers to focus on making the best use of the existing framework<sup>59</sup>. Nevertheless, the Commission expressed its readiness to further structure the rule of law dialogues with the Parliament and to discuss the rule of law situation in all the 27 member states based on the country chapters of the Rule of Law Report, as is being done in the Council.

### Dialogues with member states and stakeholders

Besides the interinstitutional activities, the Commission ensures the follow-up of the Report through dialogue with the member states. The Commission invites all member states to **technical follow-up meetings** to discuss the implementation of recommendations, an opportunity which nine of them took during the 2022 Report cycle. Furthermore, bilateral meetings take place at a political level and Commissioners discuss the Report with representatives in several national parliaments. In addition, the network of rule of law contact points provides an open channel for regular discussion between the Commission and the member states on the preparation of the Report<sup>60</sup>.

In 2022, the Commission introduced a new concept of **national rule of law dialogues** and, in cooperation with the FRA and national stakeholders, held three such dialogues following the publication of the 2022 Report and five dialogues following the publication of the 2023 Report<sup>61</sup>. The Commission further engages with the FRA, professional associations and civil society networks at EU level and with international organisations.

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<sup>59</sup> Follow up to the European Parliament non-legislative resolution on the 2022 Rule of Law Report, European Commission, 2023, p. 2.

<sup>60</sup> Communication COM(2023) 800, p. 28.

<sup>61</sup> Ibid, p. 29.

# Abbreviations

**CJEU:** Court of Justice of the European Union

**CPR:** Common Provisions Regulation

**CVM:** Cooperation and Verification Mechanism

**DG:** Directorate-General

**DG CNECT:** Directorate-General for Communications Networks, Content and Technology

**DG HOME:** Directorate-General for Migration and Home Affairs

**DG JUST:** Directorate-General for Justice and Consumers

**EEC:** European Economic Community

**EPPO:** European Public Prosecutor's Office

**FRA:** Fundamental Rights Agency

**ICS:** Investor citizenship schemes

**IRS:** Investor residence schemes

**OLAF:** European Anti-Fraud Office

**RRF:** Recovery and Resilience Facility

**SWD:** Staff working document

**TEU:** Treaty on European Union

**TFEU:** Treaty on the Functioning of the European Union

**UN:** United Nations

# Glossary

**Cohesion policy:** The EU policy which aims to reduce economic and social disparities between regions and member states by promoting job creation, business competitiveness, economic growth, sustainable development, and cross-border and interregional cooperation.

**Co-legislators:** Council of the EU and the European Parliament, which work together on an equal footing to adopt EU legislation.

**Commission Communication:** Document in which the Commission sets out for the co-legislators its evaluation, position or proposals on a particular policy.

**Country team:** Team of staff from different Commission directorates-general or services involved in drafting the annual Rule of Law Report on a particular country.

**EU's rule of law toolbox:** Set of tools to promote and uphold the rule of law in the EU and its member states.

**Interinstitutional agreement:** Jointly agreed document regulating certain aspects of consultation and cooperation between EU institutions.

**Milestone:** Qualitative achievement on the way to completing a reform or investment, as a prerequisite for a specific RRF payment.

**Network of national contact points on the rule of law:** Group composed of member state representatives, which provides a channel for regular discussion between the Commission and member states and has an active role in the annual Rule of Law Report cycle and the exchange of good practices.

**PIF Directive:** EU directive on the fight against fraud affecting the EU's financial interests, through the application of criminal law.

**Rule of Law Report:** Report introduced in the Commission's political guidelines in 2019 as an annual exercise and part of the EU's new rule of law mechanism.

**Staff working document:** Non-binding Commission document produced for discussion, either internally or outside the institution.

**Target:** Quantitative measure of a member state's progress towards completing a specific reform or an investment in its recovery and resilience plan.

## ECA team

This review was adopted by Chamber V Financing and administration of the EU, headed by ECA Member Jan Gregor. The task was led by ECA Member Laima Liucija Andrikiienė, supported by Tomas Mackevičius, Head of Private Office; Aldona Drėgvaitė, Private Office Attaché and Angela Ortiz Munoz, Private Office Assistant; Paul Sime, Principal Manager; Jitka Benešová, Head of Task; Anžela Poliulianaitė, Deputy Head of Task; Tetiana Lebedynets and Miguel Ferrão, Auditors; Savija Grabinski, Trainee. Jesús Nieto Muñoz provided graphical support and Michael Pyper provided linguistic support.



*From left to right:* Anžela Poliulianaitė, Tetiana Lebedynets, Miguel Ferrão, Jitka Benešová, Tomas Mackevičius, Laima Liucija Andrikiienė, Paul Sime, Angela Ortiz Munoz, Michael Pyper, Aldona Drėgvaitė.



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**The rule of law is one of the founding values of the EU.**

**This review contributes to a better understanding of the EU's rule of law landscape and its tools, focusing on the Commission's annual Rule of Law Report – a preventive tool that presents the Commission's assessment of significant rule of law developments in member states and makes recommendations on the issues identified.**

**We clarify the Report's place and purpose within the rule of law landscape and explain its production and follow-up, describing each step of the process from the collection and assessment of inputs to the formulation of recommendations.**

**We highlight challenges and opportunities concerning, for instance, the Report's methodology or the relationship between various rule of law tools.**

**EUROPEAN COURT OF AUDITORS**

**12, rue Alcide De Gasperi**

**1615 Luxembourg**

**LUXEMBOURG**

**Tel. +352 4398-1**

**Enquiries: [eca.europa.eu/en/Pages/ContactForm.aspx](https://eca.europa.eu/en/Pages/ContactForm.aspx)**

**Website: [eca.europa.eu](https://eca.europa.eu)**

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