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PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

2022 Rule of Law Report

The rule of law situation in the European Union

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1. INTRODUCTION

The European Union is a Union of values: fundamental rights, democracy, rule of law. This is the bedrock of our society and our common identity¹. Challenges to the rule of law in a Member State affect the legal order and the functioning of the EU as a whole. The rule of law benefits everyone in the EU and it is clear that citizens in every Member State strongly support the rule of law principles².

In recent years, we have seen challenges to the rule of law mounting both here in the EU and globally. The COVID-19 pandemic tested the resilience of national systems in upholding the rule of law in times of crisis, putting pressure on the established systems of constitutional checks and balances and on the ability of democratic institutions and their watchdogs to do their work.

Russia's unprovoked and unjustified military aggression against Ukraine and its people constitutes a direct challenge to EU values and the rules-based world order. It grossly violates international law and the principles of the UN Charter and undermines democracy as well as the rule of law, in addition to European and global security and stability. Safeguarding and upholding our democratic institutions and values is a shared responsibility of Member States and EU institutions. This is all the more important now when the EU and its Member States are threatened by hostile foreign actors using disinformation and cyber attacks to try to undermine our democracies.

The Commission recognises its particular role in realising this shared responsibility, whether through galvanising change, driving cooperation, or pointing out and acting on failings. This role is fulfilled in different ways through the different instruments available to the Commission, but the objective is always clear: to make a real difference in the way in which citizens feel the impact of the rule of law in their everyday life. The Commission has also ensured that the Recovery and Resilience Facility has given priority to driving Member State reforms of the judiciary, anti-corruption frameworks, public administration and digitalisation of their justice systems, as essential to a strong investment climate.

Throughout the past year, the rule of law has been a prominent theme on the European agenda, with the 2021 Rule of Law Report bringing a major contribution to informing the political as well as the technical debate at both EU and national level. The annual Rule of Law Report is indeed central to our efforts to have a practical impact on promotion and safeguarding of the rule of law in the EU. By duly taking into account national traditions, ensuring equal treatment and being based on a transparent and objective methodology, the report has allowed for a constructive discussion and a rich exchange of best practises among Member States, both in Council and at technical level, as well as in the framework of the discussions held in the European and in national Parliaments with the Commission on the basis of the 2021 report. Learning from each other's experience better equips Member States to find the best way forward and to prevent that challenges to the rule of law emerge or deepen.

¹ “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.” (Treaty on European Union, Article 2).

² Eurobarometer 508 on Values and identities of EU citizens (2021) shows that 82% of Europeans are supporting these principles.

This third edition of the report takes the next step in the Commission’s investment in the rule of law as the first to include specific recommendations to Member States, as announced by President von der Leyen in the 2021 State of the Union address³. In line with the preventive nature of the report, the objective of the recommendations is to support Member States in their efforts to take forward ongoing or planned reforms, to encourage positive developments, and to help them identify where improvements or follow-up to recent changes or reforms may be needed, also with a view to address systemic challenges in certain cases.

In drawing up the recommendations, the Commission has paid close attention to keeping them focused and anchored in European law and standards, while also respecting the specificity of national legal systems. Equally important is consistency and synergies with other processes and instruments, such as the European Semester, the general regime of conditionality for the protection of the EU budget and the Recovery and Resilience Facility. Subsequent editions of the Rule of Law Report will look at the follow-up given to the recommendations.

As in the previous editions, the 2022 Rule of Law report examines developments related to:

- **Justice systems** in the Member States, focusing on their independence, quality and efficiency. These are key parameters that ensure that the application and enforcement of EU law is effective, that the rule of law is upheld and that mutual trust is maintained. Well-functioning and fully independent justice systems are crucial for ensuring that justice works to the benefit of citizens and businesses. They are also essential for judicial cooperation across the EU, as well as for the functioning of the Single Market, and the EU’s legal order as a whole⁴.
- The **anti-corruption frameworks**, focusing on the effectiveness of national anti-corruption policies and assessing different key areas of action taken by Member States to prevent and fight corruption. Effective anti-corruption frameworks as well as transparency and integrity in the exercise of state power, strengthen legal systems and citizen and businesses’ trust in public authorities.
- **Media freedom and pluralism**, focusing on core areas including the independence of the media regulatory authorities, transparency of media ownership, transparency and fairness in the allocation of state advertising, the safety of journalists and access to information. This year’s report includes for the first time a systematic coverage of public service media. A free and pluralistic media environment is key for the rule of law, democratic accountability and the fight against corruption. The importance of free and pluralistic media has led to several recent initiatives at EU level⁵.
- **Institutional issues related to checks and balances**, focusing on areas of key importance for the rule of law, such as the quality and inclusiveness of the national legislative process, the role of Constitutional Courts and independent authorities such as the Ombudsperson,

³ [2021 State of the Union address.](#)

⁴ 2022 EU Justice Scoreboard.

⁵ Commission Recommendation on ensuring the protection, safety and empowerment of journalists and other media professionals in the European Union, C(2021) 6650, 16.9.2021; proposal for a Directive on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”), COM(2022)177, 27.4.2022; and Commission Recommendation protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”), C(2022)2428, 27.4.2022. The Commission is also implementing the Media and Audiovisual Action Plan, increasing EU funding support to media freedom and pluralism projects.

equality bodies⁶ and National Human Rights Institutions, and the role of civil society organisations in safeguarding the rule of law. The changing impact of and response to the COVID-19 pandemic is a further element included in the analysis. This year's report includes for the first time an overview of the implementation of rulings of the European Court of Human Rights.

The Rule of Law Report also presents significant developments at EU level and should furthermore be seen in the broader context of other workstrands contributing to upholding democratic values and human rights both within the Union and beyond. The Commission's use of key tools such as the Recovery and Resilience Facility, the General Conditionality Regulation⁷ and the EU Justice Scoreboard are summarised in this report. The Commission also pursues infringements when rule of law issues constitute breaches of EU law.

Another example of complementary action is work to promote fundamental rights: the 2022 Report on the application of the EU Charter of Fundamental Rights⁸ will focus on the civic space and its role in protecting and promoting these rights. Civil society is a key partner for the EU in the implementation of its policies in the area of fundamental rights and a debate is under way at EU level on how to increase support and their involvement at EU level.

Russia's invasion of Ukraine emphasised the importance of democratic values, human rights and the rule of law. The EU has a particular role in projecting these values worldwide, as an alternative to authoritarian models violating international law and human rights, as well as this being a central feature of the enlargement process. The credibility of our external policies relies on the state of the rule of law in the EU itself.

2. KEY ASPECTS OF THE RULE OF LAW SITUATION IN MEMBER STATES

This Report sets out significant common themes and trends, specific challenges and positive developments across the four pillars. The examples given that reflect these trends are drawn from the assessments to be found in the 27 country chapters, which are integral part of this Report and provide the detailed context in each Member State⁹. The Report also includes specific recommendations to Member States¹⁰.

Methodology of the Rule of Law Report and its recommendations

The assessment contained in the country chapters has been prepared in line with the scope and methodology, as updated following discussions with Member States¹¹. The country chapters rely on a qualitative assessment autonomously carried out by the Commission, focusing on a synthesis of significant developments since July 2021 and presenting both challenges and positive aspects identified in Member States. In each country chapter, the analysis focuses in particular on topics where there have been significant developments, or

⁶ In 2022 the Commission will propose measures to strengthen the role and independence of equality bodies.

⁷ Regulation (EU, Euratom) 2020/2092 of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, OJ L 433I, 22.12.2020, p. 1.

⁸ Publication scheduled in December 2022.

⁹ The country chapters are available [here](#).

¹⁰ The recommendations are referenced in footnotes throughout this Report, listed in the Annex and also included in the individual country chapters.

¹¹ The methodology was updated following discussions with Member States, notably to better specify the use of sources for the assessment and take into account the inclusion of recommendations in the Report. The methodology is available [here](#).

where important challenges have been identified in the previous report and persist during the reporting period.

In line with the preventive nature of the Report, the objective of the recommendations is to assist and support Member States in their efforts to take forward reforms and to identify where improvements or follow-up to recent changes or reforms may be needed, based on continuous dialogue with them¹².

In preparing the recommendations included in this Report, the following principles have been observed:

- All Member States are subject to country-specific recommendations, in full respect of the principles of equal treatment and proportionality.
- The recommendations are integrated in the report and are based on an in-depth assessment in the country chapters, applying objective criteria grounded in EU law or European and international standards.
- The recommendations are proportionate to the challenges identified. They also encourage pursuing positive reform efforts.
- The recommendations are sufficiently specific to allow Member States to give a concrete and actionable follow-up, taking into account the national competences, legal systems and institutional context, as relevant.
- In preparing the recommendations, the Commission has paid close attention to consistency and synergies with other processes, such as the European Semester, the General Conditionality Regulation and the national Recovery and Resilience Plans¹³.
- Subsequent editions of the Rule of Law Report will integrate the follow-up given to the recommendations.

The Report is the result of close collaboration with Member States and relies on a variety of national, international and other sources¹⁴. All Member States were invited to participate in the process, provide written input¹⁵ and join in dedicated country visits held between February and April 2022¹⁶. A targeted stakeholder consultation also provided valuable horizontal and country-specific contributions¹⁷. The Council of Europe also provided an overview of its recent opinions and reports concerning EU Member States¹⁸. Prior to the adoption of this report, Member States have been given the opportunity to provide factual updates to their country chapter.

¹² The recommendations are without prejudice to any proceedings the Commission may initiate under other legal instruments, such as infringement procedures or the General Conditionality Regulation.

¹³ Where relevant, established Commission positions under these processes relating to the Member State in question are set out before the recommendations.

¹⁴ The sources of the annual Rule of Law Report include in particular written input received from Member States, written contributions received during the targeted stakeholder consultation and information produced by international organisations or received from national authorities and stakeholders during country visits. The sources inform the Commission's assessment and do not, as such, represent the Commission position.

¹⁵ [2022 Rule of law report - input from Member States](#).

¹⁶ Information on the country visits can be found in the country chapters. During these country visits, the Commission discussed with Member States' national authorities, including judicial and independent authorities, law enforcement, as well as stakeholders, such as journalists' associations and civil society.

¹⁷ The consultation was carried out between December 2021 and January 2022. [2022 Rule of law report - targeted stakeholder consultation](#).

¹⁸ [2022 Rule of law report - Council of Europe contribution](#).

2.1 Justice systems

Independence, quality and efficiency are essential parameters of an effective justice system. Effective justice systems are crucial for the application and enforcement of EU law and upholding the rule of law. Judicial independence is vital for the fairness of judicial proceedings. It is a requirement stemming from the principle of effective judicial protection, referred to in Article 19 of the Treaty on European Union (TEU), and from the right to an effective remedy before a court or tribunal, enshrined in Article 47 of the Charter of Fundamental Rights of the EU¹⁹. Independent judges and courts guarantee that the rights of individuals deriving from EU law are protected and that the values common to the Member States set out in Article 2 TEU, in particular the value of the rule of law, are safeguarded²⁰. When reforming their justice systems, Member States must fully respect the requirements set by EU law and the case law of the CJEU²¹.

Perceived judicial independence across the EU

The perception of independence among companies improved in about two thirds of Member States when compared to 2021, according to the 2022 EU Justice Scoreboard, Eurobarometer surveys conducted in 2022²². However, amongst the general public, surveys pointed to decreases in the perception of judicial independence in more than half the Member States. There was little change in the relative perceptions between Member States. In Finland, Denmark, Austria, Luxembourg, the Netherlands and Germany, the level of perceived independence remains particularly high among the general public (above 75 %), while in Slovakia, Poland and Croatia, it remains very low (below 30%).

Councils for the Judiciary and procedures for judicial appointments as key safeguards for judicial independence

Councils for the Judiciary can be particularly important safeguards for judicial independence, as recognised in the case law of the CJEU²³. They can act as a buffer between the judiciary and the other branches of power in matters such as the appointment and career of judges or magistrates, as well as their role in the management of the justice system. Important European standards have been developed in the framework of the Council of Europe on how the Councils for the Judiciary should be established to best safeguard their independence, including on their composition²⁴. The Councils for the Judiciary also need adequate resources to function in an effective way and fulfil their mandates.

Legislative efforts to strengthen the independence of judicial councils were initiated in a number of Member States. In [Luxembourg](#), legislative amendments have been tabled to align the composition of the future Council for the Judiciary with European standards. These would specify the competences of the Council for the Judiciary regarding the management of magistrates' careers, and introduce a new disciplinary regime. In [Croatia](#), recent amendments strengthen the role of the two Councils in the selection of judges and state attorneys. In [Italy](#), a new law has recently been adopted to reform the justice system, providing for the

¹⁹ [Charter of Fundamental Rights of the EU](#).

²⁰ CJEU judgment of 24 June 2019, *Commission v. Poland*, C-619/18, ECLI:EU:C:2019:531 paras. 44 and 58.

²¹ A reference to the key judgments since the last report can be found in section 4.

²² Figures 50 and 52, 2022 EU Justice Scoreboard.

²³ The CJEU has recognised that a Council for the Judiciary can constitute a safeguard for judicial independence provided that such body is sufficiently independent from the executive and legislative powers and from the body to which it is submitting an opinion. See e.g. judgment of 2 March 2021, *AB and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, paras. 123-125, and case-law cited.

²⁴ See in particular Recommendation CM/Rec(2010)12 of the Council of Europe.

establishment and functioning of the High Council for the Judiciary, including the way in which its members are elected. In [Cyprus](#), reforms have recently been voted by Parliament related to the composition of the Council for the Judiciary. In the [Netherlands](#), possible changes to the composition and appointment of the Council for the Judiciary are foreseen. In [Sweden](#), since 2020 an all-party Committee of Inquiry has been examining how to strengthen the independence of the judiciary and is expected to deliver its report by February 2023.

Developments around national Councils for the Judiciary are a key theme in several Member States. In [Spain](#), concerns remain about the delays in the renewal of the Council for the Judiciary and there have been further calls to modify the Council's appointment system. In [Bulgaria](#), there are increasing concerns related to the functioning of the Supreme Judicial Council and a need to address its composition. In [Ireland](#), the proposed composition of the envisaged Judicial Appointments Commission raises some concerns. In [Slovakia](#), the Judicial Council has taken up new tasks following the Constitutional reform, while concerns remain over the regime for dismissal of its members. In [Portugal](#), the finalisation of the legislative framework for the High Council for Administrative and Tax Courts is pending since 2004 and new measures were taken to address issues regarding the allocation of cases in courts²⁵.

In other Member States, structural or systemic concerns have not been addressed. In [Poland](#), serious concerns on the independence of the national council for the judiciary remain unaddressed, even though these have been raised in a number of rulings of the CJEU and of the European Court of Human Rights, confirming concerns identified by the Commission in the context of the procedure under Article 7(1) TEU. These concerns are also reflected in the broader European Semester country-specific recommendation to safeguard judicial independence. In [Hungary](#), the National Judicial Council continues to face challenges in counter-balancing the powers of the National Office for the Judiciary President as regards the management of the courts and the country-specific recommendation to strengthen judicial independence, made in the European Semester, as well as related concerns expressed in the context of the Article 7(1) TEU procedure, remain unaddressed²⁶.

The method for the appointment of judges can have a key impact on judicial independence and public perception of independence. As established by the CJEU, in order to guarantee judicial independence, substantive conditions and procedural rules governing judicial appointments must be sufficient to prevent reasonable doubts as to the imperviousness of the judges concerned to external factors and as to their neutrality as judges²⁷.

Since the last report, some Member States have embarked on improvements to judicial appointment procedures. In [Ireland](#), the new draft law on judicial appointments limits the discretion of the Government in the procedure. In [Croatia](#), the process for appointing the Supreme Court President was concluded, and the procedure governing the selection procedure was amended to avoid a potential future deadlock. In [Czechia](#), amended legislation aims to set up a transparent and uniform system of recruitment and selection of judges and court

²⁵ Recommendations concern BG, IE, ES, IT, CY, LU, PT, SK, SE.

²⁶ Recommendations concern HU.

²⁷ See Court of Justice of the European Union, judgment of 2 March 2021, *AB and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, paras.117, 119, 123 and case law cited. Participation of independent bodies, such as councils for the judiciary, in the process of judicial appointment process may, in principle, be such as to contribute to making that process more objective, provided that such a body is itself sufficiently independent of the legislature and the executive (See judgments of 15 July 2021, *Commission v Poland*, C-791/19, paras. 98-108; of 20 April 2021, *Repubblika and Il-Prim Ministru*, C-896/19, para. 66; of 2 March 2021, *AB and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, paras. 66, 124 and 125; and of 19 November 2019, *AK et al*, joined cases C-585/18, C-624/18 and C-625/18, paras. 137 and 138).

presidents. In [Cyprus](#), Parliament has recently voted on the reform on the appointment procedures for judges and Presidents of the new proposed Supreme Constitutional Court and High Court. In the [Netherlands](#), several changes to further strengthen judicial independence are under consideration, including as regards the appointment of Supreme Court judges.

In other Member States that have taken steps to improve these procedures, challenges remain, particularly regarding appointment in higher courts and for court president positions. In [Malta](#), while steps have been taken to depoliticise the appointment of the Chief Justice, there is still no involvement of the judiciary. In [Greece](#), concerns remain regarding the appointment procedure for the most senior positions of judges and prosecutors, including the lack of judicial involvement in the selection process. In [Austria](#), a reform of the appointment procedure for the Supreme Court President and Vice-President has been announced to address the lack of judicial involvement in the procedure, but concerns remain regarding the limited involvement of the judiciary in the appointments of court presidents and vice-presidents at administrative courts²⁸.

Appointment procedures to high-level judicial positions remain a key issue. In [Lithuania](#), the appointment of the President of the Supreme Court is pending since September 2019, as the law does not foresee deadlines for the respective selection procedure and confers discretion to the President of the Republic as to the timing of selection procedures for the Supreme Court. In [Latvia](#), the rejection by Parliament of a candidate to the position of Supreme Court judge was marked by controversies regarding possible undue political influence. In [Poland](#), specific appointments to the Supreme Court have been subject to key rulings of CJEU and of the European Court of Human Rights. In [Hungary](#), concerns relate in particular to the possibility of discretionary decisions as regards judicial appointments and promotions, including the election of the President of the Supreme Court, case allocation and bonuses. In [Bulgaria](#), the absence of regular competition for judicial appointments to higher positions, combined with an extensive use of secondments, creates risks for the independence of the judiciary²⁹.

Autonomy and independence of the prosecution services as essential elements for the good functioning of the criminal justice system

While there is no single model in the EU for the institutional set-up for prosecution services, institutional safeguards are always needed to ensure that the prosecution is sufficiently autonomous and can carry out effective and impartial investigations and bring cases to Court free from political pressure. This is not only essential for national and EU criminal law, but also for many other important questions such as the protection of the EU financial interest and the fight against hate speech in the digital environment.

Several Member States embarked on reforms to strengthen the independence of their prosecution service. In [Austria](#), preparatory work continues for a reform of the prosecution service, with the aim of strengthening its independence. The reform in preparation in [Czechia](#) would establish a fixed term of office for Prosecutor General and other chief prosecutors, and apply clear conditions for their dismissal. In [Bulgaria](#), the Government has committed, under the Recovery and Resilience Plan, to establish an effective mechanism for the accountability and criminal liability of the Prosecutor General and his/her deputies, as well as a judicial review of prosecutorial decisions not to open an investigation. In [Spain](#), legal amendments were adopted aiming at an increased transparency of relations between the Government and the Prosecutor General, while concerns on the coincidence in the term of office of the Prosecutor General and the Government remain. In [Slovakia](#), the Ministry of Justice is preparing an

²⁸ Recommendations concern EL, CY, MT, AT.

²⁹ Recommendations concern BG, LV, LT, HU.

amendment to restrict the power of the Prosecutor General to annul prosecutorial decisions in individual cases, after concerns were raised over decisions to close several high-level corruption cases³⁰.

However, in some Member States, concerns exist regarding the independence and autonomy of the prosecution services. In [Slovenia](#), concerns have been raised over the impact on the independent work of prosecutors of the Minister of Interior's powers to instruct the police in individual cases. In [Poland](#), concerns regarding the functioning of the prosecution service persist, with the offices of Minister of Justice and Prosecutor-General occupied by the same person. Polish courts have also pointed to concerns that the practice of seconding prosecutors can be considered as a form of demotion and discrimination. In [Hungary](#), the rules on the removal of the Prosecutor General have been amended, while the GRECO recommendation to remove the possibility to maintain the Prosecutor General in office after the expiry of his/her mandate remains unaddressed and the lack of accountability for not opening or closing investigations is a matter of concern³¹.

Disciplinary frameworks and accountability for judges and prosecutors

The CJEU has continued to develop its case law on essential safeguards to ensure that the disciplinary framework cannot be used as an instrument for political control of judicial decisions³². These safeguards include having clear rules that define the conduct that qualifies as a disciplinary offence and the applicable sanctions. Disciplinary proceedings need to be carried out with the involvement of an independent body and procedures must fully safeguard the rights enshrined in Articles 47 and 48 of the Charter, in particular the rights of the defence. Finally, rules must be in place to ensure that the decisions taken by disciplinary bodies can be challenged in Court³³.

In some Member States, reforms are ongoing to increase safeguards for judicial independence in disciplinary proceedings. In [Spain](#), a new disciplinary regime for prosecutors was established. In [Slovenia](#), amendments are in preparation, on initiative of the judiciary, to improve the disciplinary framework. In [Belgium](#), standard forms for reporting on disciplinary action regarding judges and prosecutors have been introduced, with a first consolidated report on disciplinary procedures to be prepared by the High Council for Justice in the course of 2022.

In other Member States, concerns remained that disciplinary proceedings could be used to curtail judicial independence. In its Recovery and Resilience Plan, [Poland](#) committed to undertake reforms of the disciplinary regime regarding judges, to dismantle the Disciplinary Chamber of the Supreme Court, and to create review proceedings for judges affected by decisions of that Chamber³⁴. The plan aims to strengthen certain aspects of the independence of the judiciary. In the meantime, despite rulings of the Court of Justice, the Disciplinary Chamber continued to decide on cases concerning judges, including by suspending them in office. In [Romania](#), the application of disciplinary sanctions and the role of the Judicial Inspection continued generating concerns, though draft legislation now in preparation is

³⁰ Recommendations concern CZ, ES, AT, SK. A relevant milestone is included in the BG RRP.

³¹ Recommendations concern PL.

³² The Court has recalled this principle most recently in cases referring to the disciplinary chamber of the Polish Supreme Court (Judgment of 15 July 2021, *European Commission v Republic of Poland*, C-791/19.) and the Romanian Judicial Inspection (Judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others v Inspecția Judiciară and Others*, joined Cases C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19).

³³ CJEU Judgment of 25 July 2018, *LM*, C-216/18 PPU, para. 67.

³⁴ A number of legislative changes were adopted in June 2022.

expected to reform the disciplinary regime. Other accountability mechanisms also require safeguards. In [Croatia](#), new laws requiring periodic security checks on judges and state attorneys conducted by the National Security Agency raised concerns. In [Slovakia](#), concerns remain as regards the regime of criminal liability of judges for ‘abuse of law’. In [Slovenia](#), rules governing parliamentary inquiries lack safeguards on independence of judges and state prosecutors³⁵.

Investing in the quality and efficiency of justice

An efficient justice system manages its caseload and backlog of cases, and delivers its decisions without undue delay. While there are many differences across and within Member States, depending on the type of proceedings (e.g. civil and commercial, criminal, administrative) and on court instances, excessively long proceedings and substantial backlogs undermine the trust citizens and businesses place in national justice systems and on the effectiveness of the fight against corruption (see also Section 2.2). Adequate human and financial resources are essential conditions for the quality and efficiency of justice systems. A number of Member States have recognised this by allocating additional resources to strengthen the resilience of justice systems in their national Recovery and Resilience Plans and by investing in the digitalisation of justice.

Investing in human and financial resources and digitalisation of the justice system is essential to meet the broader efficiency challenges that exist in a number of Member States. In [Croatia](#), [Cyprus](#), [Malta](#) and [Portugal](#) initiatives are under way to tackle long-standing challenges related to the efficiency of the justice system, including as regards lengthy court proceedings. In [Italy](#), comprehensive civil and criminal justice reforms have been adopted, aiming at improving the quality and efficiency of the justice system, including backlogs and length of proceedings. In [Greece](#), the new legislation on the organisation of the courts and the status of judges has been recently adopted to address the challenges regarding the efficiency and the quality of justice. In [Hungary](#), a new law on pecuniary compensation for delay in civil proceedings entered into force, providing for compensation in case of violation of the fundamental right to have civil proceedings completed within a reasonable time. In [Ireland](#), a draft law establishing a compensation scheme for cases of excessive length of court proceedings has been proposed.

Part of ensuring the long-term resilience of the justice system is to ensure the attractiveness of judicial professions, including through adequate remuneration, and to minimise the number of open vacancies for judges, prosecutors and court staff. In [Belgium](#), efforts were made to increase the resources allocated to the justice system. In [Germany](#), an extension of the ‘Pact for the Rule of Law’ has been announced, to provide additional resources for the judiciary and digitalisation, but longer-term challenges remain regarding recruitments and the level of salaries of judges. In [Portugal](#) and [France](#), the Government is taking steps to address the shortage of human resources allocated to the justice system, although challenges remain. In [Slovenia](#), the Government decreased, without consultation with judicial authorities, the previously agreed budget for courts, the Judicial Council and the State Prosecution, and the Judicial Council launched procedures for constitutional review of judges’ salaries. In [Denmark](#), the limited expenditure on the justice system as a percentage of GDP and low number of judges remains a longer-term challenge, in particular in view of ensuring efficient case handling³⁶.

Initiatives to improve the digitalisation of justice continue in many Member States, often drawing on the experience of the COVID-19 pandemic. It is important to ensure that digital

³⁵ Recommendations concern HR, PT, RO, SI, SK. As regards PL, the disciplinary regime for judges has been the subject of infringement proceedings. A relevant milestone is included in the national RRP.

³⁶ Recommendations concern BE, DK, DE, FR, MT.

tools are effective in practice. In [Belgium](#), [Bulgaria](#) [Malta](#), challenges remain, but improvements are foreseen in the respective RRP. In [Italy](#), digitalisation is further progressing at civil courts, while challenges remain at criminal courts and prosecution offices. Member States with projects under way to further improve the level of digitalisation of justice include [Sweden](#), the [Netherlands](#), [Latvia](#), [Portugal](#), [Estonia](#), [Denmark](#), [Austria](#), [Romania](#), [Slovenia](#), [Spain](#) and [Finland](#)³⁷.

Lawyers as key actors for judicial systems based on the rule of law

Lawyers and their professional associations play a fundamental role in strengthening the rule of law and ensuring the protection of fundamental rights, including the right of a fair trial. Some Member States took steps towards facilitating access to a lawyer. In [Latvia](#), the Supreme Court affirmed that lawyers' participation in court proceedings is essential for ensuring the right to a fair trial and ruled in favour of lawyers' right to access information to exercise their functions. In [Luxembourg](#), legislation to make legal aid more accessible was developed jointly by the Ministry of Justice and the Bar Association. In [Lithuania](#), a reform of the legal aid system is being prepared. In [Ireland](#), high litigation costs and shortcomings within the legal aid system continue to raise concerns, while work is ongoing to address those challenges³⁸.

One essential element of the freedom of exercise of legal professions is respect of the confidentiality of the relationship with clients. Council of Europe recommendations make clear that any exceptions to the principle of secrecy must be compatible with rule of law principles. In [Lithuania](#), questions regarding the respect for professional secrecy of lawyers are pending before the European Court of Human Rights.

2.2 Anti-corruption framework

Corruption is detrimental to the rule of law and to citizens' and businesses' trust in public institutions. A comprehensive approach to fighting corruption must rely on a combination of preventive and repressive measures. This requires a robust legal and institutional framework, sufficient administrative and judicial capacity, as well as the political will to enforce, including effective investigation and prosecution. On the prevention side, reliable and effective integrity measures include preventing and addressing conflicts of interest, ensuring the transparency of lobbying, asset and interest disclosure systems, an effective protection of whistleblowers, as well as transparency of political party financing.

Corruption perceptions across the EU

The results of the Corruption Perceptions Index (CPI)³⁹ show that ten Member States are in the top twenty of the countries perceived as least corrupt in the world while the average score of the EU is globally good and has improved in comparison to last year⁴⁰. Some Member States have improved their score compared to previous years, whereas others continue to score significantly lower than the other EU Member States.

³⁷ Recommendations concern FR, IT, NL, FI.

³⁸ Recommendations concern IE, LT, LU.

³⁹ Published annually by Transparency International: <https://www.transparency.org/en/cpi/2021>

⁴⁰ As last year, six Member States (Denmark, Finland, Sweden, Netherlands, Luxembourg and Germany) score 80/100 or above on the index, and a further five (Austria, Estonia, Ireland, Belgium and France) score above 72/100.

The 2022 Eurobarometers on corruption⁴¹ show that corruption remains a serious concern for EU citizens and businesses in the EU. Almost seven in ten Europeans (68%) believe that corruption is widespread in their country and over four in ten Europeans (41%) consider that the level of corruption has increased in their country. In the meantime, only 31% of respondents are of the opinion that their government's efforts to combat corruption are effective. In addition, more than six in ten European companies (63%) consider that the problem of corruption is widespread in their country and a majority of companies (51%) think that it is unlikely that corrupt people or businesses in their country would be caught, or reported to the police or prosecutors.

National anti-corruption strategies and their implementation

Member States are required by international law to maintain effective and coordinated anti-corruption policies⁴². The most common way to facilitate this is to set up and implement a national anti-corruption strategy⁴³. While having such strategies in place is not a requirement in itself, they are important for political commitments to be translated into concrete actions, to ensure that legislative or institutional gaps are addressed in a coherent, comprehensive and coordinated manner and to adapt anti-corruption efforts to an evolving landscape⁴⁴. Almost all Member States currently have in place national anti-corruption strategies, which they regularly evaluate and revise. Since July 2021, [Croatia](#), [Romania](#), [Greece](#), [Lithuania](#) and [Malta](#) have revised or adopted strategies and accompanying action plans and [Germany](#), [Czechia](#), [Italy](#) and [Latvia](#) are currently revising their respective strategies. The implementation process has led to important reform proposals in some Member States. In [Portugal](#), a legislative package aimed at fighting and preventing corruption in both the public and private sectors has been adopted, and in [Finland](#) revisions of the criminal law anti-corruption legislation are ongoing⁴⁵.

Strengthening the capacity of institutions and the legal framework to combat corruption

Member States have extensive legislation in place providing their criminal justice system with tools to fight corruption. Several Member States continued their efforts to fill legislative gaps and bring existing frameworks in line with international anti-corruption standards⁴⁶ and EU law⁴⁷. [Poland](#) increased criminal sanctions for corruption in public life and [Greece](#) strengthened

⁴¹ Special Eurobarometer 523 on Corruption (2022) & Flash Eurobarometer 507 on Businesses' attitudes towards corruption in the EU (2022). The Eurobarometer data on business attitudes towards corruption as is updated every second year. The Eurobarometer data on corruption perception and experience of citizens and businesses as reported last year is updated every second year. The previous data sets are the Special Eurobarometer 502 (2020) and the Flash Eurobarometer 482 (2019).

⁴² The United Nations Convention against Corruption (UNCAC) obliges States Parties, in accordance with the fundamental principles of their legal systems, to develop and implement or maintain effective, coordinated anticorruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability. All Member States and the EU are parties to the Convention.

⁴³ See also [The Kuala Lumpur Statement on Anti-Corruption Strategies](#).

⁴⁴ As mentioned in last year's report, clear and measurable objectives, adequate resources, dedicated support and monitoring of implementation, regular evaluations and well-defined responsibilities for specialised institutions, as well as a strong involvement of relevant stakeholders, are important elements for such strategies to be effectively implemented and lead to tangible results (COM(2021) 700 final, p. 11).

⁴⁵ Recommendations concern LV, LT, PT, SI, FI.

⁴⁶ Primarily the Council of Europe's Criminal Law Convention on Corruption and its Civil Law Convention on Corruption; the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; and the United Nations Convention Against Corruption.

⁴⁷ EU legislation with an important impact on facilitating the fight against corruption includes rules on the criminalisation of corruption, asset freezing and confiscation, protection of the EU financial interests, standards to protect whistleblowers, revised rules against money laundering, notably by setting up beneficial

the definition of active and passive bribery. Reforms of substantive or procedural criminal law are under discussion in other Member States. [Finland](#) is planning to criminalise trading in influence, while [Slovakia](#) aims at widening the definition of bribery in its national law. [Germany](#) committed to strengthening criminal sanctions for bribery by members of Parliament. Specific legislative gaps remain in other Member States. In [Sweden](#), shortcomings in the legal definition of foreign bribery have led to limited prosecutions and final judgements⁴⁸.

Fighting corruption relies both on having a robust anti-corruption legal framework as well as on ensuring its effective implementation. The capacity of law enforcement, prosecution authorities and the judiciary to enforce anti-corruption criminal law provisions is essential to effectively combat corruption. This rests on the competences and autonomy of the bodies responsible, and on their specialisation, analytical capacity, and resources. Access to relevant information and interconnection of registries is also key to enable these authorities to carry out complex financial investigations. Successful anti-corruption investigations and prosecutions also rely on efficient cooperation between law enforcement authorities and other agencies, such as financial intelligence units as well as tax, audit and competition authorities.

In some Member States, structural and organisational changes took place or are being considered with a view to increasing the capacity of the anti-corruption authorities. In [Denmark](#), a new national investigative unit was established to improve the approach to serious crime, including complex corruption cases. In [Bulgaria](#), reforms are envisaged to restructure the Anti-Corruption Commission, while the specialised judicial authorities have been abolished. At the same time, such reforms need to prioritise the effective investigation of corruption, in particular with regard to high-level corruption cases⁴⁹.

Many Member States have taken steps to increase the capacity of the prosecution authorities responsible for the fight against corruption, for example through additional resources ([Ireland](#), [Latvia](#)) or extra training ([Estonia](#), [Spain](#)). Resource limitations are cited by prosecution services in many Member States as a challenge, sometimes exacerbated by additional shortcomings. In [Romania](#), seniority requirements are seen as obstacles to the recruitment of specialised prosecutors. In [Luxembourg](#) and [Portugal](#), the lack of resources has been seen to lead to delays in prosecuting cases. In [Slovakia](#), allegations of politically motivated decisions to open corruption investigations risk eroding law enforcement cooperation and the effectiveness of the fight against corruption as well as the public's trust in the integrity of the institutions. In [Slovenia](#), concerns were raised regarding the operational autonomy of the police in corruption investigations⁵⁰.

Eliminating obstacles to criminal investigation, prosecution and the application of dissuasive sanctions for corruption

Procedural shortcomings can severely obstruct the investigation and prosecution of corruption cases and undermine the effectiveness of the fight against corruption. Examples include excessively cumbersome or unclear provisions on lifting immunities, and short statutes of limitations, which can prevent the finalisation of complex cases, in particular if combined with other factors contributing to lengthy proceedings. Such obstacles can be particularly harmful

ownership registries of companies, and further steps to help the exchange of financial information and to speed up financial investigations.

⁴⁸ Recommendations concern FI, SE.

⁴⁹ Recommendations concern BG.

⁵⁰ Recommendations concern CY, IT, FR, LU, RO, SI, SK.

for high-level and complex corruption cases and may create a risk of impunity, depriving anti-corruption efforts of their deterrent effects.

Some Member States introduced measures to reduce obstacles to effective investigation and prosecution. New measures in [Portugal](#) seek to increase the effectiveness of the judicial system in handling corruption cases and to accelerate the work of the prosecution, including by extending the statute of limitation for corruption offences. In [Lithuania](#), the legislative framework was changed to enable a wider use of digital tools⁵¹.

An excessive length of criminal proceedings in corruption cases may prevent cases from reaching a timely conclusion, hampering the establishment of a robust track record of final judgements. In [Malta](#), while increased resources have been allocated to investigation and prosecution overall, investigations into high-level corruption cases remain lengthy. Results in terms of final judgments are still lacking. Delays in prosecuting high-level corruption cases have also been raised in [Czechia](#). In [Spain](#), the length of corruption investigations and prosecutions remains a concern, in particular with regard to complex, high-level corruption cases⁵².

In some Member States, immunity for corruption offences for members of the Government has been an issue of concern. [Croatia](#) has recently adopted amendments to remove the immunity of members of Government for corruption crimes. Concerns exist in [Poland](#) on the broad scope of immunities of senior executives who are also members of Parliament, and on provisions granting impunity for public officials who commit the crime of abuse of office⁵³.

Some Member States are continuing to consolidate their track record of investigating, prosecuting and sanctioning high-level corruption⁵⁴. In [Austria](#), investigations into high-level political corruption are subject to close scrutiny, including through a parliamentary investigation committee. In [Romania](#), the effectiveness of the investigation and sanctioning of high-level corruption further improved, including by advancing on cases that had been pending for years for procedural reasons. [France](#) has seen tangible results continuing in high-level corruption cases, despite challenges linked to the limited resources as well as structural weaknesses.

In other Member States, a solid track record of tackling high-level corruption cases, including via efficient investigations and prosecutions and the application of dissuasive sanctions by final convictions, remains to be established. In [Bulgaria](#), a robust track-record of final convictions in high-level cases of corruption is still lacking. In [Greece](#), a limited number of prosecutions related to corruption were taken forward, although progress on final decisions remains to be established. In [Hungary](#), some new high-level corruption cases have been opened, however the lack of a robust track record of investigations, prosecutions and final judgements of corruption allegations concerning high-level officials and their immediate circle remains a serious concern⁵⁵.

⁵¹ In the context of the RRP.

⁵² Recommendations concern CZ, ES, MT. A milestone on reducing backlogs and length of proceedings is also included in the HR RRP.

⁵³ Recommendations concern PL.

⁵⁴ As noted in the 2020 Rule of Law Report, the lack of uniform, up to date and consolidated statistics across all Member States makes it difficult to track the comparative success of the investigation and prosecution of corruption offences. The assessment is based on the data provided by Member States.

⁵⁵ Recommendations concern BG, EL, HU.

Strengthening the corruption prevention and integrity framework

Transparent and accountable governance and integrity frameworks are key to prevent corruption at all levels of the public administration and government. Member States have continued taking measures to strengthen the corruption prevention and integrity frameworks in the past year, including to update ethical standards, better enforce or revise rules on asset and interest disclosure, incompatibilities and conflicts of interest, strengthen internal control mechanisms, and regulate lobbying and revolving doors.

Fostering integrity in public life and preventing conflicts of interest

Conflicts of interest arise when a public official has a private or professional interest that could interfere with the impartial and objective performance of their duties⁵⁶. To prevent such conflicts of interest, most Member States have measures in place covering a wide range of elected and appointed public officials. Challenges have been identified in a number of Member States and some are taking steps to strengthen their frameworks. In [Spain](#), the Office for Conflicts of Interest has stepped up its role in providing ethics guidance and training activities to public officials. In [Slovakia](#), discussions are ongoing to set up an Office for the Protection of the Public Interest, which would oversee the implementation of new rules on conflict of interest. In [Malta](#), integrity rules in the public service, including within the police, were updated. In the [Netherlands](#), work is ongoing in relation to the integrity framework of the police, with new structures being set up. In [Romania](#), an increased focus on integrity of law enforcement has led to positive results. [Bulgaria](#) has continued deploying measures aiming at improving integrity of specific sectors, including the police and the judiciary. In [Ireland](#), an upcoming legislative reform aims to strengthen the Standards in Public Office Commission so that it can better enforce the integrity framework. In [Estonia](#), guidelines on conflicts of interests exist but are not subject to an effective verification and enforcement mechanism⁵⁷.

Senior government officials and Members of Parliament are often subject to specific integrity rules. Most Member States have in place codes of conduct and rules on preventing conflicts of interest and incompatibilities with other activities. It is important that the practical implementation of these rules is subject to regular verification and evaluation. Developments in the past year include strengthened rules on extra-parliamentary work and activities of Members of Parliament, such as participation in boards or committees of companies in [Luxembourg](#). The Commission for Ethics of the National Assembly in [France](#) has been active in issuing opinions and verifying financial statements to detect conflicts of interest. In some Member States, improvements have been identified or are ongoing. In the [Netherlands](#), a Code of Conduct for ministers and state secretaries is in preparation. [Finland](#) is preparing legislation to strengthen the rules on conflicts of interest for public officials and Ministers respectively. [Belgium](#) lacks a broad integrity policy for Ministers and their private offices as well as for Members of Parliament and existing codes of conduct continue to have gaps. [Czechia](#) lacks Codes of Ethics to govern the integrity framework for members of Parliament. In [Italy](#), a proposal on conflict of interest for political office holders, including parliamentarians, has been pending in Parliament for several years⁵⁸.

⁵⁶ Council of Europe, Recommendation Rec(2000)10 on Codes of conduct for public officials.

⁵⁷ Recommendations concern BG, EE, IE, SK.

⁵⁸ Recommendations concern BE, CZ, NL.

- *Lobbying and revolving doors*

Lobbying is a legitimate act of political participation⁵⁹. However, it needs to be accompanied by strong requirements of transparency and integrity to ensure accountability and inclusiveness in decision-making⁶⁰ (see also Section 2.4). Some Member States have revised their frameworks to ensure more transparency whereas in others, rules are still missing or could be improved. [Cyprus](#) adopted rules on lobbying and publically-accessible registers on lobbyists and meetings. [Germany](#)'s new lobby register at the federal level entered into force in 2022 and the introduction of a 'legislative footprint' has been announced.

In other Member States ([Belgium](#), [Croatia](#), [Italy](#), [Spain](#), and [Latvia](#)) discussions on new lobbying legislation are ongoing. In [Estonia](#), guidelines for lobbying exist and discussions on legislative transparency and integrity with regard to lobbying have taken place. In [Austria](#), a working group mandated over two years ago to propose a lobbying reform has not yet been able to find agreement. In [France](#), there are concerns about the consistency of application of lobbying rules to all types of lobbying actors. Dedicated regulation on lobbying is still missing or could be improved in a number of Member States⁶¹.

Another area under public scrutiny in many Member States is the regulation and enforcement of rules on 'revolving doors' between public and private functions. [Croatia](#) extended the cooling-off period for appointments of officials to management posts in relevant companies from 12 to 18 months. In the [Netherlands](#), the government announced its intentions to introduce stricter post-employment restrictions. In several Member States, rules on revolving doors show gaps or shortcomings. [Germany](#)'s rules on post-employment restrictions and cooling-off periods remain fragmented and inconsistent for different functions. In [Sweden](#), the rules on revolving doors for top executive functions in the Government are overall limited in scope and the government has launched an evaluation of the current framework. In [Denmark](#), there are no rules on revolving doors for ministers. In [Czechia](#), cooling off periods covering civil servants and government members remain limited⁶².

- *Asset and interest disclosure*

Asset and interest declarations by public officials support public sector transparency and accountability, to promote integrity and prevent corruption. All Member States have some rules in place to ensure that categories of public sector officials are subject to asset and interest disclosure obligations. However, these vary in the scope, transparency and accessibility of disclosed information, as well as in the level and effectiveness of verification and enforcement.

While in some Member States reform efforts are progressing, there are still challenges that need to be addressed. In [Portugal](#), the asset declaration obligations on political and senior public office holders were extended and strengthened. While the body in charge of monitoring and verifications is not yet operational, efforts are ongoing to address this. In [Romania](#), the electronic submission of asset and interest disclosures is mandatory since January 2022, though some challenges exist with regard to the effective verification of the submitted data. In [Greece](#), while asset declarations are filed by a great number of officials, only a limited proportion are verified on their accuracy. In [Hungary](#), concerns remain about the lack of systematic checks

⁵⁹ OECD (2021) Lobbying in the 21st century.

⁶⁰ OECD (2010), Recommendation of the Council on Principles for Transparency and Integrity in Lobbying; Council of Europe standards on lobbying transparency, Recommendation CM/Rec(2017)2.

⁶¹ Recommendations concern BE, DK, DE, EE, IE, ES, FR, HR, IT, LV, LU, HU, NL, PL, RO, SK. Relevant milestones are also included in the RRP for CZ.

⁶² Recommendations concern BE, DK, DE, IE, NL, SE.

and insufficient oversight of asset declarations. In [Belgium](#), the verification and transparency of such declarations remains an issue of concern, as the content of the asset declarations can only be assessed in the course of a criminal investigation. In [Austria](#), members of Parliament are not obliged to disclose assets, interests, debts and liabilities⁶³.

- *Whistleblower protection*

Encouraging and protecting those who disclose wrongdoing plays an essential role in the detection and prevention of corruption, both in the public and the private sector. The transposition of Directive (EU) 2019/1937 on whistleblower protection⁶⁴ has triggered a number of Member States to adopt legislation, while many are still in the process of revising existing national legislation or introducing new rules and streamlining the institutional setting for handling whistleblower reports.

Political party financing

Political party financing is an important risk area for corruption and several Member States have adopted or are considering reforms to increase transparency and oversight. In [Poland](#), the rules on political party financing have been revised to increase transparency. In the [Netherlands](#), discussions continue on protecting political parties against foreign interference. In [Estonia](#), draft legislation being prepared would aim to increase the powers of the Political Parties' Financing Surveillance Committee. In [Austria](#), Parliament is in the process of adopting reforms to address long-standing issues with the current system, including as regards the powers of its Court of Audit. [Denmark](#) aims to review and amend the political party financing system, although with no concrete timeline. Challenges exist in other Member States, such as [Italy](#), where the practice of channelling donations to political parties through political foundations poses an obstacle to public accountability because of the absence of a single electronic register⁶⁵.

Investor citizenship and investor residence schemes

Investor citizenship and investor residence schemes create corruption risks and raise concerns about security, money laundering and tax evasion⁶⁶. The Commission considers that the granting of EU citizenship in return for pre-determined payments or investments, without any genuine link to the Member State concerned, undermines the essence of EU citizenship and is in breach of EU law⁶⁷. As a consequence, the Commission called on Member States to repeal investor citizenship schemes and take appropriate measures to address the risks of investor residence schemes⁶⁸. [Bulgaria](#) repealed its investor citizenship scheme in March 2022. [Cyprus](#) had already stopped receiving new applications under its scheme in November 2020 and it has now also stopped handling applications. [Malta](#) suspended its scheme for Russian and Belarusian nationals on 2 March 2022, but continues to operate it for other nationals⁶⁹.

⁶³ Recommendations concern CZ, IE, EL, CY, HU, PL, AT, PT, SK. Relevant milestones are also included in the HR RRP.

⁶⁴ Directive (EU) 2019/1937 of the European Parliament and of the Council on the protection of persons who report breaches of Union law (OJ L 305, 26.11.2019, p. 17).

⁶⁵ Recommendations concern DK, IT, AT.

⁶⁶ Commission report on 'Investor Citizenship and Residence Schemes in the EU' adopted on 23 January 2019, COM(2019) 12 final.

⁶⁷ The Commission launched infringement procedures regarding the schemes operated by Cyprus and Malta.

⁶⁸ Recommendation in the context of the Russian invasion of Ukraine in relation to CBI and RBI schemes adopted on 28 March 2022, C(2022) 2028. Residence by investment schemes are in use in a total of 19 Member States: Bulgaria, Czechia, Estonia, Ireland, Greece, Spain, France, Croatia, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania and Slovakia.

⁶⁹ The Commission has continued infringement proceedings against Malta.

Countering the impact of the pandemic on corruption

The trend of heightened COVID-19 related corruption risks lasts since 2020, with areas at risk continuing to include issuance of COVID-19 vaccination, tests or recovery certificates and the procurement of medical protective equipment. The increased use of accelerated and simplified procurement procedures often resulted in direct awards or non-competitive procurement procedures. To detect and prevent corruption in such procedures, Member States stepped up transparency and monitoring. The responsible authorities in several Member States carried out targeted audits ([Austria](#), [Czechia](#), [Slovenia](#) and [Portugal](#)) or monitoring activities ([Lithuania](#)). In [Belgium](#), the Court of Audit released a special dashboard to increase transparency with regard to government support measures.

2.3 Media pluralism and media freedom

Independent and free media are the watchdogs of democracy. A free and pluralistic media environment is instrumental to defending the rule of law by holding power and institutions to account. Political or state pressure or control over the media undermines both freedom of speech and expression and the freedom to seek, receive and impart information. Conflict of interests and a highly concentrated market dominated by only a few players might also have the effect of undermining freedom of the media. In the EU, Member States have a positive obligation to guarantee an enabling environment for journalists, protect their safety and promote media pluralism and freedom. Challenges in this area identified by the previous rule of law reports have led to several recent EU initiatives, including a recommendation on the safety of journalists and a package of measures to address abusive lawsuits against public participation.

The Media Pluralism Monitor

The Media Pluralism Monitor assesses the risks to media freedom and pluralism in all Member States, focusing on four areas – basic protection of media freedom, market plurality, political independence and the social inclusiveness of media⁷⁰. The latest results of the Monitor (MPM 2022) reveal that there has been no major change across these areas since 2021 though there has been some variance in specific indicators within those general areas. The indicator relating to the journalistic profession and its protection has registered a slight deterioration. There has been an improvement in the indicator relating to transparency of media ownership following the implementation by several Member States of EU legislation regulating the matter. News media concentration retains its very high risk level across the continent while there has been no progress in terms of political independence, which remains at medium risk. For the first time, the Media Pluralism Monitor has introduced an overall ranking of Member States clustered into five levels of risk, in which Bulgaria, Greece, Hungary, Malta, Poland, Romania and Slovenia are considered to be high risk countries.

⁷⁰ The Media Pluralism Monitor is an important source for the Commission's Rule of Law Reports. It is a scientific and holistic tool that documents the health of media frameworks, detailing threats to media pluralism and freedom in Member States and some candidate countries. It is co-financed by the EU and has been implemented, in an independent manner and on a regular basis, by the Centre for Media Pluralism and Media Freedom, since 2013-14. The Commission has also used other sources, such as Reporters Without Borders' World Press Freedom Index and the Council of Europe's Platform to promote the protection of journalism and safety of journalists, as referenced in the country chapters.

Strengthening the independent functioning of media regulators

National media regulators play an important role in upholding media pluralism. To ensure this, they need to be functionally and effectively independent and sufficiently resourced, and exercise their powers impartially and transparently. All Member States have legislation in place setting out the competences and independence of media regulators. The Audiovisual Media Services Directive (AVMSD)⁷¹ revised in 2018 includes a list of requirements – independence from government, impartiality, transparency, accountability, resources, appointment and dismissal and appeal mechanisms – which Member States must ensure with regard to their media authorities. Since the publication of the 2021 Rule of Law Report, [Cyprus](#), [Estonia](#), [France](#), the [Netherlands](#), [Slovakia](#) and [Slovenia](#), have followed other Member States and adopted provisions to enhance the independence of media authorities and/or extend the authorities' competences over new domains. Reforms are pending in other Member States.

In some Member States, despite the formal update of the legal framework, concerns persist about its effectiveness or the functional independence of regulators in practice. Some of these concerns relate to possible undue political influence over the nomination process or the functioning of regulators, others to insufficient resources. In [Hungary](#), where sufficient funding and a detailed legal framework for the establishment and operation of the Media Authority are in place, its functional independence needs to be strengthened. In [Slovenia](#), questions persist on whether the new legal framework would ensure independence from political interference, and fully implementing the extensive competences with the available resources remains a challenge. In [Spain](#), new legislation attributes new competences to the Audiovisual regulator, but concerns on its resources remain. In [Romania](#), concerns about the functioning and budget of the National Audiovisual Council persist, notably in view of the funds required to improve IT systems⁷².

Improvements and obstacles related to the transparency of media ownership

Transparency of media ownership is directly linked to media freedom and pluralism, in particular when ownership results in direct or indirect control of or significant influence over the content provided. Information on ownership allows users to make better informed judgements about the content. European standards⁷³ encourage Member States to adopt specific measures in this area, which is also provided for under EU legislation⁷⁴. Since the last report, new legislation enhancing the transparency of media ownership or improving public availability of media ownership information has been adopted in [Croatia](#), [Cyprus](#), [Estonia](#), [Greece](#), [Poland](#), [Portugal](#) and [Spain](#). Laws to enhance transparency in media ownership are being considered in [Bulgaria](#) and [Slovakia](#). Practical measures to enhance transparency have been taken in [Lithuania](#), where a specific Information System of Producers and Disseminators of Public Information was launched.

The implementation of rules is facing particular challenges in some Member States. In [Czechia](#), rules to enhance transparency of beneficial ownership of media outlets enacted in 2021 still require full implementation and concerns persist with regard to the lack of full transparency of

⁷¹ Directive (EU) 2018/1808 of 14 November 2018.

⁷² Recommendations concern ES, HU.

⁷³ Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on media pluralism and transparency of media ownership.

⁷⁴ Directive (EU) 2010/13/EU of 10 March 2010, Article 5(2), as amended by Directive (EU) 2018/1808 of 14 November 2018. General (non-sectoral) obligations of transparency of beneficial ownership also exist in the Anti-Money Laundering Directives (Directive (EU) 2018/843 of 30 May 2018 and Directive (EU) 2015/849 of 20 May 2015).

ownership and conflict of interests. Challenges remain on transparency of media ownership in the [Netherlands](#) and [France](#). In [Slovenia](#), there are still challenges in identifying the ultimate ownership structure of certain media outlets⁷⁵.

Safeguarding media from political pressure and influence

Vulnerabilities and risks to the rule of law increase when media is subject to political pressure and political influence, notably from public authorities and the ruling parties, undermining media independence. Transparent and equitable rules for the allocation of state advertising, and safeguards to prevent the politicisation of public service media, have both been identified as of particular importance. Another way by which political pressure can be exercised is linked to licensing.

- *Mitigating risks related to lack of transparency and fairness in the allocation of state advertising*

State advertising includes all uses of the budget of the state, at all levels, or of state-controlled companies for the purposes of advertising and campaigns. It is important that allocations are transparent and take place on the basis of fair criteria, to prevent the risk that state advertising is used as a means of political influence and of leveraging funds to favour certain media outlets. While issues remain in several Member States, developments in a few others have sought to address specific concerns about the transparency of state advertising. In [Croatia](#), updated rules covering transparency of state advertising were adopted, with some remaining room for improvement. While not enshrined in legislation, [Malta](#) and [Cyprus](#) have adopted guidelines, the former establishing standards for the disbursement of government advertising and promotional material, and the latter relating to awareness-raising and advertising campaigns by the government press and information office. In [Austria](#), the Government has announced a reflection process given concerns about high spending on state advertising, the fairness and transparency of its allocation, and political influence in the process⁷⁶.

- *Safeguarding the independence of public service media*

Rules on the independent governance and editorial independence of public service media are key to preventing political interference in this important media sector. While the funding of public service broadcasting and funding granted to broadcasting organisations for the fulfilment of this public service remains a prerogative of each Member State insofar as such funding does not unduly affect trade and competition in the EU⁷⁷, European standards and guiding principles exist on independence, the regulatory and policy framework, funding, appointments, accountability, management, transparency and openness⁷⁸. All Member States have legislative and institutional systems to regulate public service media and some are looking to strengthen the independence of their public service broadcaster. In [Bulgaria](#), a revision of the law geared at defining in more detail the public service remit and related financing is under consideration. In [Romania](#), a reform of the law on the public broadcasting and radio companies aiming at a more independent and professionalised management is being discussed. In [Luxembourg](#), a draft law to reinforce the independence of public service media has been presented to Parliament. In some Member States, however, existing rules have not sufficiently guaranteed independence. Issues of concern include the risk of politicisation of appointments and dismissals of managers and board members in [Czechia](#), [Slovakia](#) and [Cyprus](#), the

⁷⁵ Recommendations concern CZ, FR.

⁷⁶ Recommendations concern BG, HR, HU, AT.

⁷⁷ Protocol (No 29) on the system of public broadcasting in the Member States, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union.

⁷⁸ [Council of Europe Recommendation CM/Rec\(2012\)1 on public service media governance](#).

independence and governance of public service media in [Malta](#), and the practical challenges faced under the existing rules in limiting political influence in [Slovenia](#). In [Poland](#), concerns over the independence of public service media remain, including over safeguards for appointments to executive positions. In [Greece](#), while public service media are regulated by a strong legal framework, there are concerns with regards to potential political influence in the appointment of board members. In [Hungary](#), public service media operates in a complex institutional system amidst concerns about editorial independence⁷⁹.

- *Political pressure and influence on the media through licensing restrictions and decisions*

While the European Convention on Human Rights expressly states that the right to freedom of expression shall not prevent States from submitting broadcasting and television enterprises to a licensing system, the exercise of this prerogative needs to take account of the plurality of the media landscape and be based on objective and transparent procedures and criteria. In [Poland](#), a proposal for legislative amendments geared at prohibiting broadcasting concessions to operators controlled by persons registered outside the EEA was ultimately vetoed by the President. However, two television stations faced particularly long administrative proceedings for the extension of their licenses by the regulator⁸⁰.

Access to information as a necessary prerequisite for the media, civil society and public trust

The right of access to information held by public authorities is fundamental for journalists to do their work, as well as for civil society and citizens at large. Since the publication of the last Rule of Law report, new legislation came into force in the [Netherlands](#) making access to public information broader and swifter. In [Finland](#), steps are being taken to reform the Act on the Openness of Government Activities to extend the constitutionally-guaranteed access to documents. In [Spain](#), legislative work is ongoing to strengthen access to information through a reform of the law on official secrets. In [Denmark](#), political discussions are under way to consider removing some restrictions on the right to access information. In other Member States some practical or legal concerns remain. In [Belgium](#) recent legislation introducing new refusal grounds and delays in treating public document requests might affect the right of access to information and public documents. In [Lithuania](#), there are concerns that the authorities' interpretation of data protection rules has led to restrictions on journalists' access to information. In [Austria](#), challenges persist in relation to the lack of a comprehensive and enforceable legal framework for access to documents and public information, and draft legislation has not progressed. In [Malta](#), journalists continue to face obstacles when requesting access to information held by public authorities. In [Hungary](#), access to public information continued to be hindered under the 'state of danger'⁸¹.

Threats against the safety of journalists

Journalists continue to face threats and obstacles to their work, including physical attacks reported in several Member States. In 2021, both the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists and the Mapping Media Freedom Platform identified a significant increase in alerts⁸² which also includes an increase in online attacks. Violations have included verbal harassment, legal threats, physical assault, attacks on

⁷⁹ Recommendations concern CZ, CY, HU, MT, PL, RO, SI, SK.

⁸⁰ Recommendations concern PL. An infringement procedure is ongoing regarding HU.

⁸¹ Recommendations concern BE, DK, DE, EE, ES, LT, LU, MT, AT, FI.

⁸² The Council of Europe's Platform shows a 42% increase in alerts while the MMF Platform registered a 72% increase in alerts in EU Member States between 2020 and 2021, with a sizeable percentage of the 2021 alerts related to online harassment and attacks during COVID-related protests.

property, incitement, smear campaigns and censorship. The 2021 Commission Recommendation on the safety of journalists includes measures relating to effective and impartial investigation and prosecution of crimes, independent response and support mechanisms, access to venues and information, safety during demonstrations, training and online safety and digital empowerment.

Some Member States have taken or stepped up existing measures to improve the safety of journalists. In [France](#), legislation recognised the role of journalists in demonstrations and a liaison committee between the Ministry of the Interior and the press now enables permanent dialogue on safety in protests or demonstrations. In the [Netherlands](#), the Government has continued to enhance, fund and develop the ‘PersVeilig’ platform and to promote close cooperation between prosecutors, the police and media stakeholders. In [Germany](#), Länder authorities, the Press Council and other media stakeholders are currently discussing an update the existing principles of conduct for the media and the police to address the safety of journalists during protests. In [Greece](#), threats and physical attacks have been frequently reported and the Government has recently agreed a Memorandum of Understanding on the protection of journalists. In other Member States more determined efforts would be needed to address the situation. In [Croatia](#), the professional environment for journalists is impacted by verbal aggressions against journalists, including by politicians. In [Slovenia](#), a hostile environment, online harassment of and threats against journalists are growing sources of concern. In [Slovakia](#), the adoption of proposed legislation on the protection of journalists has been postponed⁸³.

Criminal trials continue in the cases of journalists murdered in the EU. In [Malta](#), an alleged mastermind of the assassination of journalist Daphne Caruana Galizia has been indicted on charges of complicity in murder and criminal association and criminal proceedings are ongoing. The separate report of the public inquiry into the assassination was published in July 2021, finding that the State and its entities had failed to fully protect the journalist from the real and immediate risks, and had failed to act to prevent her assassination. The report established a set of recommendations relating to the rule of law, including the media landscape in the country. In [Slovakia](#), the trial related to the assassination of Jan Kuciak and his fiancée Martina Kusnirova is ongoing, while in the [Netherlands](#), the trial related to the murder of journalist Peter R. de Vries has started. The murder of journalist Giorgios Karaivaz in April 2021 is under investigation by the authorities in [Greece](#).

Legal threats and abusive court proceedings against public participation

Strategic lawsuits against public participation (SLAPPs) are a particular form of harassment used against journalists and rights defenders engaged in public participation on matters of public interest. This phenomenon has been gaining ground in the EU. Effective safeguards are needed to prevent such harassment from silencing journalists and create a chilling effect on media freedom and freedom of expression. Defamation is one of the most common grounds on which SLAPPs are brought against journalists.

In order to address the threat of SLAPPs, some Member States started debating or considering introducing procedural safeguards and/or are in the process of revising their defamation laws. In [Lithuania](#), legislative amendments have been prepared to allow for the early dismissal of such cases, as well as revising the criminal liability for defamation. In [Ireland](#), the Department of Justice initiated a review which led to recommendations looking at a new mechanism against SLAPP allowing for early dismissal. In [Malta](#), the Government has proposed legislative amendments to reform certain procedural aspects of the defamation law. In [Italy](#), while prison

⁸³ Recommendations concern EL, HR, SI, SK.

sentences for defamation have largely been abolished following a landmark Constitutional Court ruling in 2021, the increasing prevalence of SLAPP cases and the combination of criminal and civil defamation raises concerns. Amendments in [Slovakia](#) to reduce the punishment for defamation are still pending. In [Croatia](#), the number of cases of abusive litigation targeting journalists remains high, threatening the existence of smaller, local media outlets and freelance journalists. There continue to be a number of examples of such lawsuits against journalists by politicians or public officials, including judges. In [Poland](#), the news media community continues to be exposed to threats stemming from strategic lawsuits against public participation that appear to target mainly journalists scrutinising Government actions⁸⁴.

2.4 Other institutional issues linked to checks and balances

Institutional checks and balances are integral to the rule of law in a democracy. They provide a system of mutual control, ensuring that the power exercised by one state authority is subject to the scrutiny of others. While the model of checks and balances may vary between Member States according to their legal and constitutional traditions, they all need to be subject to such a system to ensure the respect for the rule of law and democratic norms. Civil society organisations, and independent authorities such as equality bodies, the Ombudsperson and National Human Rights Institutions are an indispensable element in the system of checks and balances in a healthy democracy, and attempts to restrict their operating space can present a threat to the rule of law.

Quality and inclusiveness of the legislative process

Following the trend noted in the 2020 and 2021 Rule of Law Reports, a number of Member States have continued to improve the quality of the legislative process. Improving stakeholder participation, including for civil society organisations, can benefit the quality of legislation as well as the transparency of the process. [Bulgaria](#) adopted new rules to improve the law-making process while [Spain](#) is undertaking initiatives to increase public participation in policy-making. In [Estonia](#), efforts are focused on the creation of new digital platforms for public participation in the decision-making process. The practice of nationwide public consultations in [France](#) was further reinforced and extended to other fields, including the justice system. A draft constitutional revision aiming to introduce a legislative initiative for citizens has been presented in [Luxembourg](#).

In a number of Member States, the lack of a formal framework for the consultation of stakeholders or their insufficient application in practice continue to raise concerns. In [Cyprus](#) and [Malta](#), there is no formalised process for public consultations and they play a limited part in policy-making. In [Greece](#), public consultation on draft legislation is often organised too late for input by civil society organisations and the public to have an impact. In [Luxembourg](#) and [Slovakia](#), concerns regarding the overall inclusiveness of the legislative process persist. In [Latvia](#), there are some concerns about the limited involvement of civil society organisations at local level. [Poland](#) made a commitment under its Recovery and Resilience Plan to adopt measures that would ensure a better and more stable regulatory framework. In [Hungary](#), the lack of public consultation, coupled with an accelerated legislative process, has further weakened the quality of the regulatory environment. In [Romania](#), concerns remain regarding the regular use of Government emergency ordinances as well as the practical realities of public consultations, in particular on the effective follow-up of proposals submitted by the civil society⁸⁵.

⁸⁴ Recommendations concern IE, HR, IT.

⁸⁵ Recommendations concern EE, CY, LV, LU, PT, RO.

Lessons learned from the use of emergency measures and the COVID-19 pandemic

Faced with the challenges brought by the return of the COVID-19 pandemic in autumn and winter 2021, some Member States continued to apply states of emergency, whereas in most Member States such regimes and the related restrictions to fundamental rights were progressively phased out. A number of Member States are now drawing the lessons from this experience and are in some cases updating their legal frameworks to improve preparedness for future crises. In [Portugal](#) and [Sweden](#), dedicated structures are looking at how to put in place permanent legal frameworks to govern exceptional circumstances, with similar reflections under way in the [Netherlands](#). In [Denmark](#), the use of the Epidemic Act adopted in February 2021 was reviewed by the Government and subject to a broad consultation of stakeholders. In [Czechia](#), the Ministry of Health conducted an audit of the adoption process of pandemic measures, after several of those measures had been annulled by courts. In [France](#), the Council of State dedicated its 2021 Annual Study to the states of emergency and made proposals to better define and organise them.

The use of emergency powers have also continued outside the context of the COVID-19 pandemic in relation to other crises. [Hungary](#) declared another ‘state of danger’ under amended constitutional provisions, following the invasion of Ukraine. [Poland](#) introduced a state of emergency on the Polish-Belarusian border, leading to stakeholder concerns as to constitutionality and restriction of fundamental rights. [Lithuania](#) also declared a state of emergency in response to the instrumentalisation of migration by Belarus. Restrictions on the work of monitoring bodies and journalists sparked criticism and were gradually lifted.

The role of Constitutional Courts in the system of checks and balances

Constitutional Courts play a key role in the system of checks and balances and have continued to exercise this role in the context of the COVID-19 pandemic. This was the case in [France](#), where the Constitutional Court defined the limits of the executive and legislative powers during the health emergency regime and in [Germany](#), [Spain](#) and [Italy](#), where the Constitutional Courts exercised constitutional review on the emergency measures taken to fight the COVID-19 pandemic.

Constitutional Courts also exercised scrutiny in other key areas, such as elections. In [Portugal](#), the Constitutional Court was called to review electoral acts. The new parliamentary term started after this review and the subsequent repetition of the vote. More structural reflections are under way in [Cyprus](#), with the creation of a Constitutional Court still under discussion in Parliament.

In other Member States, some decisions taken by Constitutional Courts have raised concerns as regards the primacy of EU law. In [Romania](#), the Government has made a clear commitment to the principle of primacy of EU law, but concerns remain regarding the challenge to this principle by the Constitutional Court⁸⁶. In [Germany](#), following formal commitments by the German Government clearly recognising the primacy of EU law, the Commission closed the

⁸⁶ In two judgments, the CJEU ruled that national courts should not be prevented by a risk of disciplinary sanctions from disapplying decisions of the Constitutional Court which are contrary to EU law (Judgment of the Court of Justice of 21 December 2021, Euro Box Promotion e.a., in joined cases C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19) and that EU law precludes any national rule or practice that would give rise to disciplinary liability for national judges’ failure to comply with such decisions (Judgment of the Court of Justice of 22 February 2022, RS, in cases C-430/21, para. 87). Importantly, the Romanian High Court of Cassation and Justice issued several judgments setting aside the case-law of the Constitutional Court on the composition of judges’ panels to give effect to the judgment of the CJEU of 21 December 2021, thus giving precedence to the principle of primacy of EU law.

infringement procedure concerning a judgment of the German Constitutional Court. In [Poland](#), the Constitutional Tribunal has expressly challenged the primacy of EU law, and considered certain provisions of the EU Treaties as unconstitutional. This led the Commission to launch an infringement procedure against [Poland](#), which is still ongoing⁸⁷.

National Human Rights Institutions, Ombudspersons, equality bodies and implementation of European Court of Human Rights rulings

National Human Rights Institutions (NHRIs)⁸⁸, Ombudspersons, equality bodies and other independent authorities have continued to play a role in the national system of checks and balances. In some Member States, the status of such authorities has been further strengthened. In [Sweden](#) the newly created National Human Rights Institution started work in January 2022. In [Portugal](#), the internal structure of the Office of the Ombudsperson has been reformed in order to better reflect its mandate and in [Latvia](#), the appointment rules for the Ombudsperson were amended. In [Belgium](#), the Federal Human Rights Institute has issued numerous opinions and recommendations during its first years of activity. Ensuring appropriate follow-up to the findings of independent institutions is an important part of a system of effective checks and balances⁸⁹.

However, NHRIs, Ombudspersons and equality bodies need structural guarantees of independence as well as sufficient resources to work effectively, and a number of them continue to face challenges. In [Poland](#), the new Ombudsman, appointed in July 2021, continues to play a key role as a rule of law safeguard, though its capacity to act is constrained by limited resources. In [Lithuania](#), there are concerns that the Office of the Parliamentary Ombudspersons lacks the resources to fulfil its mandate and new draft legislation has been criticised for a possible negative impact on its work. In [Hungary](#), concerns as regards the independence of the Commissioner for Fundamental Rights persist after the integration of the Equal Treatment Authority in the Office of the Commissioner, and, in March 2022, the UN Sub-Committee on Accreditation of the Global Alliance of NHRIs maintained its recommendation that the Hungarian national human rights institution be downgraded to B-status. In [Croatia](#), challenges exist regarding the follow-up to and monitoring of the Ombudsperson's recommendations, and on access to information. A number of Member States have so far not established a NHRI in line with the UN Paris Principles. While [Italy](#), [Malta](#) and [Romania](#) have started this process, there are no such plans in [Czechia](#)⁹⁰.

The track record of implementing leading judgments of the European Court of Human Rights (ECtHR) is also an important indicator for the functioning of the rule of law in a country. The country chapters therefore for the first time include systematic indicators on the implementation of ECtHR leading judgments by all Member States⁹¹. While performance varies between Member States, overall around 40% of the leading judgments of the ECtHR relating to EU Member States from the last ten years have not been implemented⁹².

⁸⁷ Commission press release IP/21/7070, of 22 December 2021. See below, Section 3.2.

⁸⁸ The UN Paris Principles, endorsed by the UN General Assembly in 1993 (Resolution A/RES/48/134), set out the main criteria that NHRIs are required to meet. NHRIs are periodically accredited before the Subcommittee on Accreditation of the Global Alliance of National Human Rights Institutions.

⁸⁹ Recommendations concern HR, NL, PL.

⁹⁰ Recommendations concern CZ, IT, LT, MT, PL, RO, SI.

⁹¹ The adoption of necessary execution measures for a judgment by the ECtHR is supervised by the Committee of Ministers of the Council of Europe.

⁹² European Implementation Network and Democracy Reporting International, Justice Delayed and Justice Denied: Non-Implementation of European Courts Judgments and the Rule of Law.

National checks and balances in relation to the use of spyware

In July 2021, Amnesty International and a group of investigative journalists, uncovered that several governments across the world had deployed a particularly intrusive spyware, known as ‘Pegasus’. In the EU, targets included journalists, lawyers, national politicians and MEPs. This subject has gradually gained importance over last year⁹³: while linked to national security, there is a need for national checks and balances to ensure safeguards are in place and fundamental rights are respected. In [Hungary](#), investigations have been concluded following allegations related to the use of Pegasus surveillance software against lawyers and journalists, while there are concerns due to the absence of effective judicial supervision as regards the use of secret surveillance measures outside criminal proceedings. In [Poland](#), despite allegations related to the use of Pegasus and equivalent spyware surveillance software, no investigation was launched by the prosecution service. In [France](#), a criminal investigation was opened by the Paris Prosecutor’s Office into alleged use of surveillance spyware targeting in particular journalists. In [Spain](#), the use of Pegasus and equivalent spyware surveillance software was subject to an investigation by the Ombudsperson and judicial proceedings. Although Member States are competent to guarantee their national security, they must apply relevant EU law, including the case-law of the CJEU, when doing so. The rule of law requires that the recourse to such tools by Member States’ security services is subject to sufficient control that it fully respects EU law, including fundamental rights such as the protection of personal data, the safety of journalists and freedom of expression. The use of surveillance means in criminal investigations also have to respect procedural rights, including the rights of defendant. Robust institutional checks and balances are therefore needed to guarantee the functioning, cooperation and mutual control of State organs, so that power is exercised by one state authority under the scrutiny of others.

Civil Society Organisations as essential actors for the rule of law

Civil society organisations and human rights defenders play an essential role as watchdogs against breaches of the rule of law and actively contribute to fostering the rule of law, democracy and fundamental rights on the ground. EU law⁹⁴, complemented by European standards,⁹⁵ set out key requirements for ensuring the operation of civil society organisations without unjustified interference. Following the arrival of millions of people to the EU fleeing Russia’s military aggression, civil society has played a key role in their reception in the respective Member States and providing them with essential items and services, including psychological and medical support.

Steps are being taken to improve the situation for civil society organisations in several Member States. In [Bulgaria](#), a Council for Civil Society Development set up with the objective of assisting civil society organisations has become operational. In [Romania](#), while civil society organisations are facing challenges, there are plans to simplify registration procedures for non-governmental organisations. In [Sweden](#), the framework rules on the operation and funding of civil society organisations are being reviewed. In [Malta](#), existing concerns on civil society organisations’ access to funding were addressed. While in the majority of Member States, there is an enabling and supportive environment for civil society and the civil society space continues

⁹³ The European Parliament established a specific investigative committee (‘PEGA’) to address the use of the ‘Pegasus’ surveillance spyware and other similar technologies in the EU.

⁹⁴ Judgment of 18 June 2020, *Commission v Hungary*, C-78/18, EU:C:2020:476, paragraphs 112 and 113.

⁹⁵ See in particular Recommendation Rec(2007)14 of the Committee of Ministers of the Council of Europe on the legal status of non-governmental organisations in Europe.

to be considered as ‘open’⁹⁶, in some Member States civil society organisations continue to face challenges. These can include burdensome registration procedures, difficulties in accessing funding, restrictive legislation and inadequate protection against attacks and threats, including SLAPP and smear campaigns. In [Ireland](#) legal obstacles persist for the funding of civil society and in [Germany](#), the regime for the tax-exempt status of civil society organisations remains a concern, though this could be addressed in forthcoming reforms. In [Slovenia](#), civil society faced challenges as regards negative narratives, while issues linked to funding and limitations on freedom of assembly were addressed. In [Czechia](#), some concerns exist about the access of civil society organisations to public funding while in [Slovakia](#), public subsidies schemes continue to exclude organisations working on issues related to gender equality and LGBTIQ rights. In [Cyprus](#), the Government has taken action to better assist civil society and to improve communication with public authorities. The registration procedures for civil society organisations remain complex in [Italy](#). In [Greece](#), some registration requirements continue to be considered disproportionate, while a review of the existing legislation is pending before the Council of State. In [Spain](#), the Parliament is working on the reform of the Citizen Security Law following concerns raised regarding the law including by civil society. In [France](#), while new laws have been adopted to improve the financial environment for associations, a number of stakeholders raised concerns as regards the impact of the Law on republican principles on the civic space⁹⁷.

In some Member States, systematic restrictions have further aggravated the ability of civil society to operate with a potential chilling effect. In [Poland](#), civic space has further deteriorated and recent draft legislation might have an additional negative impact. In [Hungary](#), independent civil society remains under pressure and organisations representing the LGBTIQ community report being targeted by smear campaigns launched by the Government, while the State’s role in financing civil society raises questions⁹⁸.

3. DEVELOPMENTS AND ACTIONS AT EU LEVEL

3.1 Dialogue and follow-up to the Rule of Law Report

Inter-institutional dialogue

The Council continued the practice of organising its annual rule of law dialogue on the basis of the Rule of Law Report. In September 2021, the Council Presidency organised a horizontal discussion on general rule of law developments in the General Affairs Council. The General Affairs Council also held country-specific discussions, focusing on the relevant developments highlighted in the country chapter of the Rule of Law Report, in November 2021⁹⁹ and April 2022¹⁰⁰. Targeted discussions on rule of law-related topics also took place in the Justice Council, where Ministers exchanged views on the impact of the COVID-19 pandemic on the functioning of courts in December 2021, and discussed the issue of access to a lawyer and the rule of law in March 2022. Member States showed a clear interest to share developments and

⁹⁶ According to the rating given by CIVICUS (non-governmental organisation). Ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed. Compared to 2021, two Member States have been downgraded on the scale from open to narrowed and one from narrowed to ‘obstructed’.

⁹⁷ Recommendations concern DE, IE, EL, SE.

⁹⁸ Recommendations concern HU, PL.

⁹⁹ The discussion focused on key developments in Croatia, Italy, Cyprus, Latvia and Lithuania.

¹⁰⁰ The discussion focused on key developments in Luxembourg, Hungary, Malta, the Netherlands and Austria.

best practices and to contribute to the prevention of problems in an inclusive and constructive manner.

The European Parliament continued to hold debates on the rule of law. Since July 2021, it has adopted several resolutions on the rule of law and on more specific issues such as media freedom and civil society¹⁰¹. The Parliament also adopted a specific resolution on the 2021 Rule of Law Report¹⁰², welcoming in particular the commitment to include specific recommendations to the Member States. The resolution reiterated recommendations issued previously, notably on the need to identify tools that can be used if shortcomings are not addressed, as well as Parliament's support for an inter-institutional agreement on an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights. The Commission values the cooperation with the European Parliament and has made clear that inter-institutional cooperation plays a central part in strengthening the EU's capacity to monitor and uphold the rule of law. The decision to include recommendations in the 2022 report also responds to a call from the European Parliament.

The European Parliament also organised country specific debates, notably in the Democracy, Rule of Law and Fundamental Rights Monitoring Group of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE). The Monitoring Group conducted monitoring missions in Bulgaria, Malta, Slovakia and Slovenia and held discussions on its findings. In addition to a debate on the primacy of EU law, the European Parliament has adopted a resolution calling for more action to be taken to address the rule of law concerns in Poland and Hungary¹⁰³.

The European Economic and Social Committee (EESC), through its Ad hoc group on Fundamental Rights and the Rule of Law¹⁰⁴, and the Committee of Regions, through its Commission for Citizenship, Governance, Institutional and External Affairs¹⁰⁵, have also continued to debate the rule of law at EU level. In November 2021, the EESC organised a conference focused on the contribution of civil society to the Rule of Law Mechanism.

¹⁰¹ European Parliament resolution of 10 March 2022 on the rule of law and the consequences of the CJEU ruling, P9_TA(2022)0074; European Parliament resolution of 8 March 2022 on the shrinking space for civil society in Europe, P9_TA(2022)0056; of 16 December 2021 on fundamental rights and the rule of law in Slovenia, in particular the delayed nomination of EPPO prosecutors, P9_TA(2021)0512; of 15 December 2021 on the impact of organised crime on own resources of the EU and on the misuse of EU funds with a particular focus on shared management from an auditing and control perspective, P9_TA(2021)0501; of 11 November 2021 on strengthening democracy and media freedom and pluralism in the EU: the undue use of actions under civil and criminal law to silence journalists, NGOs and civil society, P9_TA(2021)0451.

¹⁰² European Parliament resolution of 19 May 2022 on the Commission's 2021 Rule of Law Report (P9_TA(2022)0212).

¹⁰³ European Parliament resolution of 5 May 2022 on ongoing hearings under Article 7(1) TEU regarding Poland and Hungary, P9_TA(2022)0204; The European Parliament has adopted three resolutions in total on the rule of law in Poland and Hungary since 20 July 2021: resolution of 21 October 2021 on the rule of law crisis in Poland and the primacy of EU law, P9_TA(2021)0439; of 16 September 2021 on media freedom and further deterioration of the rule of law in Poland, P9_TA(2021)0395; of 8 July 2021 on breaches of EU law and of the rights of LGBTIQ citizens in Hungary as a result of the legal changes adopted by the Hungarian Parliament, P9_TA(2021)0362.

¹⁰⁴ The ad hoc group on Fundamental Rights and the Rule of Law (FRRL) is a horizontal body within the EESC tasked to provide a forum for European civil society organisations to meet and share their assessment on the state of fundamental rights, democracy and rule of law in the Member States.

¹⁰⁵ The remit of the CIVEX Commission includes Constitutional Affairs, and Governance, better Law-Making, Subsidiarity and Proportionality.

Dialogue with authorities and stakeholders in the Member States

The Commission has continued its outreach at national level in the Member States. Bilateral meetings at both political and technical level were held to discuss key reforms as a follow up to the 2021 Report. National Parliaments have a crucial role in upholding the rule of law, both as lawmakers and in holding the executive accountable, and discussions following up on the 2021 Report were an important theme of Commissioners' visits to national Parliaments¹⁰⁶.

The network of rule of law contact points provides for an open channel for regular exchange between the Commission and the Member States. The network has continued to meet on a regular basis to prepare the annual Rule of Law Report and is increasingly acting as a forum to exchange best practice and share information on planned or ongoing reforms at national level.

The Commission will continue strengthening the dialogue with stakeholders and authorities in the Member States, also with a focus on the follow-up to the recommendations contained in this report.

Dialogue with and support for civil society at EU level

Civil society remains a key partner for the European Commission in the preparation of the annual Rule of Law Report. In addition to the large number of written contributions received from civil society and the meetings carried out as part of the country visits, the Commission has also organised horizontal meetings with a number of key networks of civil society organisations and other key interlocutors¹⁰⁷. These networks have made joint recommendations on the process for the rule of law report¹⁰⁸. Civil society can also play an important role in the follow-up to the report, and the Commission will pursue such follow-up with civil society at national level in cooperation with Commission Representations and the Fundamental Rights Agency.

Through the Citizens Equality Rights and Values programme (CERV), the Commission has stepped up efforts to support civil society organisations, in particular the smaller, local ones facing particular constraints. Out of the available budget of the programme (€1.55 billion) almost a third is reserved specifically for the civil society organisations, with at least 40% of this amount to be allocated to the local and regional civil society organisations. As well as support to specific projects, there is also some provision for grants to support the capacity building of civil society organisations, funding their running costs and development.

The Commission remains committed to consider how to increase involvement of civil society, professional networks and other stakeholders in the rule of law debate at national and EU level. This applies both to the preparation of the report and its follow-up. More generally, and as a follow up of the Conference on the Future of Europe, the Commission will consider ways of broadening the scope of its rule of law work to more directly involve citizens.

¹⁰⁶ Annual Report 2021 on the application of the principles of subsidiarity and proportionality and on relations with national parliaments.

¹⁰⁷ Human Rights and Democracy Network, the Fundamental Rights Agency, the European Network for National Human Rights Institutions and Civil Society Europe.

¹⁰⁸ [Civil society recommendations: how the Commission can improve the credibility, inclusiveness and impact of the Rule of Law Report, European Partnership for Democracy.](#)

3.2 International cooperation

The rule of law is a key guiding principle for the EU action beyond its borders. The rule of law is central to EU action at global level, where working with partners to protect and promote human rights and strengthen democracies around the world is a priority. The EU and its Member States are the biggest global donor of democracy support. The Russian invasion of Ukraine underlines the need to reinforce our actions to promote and defend our values, to lead by example and to work with our international partners, as for example in UN and Council of Europe fora. The Commission and several Member States contributed to the commitments of the Summit for Democracy hosted by the President of the United States to promote democratic values worldwide, and are leading efforts during the Year of Action to implement them.

The EU is a staunch defender of human rights, democracy and the rule of law throughout the world, as demonstrated by the EU Action Plan for Human Rights and Democracy 2020-2024¹⁰⁹, and in line with the Sustainable Development Goals¹¹⁰. In the immediate neighbourhood, key requirements for EU membership set out in the ‘Copenhagen criteria’ include the rule of law, which is essential for candidate countries and potential candidates to realise their European perspective, and the revised enlargement methodology, placing the rule of law at the very heart of the accession process. The EU will continue to pursue a coherent approach in its cooperation with candidates and potential candidates and countries across the neighbourhood as well as in all its external action, at bilateral, regional and multilateral level. The EU addresses rule of law issues regularly in human rights dialogues with partner countries and at multilateral level, in particular the United Nations.

Upholding the rule of law at global level includes strengthening cooperation on rule of law issues with international and regional organisations¹¹¹. The rule of law, democracy and human rights remain the key priorities for the cooperation between the EU and the Council of Europe¹¹². In this context, the EU has renewed its commitment to protect and promote an independent civil society, while also protecting human rights defenders and free media. EU’s commitment to respect, protect and fulfil human rights, democracy and the rule of law consistently and coherently in all areas of its external action and to support the UN human rights system as a cornerstone of its external action is also a key guiding principle for the EU participation in the UN fora. International organisations, notably key bodies of the Council of Europe¹¹³, remain important partners in the preparation of the Report, and upholding the rule of law in Europe, with which the Commission will continue to cooperate closely.

The Commission aims to further strengthen this key element in its rule of law work, building on its close relations with the Council of Europe and other international bodies.

3.3 EU action to uphold the rule of law

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. It complements a number of other mechanisms and instruments at EU

¹⁰⁹ [EU Action Plan for Human Rights and Democracy 2020-2024](#).

¹¹⁰ [Sustainable Development Goals](#).

¹¹¹ Such as the United Nations, the Council of Europe, the Organisation for Economic Cooperation and Development (OECD) and the Organisation for Security and Cooperation in Europe (OSCE).

¹¹² [Council conclusions on EU priorities for cooperation with the Council of Europe 2020-2022](#).

¹¹³ The Venice Commission, the Group of States against Corruption (GRECO), the Parliamentary Assembly of the Council of Europe (PACE), the European Court of Human Rights (ECtHR).

level, each with their own purpose. This section includes an overview of relevant actions and mechanisms.

The case-law of the Court of Justice of the European Union (CJEU) on the rule of law continued to consolidate. The CJEU ruled on a number of requests for preliminary rulings brought by national courts. In a judgment of 6 October 2021¹¹⁴, the CJEU clarified the three types of situations in which a national court of last instance can refrain from submitting a request for a preliminary ruling to the CJEU where a question concerning the interpretation of EU law is raised before it¹¹⁵. In another case, the CJEU ruled that EU law precludes a national supreme court from declaring a request for a preliminary ruling unlawful on grounds that the questions referred are not relevant or necessary¹¹⁶. The CJEU also declared that, by virtue of the primacy of EU law, national courts should not be prevented, by a risk of disciplinary sanctions, from disapplying decisions of a Constitutional Court which are contrary to EU law¹¹⁷.

The CJEU has continued to examine infringement cases brought before it by the Commission. When CJEU interim measures have not been complied with, the Commission has requested the CJEU to impose financial penalties¹¹⁸. The Commission has continued to exercise its role as guardian of the EU treaties by launching infringement procedures where relevant to address specific breaches of the rule of law¹¹⁹.

The procedure for upholding the common values of the EU set out in Article 7 TEU continues in the Council as regards [Poland](#) and [Hungary](#). This procedure allows the Council to determine the existence of a clear risk of a serious breach of the Union's values and follow up on such risks. The Council held hearings for [Poland](#) in February 2022, and for [Hungary](#) in May 2022 as well as a general state of play on both Member States in December 2021¹²⁰.

Respect for the rule of law remains a fundamental precondition for the proper management of EU funds. The General Conditionality Regulation¹²¹ is intended to protect the sound financial management of the Union budget and the financial interests of the Union from breaches of the principles of the rule of law. The Commission has been monitoring the situation in all Member States since the General Conditionality Regulation became applicable on 1 January 2021 and

¹¹⁴ Judgment of 6 October 2021, *Consorzio Italian Management and Catania Multiservizi*, C-561/19, ECLI:EU:C:2021:799.

¹¹⁵ The Court had set out three situations in which national courts or tribunals of last instance are not obliged to make a reference for a preliminary ruling in *Cilfit* (Judgment of 6 October 1982, *Cilfit and Others*, 283/81, ECLI:EU:C:1982:335): (i) the question is irrelevant for the resolution of the dispute; (ii) the provision of EU law in question has already been interpreted by the Court; and (iii) the correct interpretation of EU law is so obvious as to leave no scope for any reasonable doubt. By contrast, if the question concerning the interpretation of EU law does not involve any of those situations, the court or tribunal of last instance must bring the matter before the Court.

¹¹⁶ Judgment of 23 November 2021, *IS*, C-564/19, ECLI:EU:C:2021:949.

¹¹⁷ Judgment of 21 December 2021, *Euro Box Promotion e.a.*, in joined cases C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19.

¹¹⁸ On 27 October 2021, the Court of Justice imposed €1 million as a daily penalty payment on Poland for as long as the interim measures order of 14 July 2021, regarding notably the functioning if the disciplinary chamber of the Polish Supreme Court, had not been fully complied with.

¹¹⁹ Notably, on 22 December 2021, the Commission decided to launch an infringement procedure against Poland because of serious concerns with respect to the Polish Constitutional Tribunal and its recent case law challenging the supremacy of EU law.

¹²⁰ Proceedings under Article 7 TEU were brought by the Commission against Poland in 2017 and by the European Parliament against Hungary in 2018.

¹²¹ Regulation 2020/2092 of 16 December 2020, OJ L 433I, 22.12.2020, p. 1.

has adopted guidelines on its application¹²². In its judgements of 16 February 2022, the CJEU¹²³ confirmed the conformity of the regulation with the EU Treaties. In April 2022, the Commission launched for the first time the formal procedure under the General Conditionality Regulation with regard to Hungary¹²⁴.

A related framework for the protection of several EU funds is the Common Provisions Regulation (CPR)¹²⁵, which entered into force on 1 July 2021. It requires Member States to put in place, as part of the ‘horizontal enabling conditions’, effective mechanisms to ensure compliance of the programmes supported by the Funds and their implementation with the rights and principles enshrined in the Charter of Fundamental Rights, including the right to an effective remedy and to a fair trial by an independent and impartial tribunal previously established by law. Member States have to ensure that the horizontal enabling condition is fulfilled when preparing a programme and that it remains fulfilled throughout the programming period.

A number of rule of law-related issues – notably as regards the effectiveness of justice systems, the fight against corruption and the quality and inclusiveness of the law-making process - are also part of the European Semester to the extent that those aspects are of macroeconomic relevance and have an impact on the business environment, investment, economic growth and jobs. In order to address a number of relevant country specific recommendations under the Semester by concrete rule of law reforms and investments, the Commission discussed and agreed with several Member States concrete milestones in the framework of the national recovery plans under the Recovery and Resilience Facility (RRF), which were subsequently formally approved by the Council.

In the 2022 European Semester Spring Package, the Commission has proposed to the Council further recommendations to two Member States related to the rule of law¹²⁶. The Commission is also providing technical support to Member States, notably through the Technical Support Instrument, to improve efficiency, quality and independence of public administration and justice systems. The Commission continues to promote judicial reform through the annual EU Justice Scoreboard¹²⁷. The 2022 EU Justice Scoreboard for the first time includes survey data on how companies perceive the effectiveness of investment protection in the different Member States¹²⁸. The results suggest that administrative conduct, stability and quality of the law-making process, as well as effectiveness of courts and property protection, are key factors of comparable significance for confidence in investment protection. The European Semester and the Justice Scoreboard are complementary to the Rule of Law Report and both feed into the report where relevant.

Media freedom and media pluralism has become an important area of action at EU level. The 2020 European Democracy Action Plan and Media and Audiovisual Action Plan announced a series of initiatives to support and safeguard media freedom and pluralism. The Commission

¹²² C(2022) 1382 final. Guidelines on the application of the general regime of conditionality regulation.

¹²³ See cases C-156/21 and C-157/21. On 16 February 2022, the CJEU rendered its judgements and dismissed the actions lodged by Poland and Hungary for the annulment of the General Conditionality Regulation.

¹²⁴ On 27 April 2022, the Commission launched for the first time the step of the procedure established under Article 6(1) of the General Conditionality Regulation.

¹²⁵ Regulation (EU) 2021/1060 of 24 June 2021.

¹²⁶ [2022 European Semester: Spring package](#).

¹²⁷ The 2022 EU Justice Scoreboard was published on 19 May 2022: [EU Justice Scoreboard](#).

¹²⁸ Figures 54 and 55, 2022 EU Justice Scoreboard.

presented in September 2021 a Recommendation to Member States on the safety of journalists¹²⁹. In April 2022, the Commission adopted a package of measures to protect journalists and civil society organisations against abusive litigation (SLAPP)¹³⁰. The Commission is also preparing a European Media Freedom Act.

4. CONCLUSIONS AND NEXT STEPS

The rule of law is fundamental to a stable, resilient, fair and democratic political, economic and social environment across the EU. It is essential to a well-functioning Single Market and to the Union as a whole. It is also a reflection of Europeans' aspirations and values, enshrined in Article 2 of the Treaty. The Commission is committed to protect and promote the rule of law, as guarantor of the EU Treaties and of the primacy of EU law. A vibrant, forward-looking EU transitioning to a greener, more digital and more socially just society needs to continue being built on firm foundations. The Russian invasion of Ukraine is a reminder of the pressure on our cherished EU values. Protecting our citizens and their rights needs a determined and consistent defence of the rule of law across the EU.

The annual Rule of Law Report is an important part of efforts to promote and safeguard the rule of law in the EU, both at the national and European level. Relying on a continued engagement and cooperation with Member States, this year's Report shows that important rule of law reforms have continued to take place in many Member States to address challenges identified in previous editions. However, important concerns remain in some Member States.

With this third edition, the Rule of Law report and the ensuing cycle of discussions with the Member States, including national parliaments, the European Parliament, and the Council is a well-established exercise. In line with the preventive nature of the report, the recommendations included for the first time this year seek to support Member States in their reforms. In some instances, recommendations guide Member States to take measures to address particular concerns raised in the Report.

The Commission has prepared this report based on continued dialogue with the Member States, while fully preserving political responsibility for its assessment and the recommendations issued. The next edition will follow-up on the developments and assess the implementation of the recommendations.

At the start of a new annual cycle of dialogue on the rule of law, the Commission invites the Council and the European Parliament to continue holding general and country-specific debates on the basis of this report, also using the opportunity of the recommendations to look further at concrete implementation. The Commission also welcomes further debate at national level, involving national parliaments, civil society and other key actors, but also at European level, with increased citizen's engagement. The Commission invites Member States to effectively take up the challenges identified in the Report and stands ready to assist Member States in the efforts to implement the Report's recommendations.

¹²⁹ Commission Recommendation on ensuring the protection, safety and empowerment of journalists and other media professionals in the European Union, C(2021) 6650 final, 16.9.2021.

¹³⁰ Proposal for a Directive on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation), COM(2022)177 final, 27.4.2022 and Commission Recommendation protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation", C(2022)2428, 27.4.2022.