

# Towards a strategic engagement of NHRIs in EU Rule of Law mechanisms

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Background Paper  
ENNHRI High-level Consultation

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# 1. Introduction

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The purpose of the present paper is to contribute to **ongoing reflections** on opportunities and parameters for European NHRIs to achieve a better promotion and protection of human rights across the region through participation in EU rule of law mechanisms. These reflections are particularly timely at a moment where several developments are taking place at EU level for **strengthening EU action to protect and promote the rule of law**, democracy and human rights both within the Union and in third countries. This paper aims at **exploring opportunities** for valuing the unique potential of European NHRIs both as contributors and beneficiaries of existing and future EU rule of law mechanisms.

After some introductory considerations on the **importance of NHRIs' engagement** in this area (section 2.), the paper will provide a **brief overview of EU action and core mechanisms** to promote and protect the rule of law in the national contexts where NHRIs across Europe are established (section 3.). The paper will then outline **preliminary reflections on how NHRIs' strategic engagement could be framed**, in particular as regards the possible scope and modalities of NHRIs' participation, strategic criteria and parameters of engagement, and considerations on the role of ENNHRI (section 4.). Final considerations on the way forward are set out as conclusions, including a set of **guiding questions** to feed into discussions on the value added and forms of NHRIs' strategic engagement in this area and a short overview on the **next steps** (section 5.).

## 2. EU action to promote and protect the rule of law: relevance of NHRIs' engagement

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### Rule of law, human rights and NHRIs

As widely understood at [international level](#), the rule of law and human rights are **interlinked and mutually reinforcing principles**: a strong regime of rule of law is vital to the protection of human rights, and the rule of law can only be fully realised in an environment that protects human rights. In practice, their scope and content is partly overlapping: a number of human rights enshrined in national constitutions, regional and international instruments are expressly or impliedly connected to specific aspects of the rule of law, as [recognised](#) by the Council of Europe Venice Commission, among others.

This is reflected in the letter of the EU Treaties, including the EU Charter of Fundamental Rights, where human rights protection is constantly linked to respect for the rule of law. Similarly, in EU institutional practice, the rule of law is used to encompass a number of concepts, from formal to more substantive notions including respect for human rights and the protection of [human rights defenders](#) (HRDs). This approach is well illustrated in the recent Communications on the rule of law of the European Commission of [April](#) and of [July](#) 2019 as well as in recent cases before the Court of Justice of the EU (see for example the Advocate General's opinions in the [Hungarian case on the financing of civil society organizations](#) and on the [French and Belgian counterterrorism measures](#), and the ruling in the [Polish Supreme Court case](#)).

As independent, State-mandated bodies with a broad human rights remit, working with and in support of other HRDs for the realization of human rights for all, **NHRIs contribute to promote, protect and strengthen the rule of law at national level**; at the same time, the extent to which they are able to effectively fulfil their mandate and their reports on the human rights situation on the ground **contribute to reflect an accurate picture of the rule of law environment in which they operate**.

### Added value of a strategic engagement of NHRIs

A strategic engagement of NHRIs in EU rule of law mechanisms has a clear value added with a view to ensuring a more comprehensive and accurate assessment of the situation in

each country, as well as enhanced impacts of follow up action in relation to the rule of law and human rights environment.

NHRIs can provide a key contribution for **EU policy makers to thoroughly and objectively monitor, assess and address rule of law issues** in a given country. On the one hand, NHRIs' establishment and functioning in compliance with the [Paris Principles](#) is in itself an **indicator of the realisation of a sustainable human rights environment contributing to a strong rule of law framework**. On the other hand, their expert and independent engagement on the promotion and protection of human rights and HRDs at national level constitutes a **key resource to populate other rule of law indicators** and a useful **tool for the identification and implementation of remedies**.

NHRIs' engagement in EU rule of law mechanisms across the region would also help to increase the **coherence of EU action in this area**. It would equally favour the **necessary synergies between initiatives for the protection and promotion of the rule of law and initiatives for the protection and promotion of human rights**, such as the EU strategy for the effective enforcement of the EU Charter of Fundamental Rights (and ongoing reflections over a new one) and the [EU Action Plan on Human Rights and Democracy](#) (and ongoing reflections over a new one, which is expected to reflect the progressively prominent role given to the promotion and protection of the rule of law in EU external action).

In turn, a strategic involvement of NHRIs in EU rule of law mechanisms has the potential to enhance the impact of such mechanisms as a means to achieve an **improved enabling environment** where NHRIs' efforts can be fully deployed for a better promotion and protection of human rights and the rule of law:

(i) taking into account the establishment and functioning of NHRIs in compliance with the Paris Principles as a rule of law indicator can help **preventing and better addressing negative trends** which could affect NHRIs' ability to effectively carry out their mandate;

(ii) the participation of NHRIs in EU rule of law mechanisms would **enhance the recognition of NHRIs' role at national and EU level**, with a potential positive repercussion on their resources and capacity and therefore on the quality and impact of their work;

(iii) such engagement would also provide NHRIs with opportunities to fulfil their role to **support a vibrant civil space and an enabling and protecting environment for HRDs**, as reflected in ENNHRI's [Regional Action Plan on Promoting and Protecting Human Rights](#)

[Defenders and Democratic Space](#) – this being another constituent element of a strong human rights and rule of law framework.

## Synergies with other regional instruments and processes

NHRIs' strategic engagement in EU rule of law mechanisms would create **opportunities for further synergies between the EU and other regional instruments and processes**, in particular at Council of Europe level. The EU [has committed](#) to step up cooperation with the Council of Europe on rule of law issues, including by exploring further synergies with the work the Venice Commission. Building on the recognition by the Council of Europe of NHRIs and other HRDs as key actors "contributing to an environment of respect for and the active promotion of human rights, democracy and the rule of law", as underlined in the [Recommendation](#) on the need to strengthen the protection and promotion of civil society space in Europe, such increased cooperation would ideally also bring together and provide renewed joint support to other relevant strands of work.

Special reference goes to ongoing efforts to support the **establishment and the effective functioning of NHRIs** – with the Council of Europe planning to update its [Recommendation](#) on NHRIs and the EU Agency for Fundamental Rights currently working on a new report on the situation of NHRIs in EU Member States; and initiatives related to on the **protection and promotion of the civil society space** across the region, on which a recent [Recommendation](#) was issued by the Council of Europe Committee of Ministers, and a list of EU actions is being taken forward as part of the [conclusions](#) of the 2018 EU Annual Colloquium on Fundamental Rights.

### 3. Opportunities for a strategic engagement: overview of EU action and core mechanisms to promote and protect the rule of law

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#### A founding value to be promoted in EU internal and external action

In the EU's constitutional framework, the rule of law is one of the **founding values** common to the Member States, which the Union shall uphold and promote both **internally and in its relations with the wider world** (Articles 2, 3(1) and 3(5) of the Treaty on the European Union (TEU)). While the scope and nature of EU action to promote and protect the rule of law, and the related mechanisms, differ depending on whether they concern EU Member States, candidate countries or third countries with which the EU engaged in some form of cooperation, such action is relevant to any national context where European NHRIs are established.

#### Different areas of action and a variety of legal and policy instruments

There is a multitude of legal and policy instruments through which the EU promotes and protects the rule of law by its internal and external action. For the purpose of this discussion paper, focus is put on **core mechanisms applicable to Member States, Enlargement and Eastern Neighbouring countries** (a more detailed and comprehensive overview of these and other relevant mechanisms is illustrated in annex I).

i. **EU Member States:** the rule of law framework and the future rule of law review cycle

The backsliding of the rule of law in some EU Member States in recent years has highlighted the urgency to strengthen the Union's capacity to promote and uphold the rule of law within its borders. The European Commission, also prompted by calls from the European Parliament and the Council, first reacted by [adopting](#) in 2014 a **Rule of Law Framework** with as objective "to prevent the emerging of a systemic threat to the rule of law". The process is aimed at finding a solution through a dialogue with the Member State concerned, indicating swift and concrete actions which could be taken to address detected issues, following an objective and thorough assessment of the situation at stake. If no solution is found, and there are indications of a "clear risk of a serious breach" of the rule of

law, the Commission (or the European Parliament) may decide to submit a reasoned opinion to the Council proposing the activation of the mechanisms set out in Article 7 TEU.



Information provided by the Polish NHRI was crucial to the assessment by the European Commission of the existence of a clear risk of a serious breach of the rule of law by Poland within the Rule of Law Framework, which led to the Commission's proposal on triggering Article 7 TEU in December 2017.

Following a [public consultation](#), the Commission set out in its July 2019 [Communication](#) concrete actions to strengthen the current toolbox to address challenges to the rule of law within the Union. Among the proposed actions, the Commission committed to establish a **Rule of Law Review Cycle** aimed at ensuring a regular monitoring of the situation of the rule of law in all Member States which will be supported, among others, by a dedicated **dialogue with Member States** on rule of law topics and an **Annual Rule of Law Report**.

- ii. **Enlargement countries:** supporting and monitoring rule of law reforms through accession

As regards Enlargement countries (candidates: Albania, North Macedonia, Montenegro, Serbia and Turkey; and potential candidates: Bosnia and Herzegovina and Kosovo\*), the rule of law is a **constituent element of the key criteria for accession** (so called 'Copenhagen criteria'). The first criterion refers to the need for countries wishing to join to have stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. As such, promoting respect for the rule of law is a key cross-cutting policy objective within EU's efforts to promote structural reform in candidate and potential candidate countries, realised, among others, through the [instrument for Pre-accession Assistance](#). The rule of law is also firmly [embedded](#) in **accession negotiations**, as key benchmark against which progress towards membership is assessed by the EU. The European Commission [issues annual Communications on the EU Enlargement policy](#) where it gives an overview of how the rule of law is implemented by candidate and potential candidates, accompanied by **country reports** in which a detailed assessment of the state of play in each country is presented, reporting on what has been achieved over the last year and setting out guidelines on reform priorities.

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\* *This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence*



ENNHRI has been invited this year for the first time by the European Commission to participate in a consultation process to establish the country reports to be included in the 2020 Enlargement Package.

iii. **Eastern Neighbouring countries:** promoting rule of law through neighbourhood policy and external action

The EU's relations with Armenia, Azerbaijan, (Belarus), Georgia, Moldova and Ukraine are governed by the Eastern Partnership (EaP) as part of the [European Neighbourhood Policy](#) (ENP). Besides participating in initiatives open to all Neighbourhood countries, EaP countries' relations with the EU are grounded in bilateral agreements, including Association Agreements, and regional cooperation initiatives, financed through the European Neighbourhood Instrument. The rule of law is firmly anchored in this framework of cooperation: it is one the [key deliverables](#) set in the area of stronger governance for 2020, with further rule of law related aspects being included in other key deliverables (engagement with civil society organisations, non-discrimination, supporting plurality and independence of media, key judicial reforms). **Bilateral dialogues** are held with each country, including on rule of law issues, and a **dedicated thematic expert panel** on the rule of law exists within the [framework](#) supporting EaP multilateral dialogues.

As regards **Russia**, the country not being part of the ENP, the promotion of the rule of law is sought through the [channels](#) regulating EU's diplomatic relations with the country, including via bilateral **human rights dialogues** and within the framework of the **EU Action Plan on Human Rights and Democracy**.

## 4. Framing NHRIs' strategic engagement in EU rule of law mechanisms

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### Possible scope and modalities of NHRIs' participation: a general frame

Although, as illustrated above, EU Member States, Enlargement and Eastern Neighbouring countries are subject to actions and instruments which differ in their scope and nature, it is possible to outline a common general frame on which NHRIs participation in the various EU rule of law mechanisms could rest. Building on NHRIs' role, functions and essential features, and reflecting ENNHRI's considerations as outlined in its [input](#) to the European Commission's consultation on strengthening the rule of law in the EU, such a frame could be made of the following three pillars, corresponding to different forms of engagement:

- i. Regarding NHRIs as **rule of law indicator**, taking the Paris Principles as benchmark NHRIs complying with the Paris Principles are recognised as an international indicator of accountable and inclusive institutional frameworks, as they play a key role as checks and balances to guard democracy and the rule of law. The extent to which countries across the region fulfil the [recommendation](#) to **establish NHRIs in compliance with the Paris Principles** could be therefore expressly considered among the indicators of the respect for the rule of law. The **assessment of their independence, pluralism and effectiveness** and their **concrete functioning and environment**, including whether they experience **threats and attacks**, could be taken into account in this context. Such indicators could be integrated in **relevant checklists** used by the EU to assess the rule of law situation in EU and third countries; in turn, **recommendations on establishing NHRIs, ensuring compliance with the Paris Principles** and **support to NHRIs under threat** could feature as part of EU's follow up action.



In the [UN 2030 Sustainable Development Goals](#), NHRIs in compliance with the Paris Principles and measuring violence against HRDs are indicators of peaceful and inclusive societies, access to justice and effective, accountable and inclusive institutions.

ii. Integrating NHRIs in rule of law monitoring mechanisms as **reliable sources of information**

Respect for human rights with rule of law implications (including access to justice and fair trial, freedom of expression, freedom of association, non-discrimination and equality before the law, the right to respect for private life and the prohibition on torture or inhuman or degrading treatment or punishment) is part of the core elements of the consensual [definition](#) and [checklist](#) on the rule of law elaborated by the Council of Europe Venice Commission, referred to by the European Commission as benchmark for monitoring risk and weaknesses in its July 2019 [Communication](#). Monitoring and reporting on the situation of human rights in their country is an obligation under the Paris Principles and a central function of all NHRIs – A-status NHRIs being given independent reporting rights before the UN Human Rights Council, Treaty Bodies and other UN mechanisms.

**NHRIs’ annual reports and special thematic reports** constitute key sources of information on national developments which could be regularly integrated in the sources of information used to carry out rule of law assessments by the EU, insofar as they can provide overall indications on positive or negative evolutions concerning compliance with different rule of law indicators. **Impact assessments of and interventions on policies and laws**, as well as, when covered by the NHRI’s mandate, information related to **individual complaints** and **strategic litigation initiatives**, can also point to the existence of specific human rights issues which may point to early warning signs of possible deteriorations of the rule of law situation in a given country.



Information provided by the French NHRI on the respect of human rights by State authorities in the context of the ‘yellow vest movement’ fed into the recommendations later formulated on the matter by the Council of Europe Commissioner for Human Rights.

iii. Involving NHRIs in the **identification of remedies and implementation monitoring**

Building on their in-depth understanding of the national context, NHRIs can provide key input in the **assessment of the most appropriate responses** to national challenges related to rule of law and respect of human rights and could be therefore regularly consulted when formulating recommendations in the context of EU rule of law mechanisms. Given their independence and taking advantage of their permanent cooperation with State authorities, including the dialogue with national parliaments, and civil society, NHRIs can also contribute to **monitoring at national level the implementation of and follow up to relevant recommendations**.



In response to the lack of full acknowledgement by national authorities of the challenges faced by journalists in Bosnia and Herzegovina, the NHRI elaborated in 2017 a special report on their situation, which resulted in swift follow-up action by the national parliament.



When monitoring public demonstrations in 2018, the Armenian NHRI handled several complaints over participants' arrests and detention, reporting cases and requesting official investigations to State authorities. A significant number of those arrested were later released with the assistance of the NHRI.

## Preliminary considerations on key parameters and criteria for a strategic engagement

Key parameters and criteria would need to be set when conceptualising a possible model of strategic engagement of NHRIs in EU rule of law mechanisms based on the proposed general frame outlined above, in order to ensure the **effectiveness and sustainability of NHRIs' participation**. The importance of ensuring that NHRIs are **sufficiently equipped and resourced** should be kept in mind as a transversal consideration when reflecting on possible models. At this stage, the following preliminary considerations can be made, with a view to prompting further reflections:

- **Clear and coherent indicators related to NHRIs:** rule of law indicators related to NHRIs could refer to and be formulated on the basis of the Paris Principles, with assessments and follow up recommendations taking into account the periodic reviews of GANHRI Sub-committee on Accreditation, as well as its indications concerning the interpretation and application of the Paris Principles. Essentially, such indicators could reflect (i) the establishment of NHRIs and their essential features as set out by the Paris Principles, and (ii) the extent to which NHRIs enjoy the standards set in the Paris Principles and benefit from an enabling environment in their concrete functioning, including consideration of any factor affecting in practice their functional independence, such as experiences of threats and attacks. Depending on the approach and structure characterizing rule of law checklists used by the EU, the integration of NHRIs-related indicators could be achieved by formulating a self-standing benchmark (i.e. establishment and functioning of the NHRI according to the Paris Principles as standalone rule of law indicator), set out in a checklist formulated on the basis of the Paris Principles; and/or by considering the elements included in the Paris Principles as

aspects of relevant rule of law benchmarks/indicators (e.g. level of independence of NHRI as an aspect of the separation of powers). A possible conceptual framework of NHRI-related rule of law indicators is illustrated in annex II;

- **Anchoring NHRIs’ participation to existing procedures:** the effectiveness of NHRIs’ participation may benefit from a formalisation of their role at the different stages of the procedures (gathering of information, expert assessments, dialogues, formulation and follow up of recommendations), as a means, on the one hand, to match expectations and capacity and allow NHRIs to provide meaningful contributions; and, on the other hand, to ensure an efficient and impact-driven use of NHRIs’ contributions;
- **NHRIs as information sources through general and ad-hoc reporting:** the participation of NHRIs to EU rule of law mechanisms as information sources could in principle rest on the consideration of their regular, own reporting activities. Increasingly, NHRIs include specific chapters in their annual reports specifically dedicated to the rule of law or publish special reports on rule of law issues. In certain circumstances, such as in the case of a rapid deterioration of the rule of law situation in a given country, the possibility of questioning NHRIs on specific issues could nonetheless become crucial, so that NHRIs themselves have the opportunity to alert on worrying trends;
- **Effective use of NHRIs’ engagement:** the assessment of rule of law indicators related to NHRIs’ features and functioning or based on information provided by NHRIs is deemed to be integrated in relevant EU reporting activities (e.g. Commission assessments within the Rule of Law Framework, the Annual Report of the future Rule of Law Review Cycle, general reports and country reports illustrating progress on Enlargement, neighbourhood policy and external action). NHRIs could also, as appropriate, participate in EU bilateral or multilateral dialogues where such reports are discussed (e.g. the future Commission rule of law dialogue with Member States, bilateral dialogues with Enlargement countries on rule of law negotiating chapters, human rights dialogues). NHRIs’ input considered not directly relevant within the relevant rule of law mechanism should be taken into account in other EU level rule of law and/or human rights related processes (including to inform Council rule of law dialogues and peer review processes or initiatives by the European Parliament, and to feed reporting activities such as the Commission’s Annual Report on the Charter or EU Annual Reports on Human Rights and Democracy);
- **Foreseeing the necessary safeguards for NHRIs:** NHRIs’ strategic engagement in EU rule of law mechanisms might produce negative consequences, including threats on their independence, capacity, resources and reputation, which would need to be effectively prevented and addressed. Necessary safeguards should include both establishing the boundaries of NHRIs’ participation in EU rule of law mechanisms taking account of the Paris Principles and the scope of NHRIs’ national mandate, in order to

prevent such participation leading to threats at national level; and envisaging specific EU action to support NHRIs under threat. These safeguards should be underpinned by a comprehensive and coherent EU policy to effectively promote the establishment and strengthening of NHRIs in compliance with the Paris Principles both within the EU and externally.

## Role of ENNHRI

As the European Network of NHRIs, ENNHRI can play a crucial role – resources and capacity allowing – to ensure that NHRIs' strategic engagement in EU rule of law mechanisms reaches its full potential and has value added for NHRIs as well as for EU policy making. ENNHRI's responsibilities in this context could in particular include:

- **Acting as a bridge between NHRIs and the EU on rule of law issues**, contributing to the flow of information on legal and policy developments and representing NHRIs collectively in relevant EU and regional fora, as a means to support NHRIs' and EU's continued cooperation at different levels and enhance, through such cooperation, NHRIs' promotion and protection of human rights at national level;
- **Providing EU institutions and bodies with information on the situation of NHRIs**, also as a means to contextualise their input and contribute to develop comparative analysis feeding into assessments, findings and follow-up measures;
- **Sharing with EU institutions and bodies its expertise on NHRIs' standards, mandate and functioning**, including for the purpose of providing assistance to the identification and formulation of relevant rule of law indicators and contributing to reflections on forms and modalities of NHRIs' participation and reporting;
- **Providing NHRIs with a platform for knowledge exchange and capacity building on rule of law issues** as a means to enhance their awareness and expertise and allow them to provide quality and timely input to EU rule of law mechanisms, with an impact driven approach and bearing in mind the need to maintain a strategic and sustainable engagement;
- **Assist EU institutions and bodies in the early identification of threats to NHRIs and other human rights defenders and in the identification and implementation of necessary safeguards and measures to prevent or react to such threats**, also building on its [Guidelines](#) on ENNHRI support to NHRIs under threat.

A number of these actions would equally contribute to the implementation of ENNHRI's actions as foreseen in its [Regional Action Plan on Promoting and Protecting Human Rights Defenders and Democratic Space](#).

## 5. Conclusions and way forward

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### Framing the discussion: proposed guiding questions

The considerations set out above are meant to feed into ongoing reflections on the most appropriate and impactful role for NHRIs in EU rule of law mechanisms. With a view to that, a **set of guiding questions** can be extracted from this paper as a means to facilitate discussions among NHRIs and between NHRIs and EU institutions and bodies:

**I. Relevance of NHRIs' engagement**

*Which are the aspects bearing particular relevance in your opinion when thinking about the potential of a strategic engagement of NHRIs in EU rule of law mechanisms?*

*Would you have any proposals to further elaborate the aspects mentioned in this paper and/or add others worth consideration?*

**II. Opportunities for a strategic engagement**

*Have you had an experience of involving an/being involved as NHRI in any EU rule of law mechanisms until now?*

*Which are in your view the main barriers to a meaningful participation (e.g. limited timeframe, lack of information/awareness, limited capacity or resources, political concerns)?*

**III. Scope and modalities of NHRIs' participation**

*Is there a particular form of engagement for NHRIs, among or beyond those illustrated in this paper, which has in your opinion and experience, most value added in terms of its impact?*

**IV. Key parameters and criteria for a strategic engagement**

*Do you have any proposals for elaboration or modification of the parameters and criteria set out in this paper? Are any of the issues raised more relevant than others?*

*How do you think should the EU manage related challenges (e.g. ensuring clarity of NHRIs' role, effective use of information by NHRIs, EU support NHRIs if under threat)?*

## V. Role of ENNHRI

*On which aspects do you think ENNHRI should focus on as a priority with a view to supporting NHRIs' strategic engagement in EU rule of law mechanisms?*

### Next steps

Bringing together Heads of European NHRIs, representatives from EU institutions and bodies, as well as representatives from Council of Europe bodies and civil society stakeholders, the **High-Level Consultation** organised by ENNHRI on 5 February 2020 is a key opportunity to foster an inclusive and informed discussion on how to frame a strategic engagement of NHRIs in EU rule of law mechanisms.

Findings and conclusions of the High-Level Consultation will be outlined in an **outcome report** which will be used as a basis for a broader consultation with all ENNHRI members and key EU actors, including at the ENNHRI General Assembly on 10 March 2020.

## Annex I

### Overview of relevant EU rule of law monitoring mechanisms

#### *EU Member States*

Within the Union, EU action to uphold and promote the rule of law is aimed at ensuring its permanent respect in all MSs. This is a legal obligation deriving from the Treaties, which provide for the possibility of sanctioning serious and persistent breaches by Member States (Article 7 TEU). A variety of legal and policy instruments concur to achieve this, including cooperation and mutual support instruments, monitoring mechanisms as well as enforcement and sanctioning tools.

#### General cooperation and monitoring frameworks

	Initiator	Decision-maker	Coverage	Scope and process	Outcome	References
Rule of law review cycle	Commission	Commission, Council, EP	All MSs	Regular monitoring of rule of law situation in the broad sense, based on internal and external sources, of all EU MSs	Findings and non-binding recommendations feeding: (i) regular dialogue with MSs; (ii) Annual Rule of Law Report; (iii) interinstitutional dialogue	<a href="#">COM(2019)343 final</a> To be established as from 2020

<p><b>Justice Scoreboard</b></p>	<p>Commission</p>	<p>Commission</p>	<p>All MSs</p>	<p>Annual compilation of comparative data on indicators relevant to the independence, quality, and efficiency of national justice systems (mainly civil, commercial and administrative litigation), based on a large range of sources of information (including Council of Europe bodies, national contact points, European judiciary related networks)</p>	<p>Comparative information report that aims to assist the EU and MSs to improve the effectiveness of their national justice systems</p> <p>Country-specific assessments feed into annual country reports elaborated as part of the European Semester process</p>	<p><a href="#">Additional information</a></p>
<p><b>European Semester</b></p>	<p>Commission</p>	<p>Commission, Council (endorsement and adoption)</p>	<p>All MSs</p>	<p>Annual detailed analysis of each MS's plans for structural reforms. Country assessments carried out through bilateral dialogue with the national authorities and stakeholders concerned and illustrated in annual country reports.</p>	<p>Non-binding country-specific recommendations proposed by the Commission for the next 12-18 months, including on the improvement of national justice systems. Proposals are endorsed and formally adopted by the Council.</p>	<p><a href="#">Additional information</a></p>
<p><b>Structural Reform Support Service</b></p>	<p>Commission</p>	<p>Commission</p>	<p>All MSs (upon request)</p>	<p>Tailor-made support for design and implementation of key reforms, including rule of law related institutional reforms, based</p>	<p>Support provided through the Commission's in-house expertise or with other providers of technical support (including experts</p>	<p><a href="#">Additional information</a></p>

				on a request sent to the Commission and an assessment of the country specific needs	from national administrations, private sector, international organisations)	
<b>Cooperation and verification mechanism</b>	Commission	Commission	BG, RO	Regular monitoring in the areas of judicial reform, fight against corruption and, for BG, organised crime	Assistance provided through expertise and funding opportunities under the <a href="#">European Structural and Investment Funds</a>	<a href="#">Additional information</a> and <a href="#">progress reports</a>  Transitional measure deemed to be closed once defined benchmarks will be fulfilled
<b>Council rule of law dialogue</b>	Council	Council	All MSs	Annual rule of law dialogue between MSs in the General Affairs Council, each year focusing on a particular theme	Annual Presidency conclusions which may include non-binding recommendations	<a href="#">Additional information</a>  Discussions on a review of this process <a href="#">started</a> under FI Presidency, which may lead to a regular peer review mechanism

### Mechanisms to react to detected rule of law deficiencies

	Initiator	Decision-maker	Coverage	Scope and process	Outcome	References
<b>Rule of Law Framework</b>	Commission	Commission	All MSs	Staged process of dialogue with a MS in case of detected rule of law	Voluntary implementation by MS concerned of Commission recommendations to prevent the emergence of	<a href="#">COM(2014)158 final</a>  The only time the mechanism has been <a href="#">used</a> came

				<p>deficiencies, resulting in the Commission issuing:</p> <ul style="list-style-type: none"> <li>(i) assessments; (ii) opinions; (iii) non-binding recommendations</li> </ul>	<p>a systemic threat to the rule of law, at which point an Article 7 TEU procedures would be required</p>	<p>with the start of a dialogue with Poland in 2016</p> <p>The Commission <a href="#">committed</a> to improve inter-institutional balance</p>
<p><b>Breach of values preventive mechanism</b></p>	<p>Commission, EP (2/3 majority of votes cast, representing majority of MEPs) or 1/3 of MSs</p>	<p>Council (majority of 4/5 of MSs excluding MS concerned), EP (consent by 2/3 majority of votes cast, representing majority of MEPs)</p>	<p>All MSs</p>	<p>Following the Commission/EP/MSs proposal:</p> <ul style="list-style-type: none"> <li>i) Council held hearing of the MS and may make recommendations</li> <li>ii) upon EP consent the Council can issue decision determining a clear risk of a serious breach</li> </ul>	<p>Council decision determining a clear risk of a serious breach in the MS concerned, prompting the MS concerned to remedy the situation</p>	<p>Article 7(1) TEU</p> <p>The procedure has been triggered in two cases so far: by the Commission in respect of <a href="#">Poland</a> in 2017 and by the EP in respect of <a href="#">Hungary</a> in 2018</p> <p>Discussions on a review of the procedure to make it <a href="#">more efficient</a> are ongoing</p>
<p><b>Breach of values sanctioning mechanism</b></p>	<p>Commission or 1/3 of MSs</p>	<p>1<sup>st</sup> phase: European Council (by unanimity excluding MS concerned), EP (consent by 2/3 majority of votes cast,</p>	<p>All MSs</p>	<p>1<sup>st</sup> phase (determination):</p> <p>Following the Commission/MSs proposal:</p> <ul style="list-style-type: none"> <li>i) the MS submits its observations</li> </ul>	<p>European Council decision determining the existence of a serious and persistent breach, prompting the MS concerned to remedy the situation</p> <p>Council decision sanctioning the MS</p>	<p>Article 7(2)-(3) TEU</p>

		<p>representing majority of MEPs)</p> <p>2<sup>nd</sup> phase: Council (by qualified majority of 72% of MS excluding MS concerned and comprising 65% of their population)</p>		<p>ii) upon EP consent the European Council can issue decision determining the existence of serious and persistent breach</p> <p>2<sup>nd</sup> phase (sanctions):</p> <p>The Council can suspend membership rights, including voting rights</p>	<p>concerned (2nd phase) until it remedies the situation</p>	
<p>Strategic value-based infringement proceedings</p>	<p>Commission or a MS</p>	<p>Pre-infringement stage: Commission</p> <p>Infringement: Court of Justice</p>	<p>All MSs</p>	<p>Pre-infringement dialogue between MS and Commission based on own investigations, complaints from citizens or stakeholders or referral by MS. Stages:</p> <p>i. Commission Letter of Formal Notice and detailed reply by MS concerned within a set deadline (usually 2 months)</p> <p>ii. Commission Reasoned Opinion (formal request to comply with EU law) and detailed reply by MS</p>	<p>Voluntary implementation by MS concerned of Commission recommendations during pre-infringement stage puts an end to the procedure</p> <p>Court's rulings and ordonnances on interim measures are binding on MS concerned. If the violation is ascertained and the MS does not comply with the Court's judgement, the Commission may refer the MS back to the Court and</p>	<p>Article 258-259 TFEU</p> <p><a href="#">Additional information</a></p> <p>Infringements can only concern rule of law problems affecting the application of EU law (primary or secondary law possibly in connection with the EU Charter of Fundamental Rights)</p> <p>See for example <a href="#">Polish Supreme</a></p>

				<p>concerned within a set deadline (usually 2 months)</p> <p>If the dialogue is not successful, the Commission or the MS which initiated the procedure may refer the case to the Court of Justice which rules to ascertain whether there has been a violation. The Court may grant interim measures and/or handle the case with an accelerated procedure upon request.</p>	<p>ask for the imposition of financial penalties</p>	<p><a href="#">Court case and Hungarian case on the financing of civil society organizations</a></p>
<p>Interpretative preliminary references</p>	<p>National courts</p>	<p>Court of Justice</p>	<p>All MSs</p>	<p>National court having doubts over the interpretation of EU law in a case pending before it may refer the matter to the Court of Justice through a preliminary reference.</p> <p>If no judicial remedy exists under national law against its decisions, that court or tribunal shall be obliged to refer the matter to the Court.</p>	<p>Court's rulings are a general, binding and final determination of EU law, with no scope for appeal. The referring court shall implement the ruling when deciding on the case at issue.</p>	<p>Article 267 TFEU</p> <p>Preliminary references can only concern rule of law problems affecting the application of EU law (primary or secondary law possibly in connection with the EU Charter of Fundamental Rights)</p> <p>See for example <a href="#">Irish case on</a></p>

						<a href="#">European Arrest Warrant</a>
<b>Proposal for an EU budget protection mechanism</b>	Commission	Commission, Council (veto power by qualified majority)	All MSs	Proposed mechanism allowing the Commission to adopt measures to protect the Union's budget when it finds generalised deficiencies regarding the rule of law in a MS which affect or risk affecting that budget. The qualitative assessment shall be based on internal and external sources	Protective measures may include the suspension or reduction payments from the EU budget and the prohibition to enter into new legal commitments. The Council would be able to veto the Commission's decisions by qualified majority	<a href="#">COM(2018) 324 final</a> Proposal currently under negotiations <a href="#">Additional information</a>

### *Enlargement countries*

Respect for the rule of law is an essential condition for accession for countries willing to join the EU (Article 49 TEU). Rule of law reforms by candidate and potential candidate countries are promoted and assessed through various tools within the accession process.

### General cooperation and monitoring frameworks

	Initiator	Decision-maker	Coverage	Scope and process	Outcome	References
<b>Accession negotiations</b>	Commission	European Council (formal opening, by unanimity), Commission (conducting negotiations)	Candidate countries (AL, MK, MNE, SRB, TR)	Intergovernmental conferences between candidate country, MSs and Commission concerning the adoption and implementation of the EU acquis based on policy	Rule of law interim and closing benchmarks set for each country. Recommendations formulated based on progress monitoring by the Commission prompt	<a href="#">Additional information</a> The Commission <a href="#">reports</a> annually on general and

		and monitoring progress)		chapters. Rule of law and related issues are covered by Chapter 23 (Judiciary and Fundamental Rights) and Chapter 24 (Justice, Freedom and Security)	reform in candidate countries. Once all chapters are closed, results of the negotiations are incorporated into a draft accession treaty.	country specific progress
<b>Pre-Accession Strategy</b>	Commission	Commission	Candidate countries (AL, MK, MNE, SRB, TR)	Framework for each candidate country's accession process, making down priorities, procedures/instruments underpinning the process and a monitoring framework	Framework guiding the implementation of the whole accession process for each country	<a href="#">Additional information</a>
<b>Instrument for pre-Accession assistance (IPA)</b>	Commission	Commission	Candidate (AL, MNE, MK, SRB, TR) and potential candidate countries (BiH, KO)	Framework to support structural reforms through financial and technical assistance on the basis of Country Strategy Papers, including on rule of law related objectives (including democratic institutions, empowering civil society, ensuring independent, impartial and efficient judiciary, ensuring accountability for serious crimes, fighting organised crime and tackling corruption, tackling shortcomings in protecting	Country and multi-country financial assistance programmes implemented under direct or shared management  Actions undertaken and results assessed through a strict performance monitoring framework based on agreed indicators	<a href="#">Additional information</a>  The Commission publishes an annual report on pre-accession assistance

				human rights) set for each beneficiary country		
Stabilisation and Association Process	Commission	Commission	AL, BiH, KO, MNE, MK, SRB	Special progressive partnership for Western Balkan countries with the aim of eventual EU membership, based on contractual relationships (bilateral Stabilisation and Association agreements), trade relations, financial assistance and regional cooperation	Financial (IPA) and technical assistance Country evaluation of the implementation of common political and economic goals	<a href="#">Additional information</a>

### *Eastern Neighbouring countries*

The rule of law is a transversal policy objective integrated in the implementation of all EU external actions and policies (Article 21 TEU). Promotion of the rule of law is variably declined in terms of persuasion, incentives and conditionality within the various instruments through which the EU engages in cooperation with third countries.

### General cooperation and monitoring frameworks

	Initiator	Decision-maker	Coverage	Scope and process	Outcome	References
Eastern Partnership (EaP)	Commission	Commission	AM, AZ, GE, MD, UA (BLR)	Framework supporting delivery on key policy goals including rule of law related objectives through bilateral (based for AM, AZ, MD, UA on Association	Financial (European Neighbourhood Instrument) and technical assistance	<a href="#">Additional information</a> Following an <a href="#">internal monitoring</a> , the Commission launched a <a href="#">structured</a>

				<p>Agreements) and regional cooperation initiatives.</p> <p>Rule of law issues also dealt with by a thematic expert panel as part of <a href="#">multilateral dialogues</a></p>	<p>Country evaluation of the implementation of key policy goals</p>	<p><a href="#">consultation process</a> on the future strategic direction of the EaP</p>
<p><b>Human Rights Dialogues</b></p>	<p>Council (initiating and assessing dialogue), EEAS, Commission</p>	<p>EEAS, Commission</p>	<p>All including AM, AZ, GE, MD, UA, RUS</p>	<p>Bilateral dialogues as part of broader cooperation initiatives (such as the EaP) or dedicated institutionalised dialogues (such as consultations with RU) on human rights, democracy and rule of law issues</p>	<p>Definition and implementation of objectives of mutual interest, enhanced cooperation</p> <p>Regular assessment by the Council Working Party on Human Rights</p>	<p><a href="#">Additional information</a></p>
<p><b>EU Action Plan on Human Rights and Democracy</b></p>	<p>Council, EEAS, Commission</p>	<p>EEAS, Commission, MSs</p>	<p>All including AM, AZ, GE, MD, UA, RUS</p>	<p>Framework supporting delivery on key policy objectives related to human rights, democracy and rule of law across all EU external action and policies</p>	<p>Financial (European Instrument for Human Rights and Democracy) and technical assistance</p> <p>Overall evaluation of the implementation of key policy objectives</p>	<p><a href="#">Additional information</a></p> <p>Work is ongoing over the next Action Plan</p>

## Annex II

### NHRIs-related rule of law indicators: reflecting on a possible conceptual framework based on the Paris Principles

PP relevant benchmark*	Potential indicators**	Checklist examples**	Related rule of law core elements***
<b>Establishment of NHRI</b>	Actual establishment	<i>Has the NHRI been established?</i>	<b>Respect for human rights</b>    State body legally mandated to promote and protect human rights
	Way of establishment ensuring permanency, independence and essential features	<i>Is there a reference to the NHRI in the Constitution?</i>  <i>Is the NHRI established in a legislative text or in an instrument of the executive?</i>  <i>Does the instrument establishing the NHRI specify the NHRI's essential features (role, functions, powers, funding, lines of</i>	

\* Relevant benchmarks are taken from the list of essential requirements of the Paris Principles as outlined in the GANHRI Sub-Committee on Accreditation (SCA) [General Observations](#).

\*\* Potential indicators and checklist examples are drawn from the essential requirements and compliance practices as illustrated in the GANHRI Sub-Committee on Accreditation (SCA) [General Observations](#).

\*\*\* Core elements and related factors indicated are drawn on the basis of those included in the [consensual definition](#) and [checklist](#) elaborated by the Council of Europe Venice Commission, referred to by the European Commission in its [Rule of Law Framework](#) and in its recent [Communication](#) on strengthening the rule of law within the Union. Other internationally recognised frameworks are taken into account, including the [UN Rule of Law indicators implementation guide](#) and the [Conceptual Framework of the WJP Rule of Law Index](#)

		<i>accountability, appointment mechanism and terms of office of its members)?</i>	<p><b>Prohibition of arbitrariness of executive powers</b></p> <p>↕</p> <p>Government subject to checks by independent and permanent human rights State body</p>
<b>Human rights mandate</b>	Broad human rights mandate	<p><i>Is the NHRI mandated with specific functions to both promote and protect human rights?</i></p> <p><i>Is NHRI's mandate interpreted in a broad, liberal and purposive manner?</i></p> <p><i>Does the scope of NHRI action reflect a progressive definition of human rights as set out in international, regional and domestic instruments, including economic, social and cultural rights?</i></p>	<p><b>Respect for human rights</b></p> <p>↕</p> <p>State body legally mandated to promote and protect human rights</p>
	Human rights promotion	<i>Is the NHRI vested with the competence to freely address public opinion, raise public awareness on human rights issues and carry out education and training programs?</i>	<p><b>Non-discrimination and equality before the law</b></p> <p>↕</p> <p>Preventing any unjustified unequal treatment under the law</p>
	Participation in law-making	<i>Is the NHRI vested with the power to examine existing and draft legislation and make recommendations to ensure human rights compliance?</i>	

	Monitoring and reporting functions	<p><i>Does the NHRI regularly monitor, analyse and report on the human rights situation in the country?</i></p> <p><i>Does NHRI monitoring extend to the acts and omissions of both the public and private sectors?</i></p> <p><i>Does the NHRI have the mandate to obtain statements or documents from State authorities in order to assess situations raising human rights issues? Is it able to carry out this function effectively in practice?</i></p>	<p><b>Legality</b></p> <p>↕</p> <p>Accountable and pluralistic process for enacting laws</p> <p><b>Access to justice and effective judicial review</b></p> <p>↕</p> <p>Facilitating access to justice for human rights violations</p>
	Complaints-handling functions	<p><i>Does the NHRI have a mandate to handle complaints?</i></p> <p><i>Is the NHRI equipped to ensure that complaints are dealt with fairly, transparently, efficiently, expeditiously, and with consistency? Is it able to carry out this function effectively in practice?</i></p>	<p><b>Prohibition of arbitrariness of executive powers</b></p> <p>↕</p>
	Investigation functions	<p><i>Does the NHRI have a mandate to carry out investigations in alleged human rights violations, including by the military, police and security officers?</i></p> <p><i>Does the NHRI have the mandate to carry unannounced visits to inspect and examine public premises, documents, equipment and assets without prior written notice?</i></p>	<p>Government subject to checks by independent and permanent human rights State body</p> <p>Open government and access to information</p>
	Recommendation functions	<p><i>Does the NHRI have the mandate to address recommendations to public authorities?</i></p>	<p>Government officials are sanctioned for misconduct</p>

		<p><i>Is there an obligation upon public authorities to respond to NHRIs' recommendations and provide information on follow-up action?</i></p> <p><i>Does the NHRI monitor and report on the implementation of recommendations?</i></p>	
<p><b>Interaction with international human rights system</b></p>	<p>Promoting harmonization of national legislation, regulations and practices with international human rights standards</p>	<p><i>Is the NHRI vested with the responsibility to conduct assessments of domestic compliance with and reporting on international human rights obligations?</i></p>	<p><b>Legality</b></p> <p>↕</p> <p>Ensuring supremacy of the law</p>
	<p>Engaging with international human rights monitoring bodies</p>	<p><i>Does the NHRI assist or participate as independent body in country visits of international human rights monitoring bodies? Does it have the power to submit parallel or shadow reports to such monitoring bodies?</i></p> <p><i>Is the NHRI vested with the responsibility of monitoring the implementation of recommendations originating from international human rights monitoring bodies?</i></p>	<p><b>Legal certainty</b></p> <p>↕</p> <p>Preventing conflicts between national law and international human rights standards</p>
<p><b>Cooperation with other national human rights bodies</b></p>	<p>Engagement with all State bodies responsible for the promotion and protection of human rights</p>	<p><i>Is there a regular, constructive and transparent relationship between the NHRI and other State bodies responsible for the promotion and protection of human rights?</i></p>	<p><b>Prohibition of arbitrariness of executive powers</b></p> <p>↕</p> <p>Government subject to checks by independent and</p>

	<p>Engagement with other human rights defenders (HRDs)</p>	<p><i>Is the NHRI free to engage in a regular, constructive and transparent relationship with other HRDs such as media, civil society and non-governmental organisations?</i></p> <p><i>Is the NHRI free and able to provide support, assistance and protection to HRDs under threat?</i></p>	<p>permanent human rights State body</p> <p>A free and vibrant civic space</p> <p><b>Respect for human rights</b></p> <p>↕</p> <p>Enabling environment for HRDs (freedom of expression and information, freedom of association and assembly)</p>
<p><b>Pluralism</b></p>	<p>Diverse decision-making and staff body</p>	<p><i>Are staff and decision-making level representative of the society's social, ethnic, religious and geographic diversity?</i></p> <p><i>Are selection criteria legislatively established, publicly available and subject to consultation with all stakeholders, including civil society?</i></p> <p><i>Are diverse societal groups involved in the appointment procedure?</i></p>	<p><b>Non-discrimination and equality before the law</b></p> <p>↕</p> <p>Preventing any unjustified unequal treatment under the law</p> <p><b>Prohibition of arbitrariness of executive powers</b></p> <p>↕</p>
	<p>Cooperation with diverse societal groups</p>	<p><i>Is the NHRI free and able to effectively cooperate with diverse societal groups?</i></p> <p><i>Do existing NHRI's advisory committees, networks, consultations or public forums involve participation of diverse societal groups?</i></p>	

	<p>Engagement on all human rights issues on an equal footing</p>	<p><i>Is the NHRI free to appreciate and engage on all human rights issues affecting society with no distinction?</i></p> <p><i>Is the NHRI free and able to ensure accessibility to his work for all citizens?</i></p>	<p>A free and vibrant civic space</p> <p><b>Respect for human rights</b></p> <p>↕</p> <p>Enabling environment for HRDs representing vulnerable and/or minority groups (freedom of expression and information, freedom of association and assembly)</p>
<p><b>Formal and functional independence</b></p>	<p>Guarantees of impartiality and independence in the selection and appointment process</p>	<p><i>Is the selection and appointment clear, transparent and merit-based? Is such process set in legislation, regulations or binding administrative guidelines?</i></p> <p><i>Are efforts made to publicize vacancies including among diverse societal groups?</i></p> <p><i>Is the assessment of applications based on pre-determined, objective and publicly available criteria?</i></p> <p><i>Is the process subject to the control of an independent body and involve open and fair consultation with stakeholders including from civil society?</i></p>	<p><b>Prohibition of arbitrariness of executive powers</b></p> <p>↕</p> <p>Separation of powers</p> <p>Government subject to checks by independent and permanent human rights State body</p> <p>Government officials are sanctioned for misconduct</p>

	<p>Limiting membership and participation of political representatives</p>	<p><i>Can political representatives be members of, or participate in, NHRI's decision-making?</i></p> <p><i>If so, do such persons participate only in an advisory capacity? Is participation restricted to a limited number and/or to those with roles and functions of direct relevance to the work of the NHRI?</i></p> <p><i>Are there guarantees to avoid conflicts of interest and inappropriate influence on decision-making?</i></p>	<p>A free and vibrant civic space</p> <p><b>Respect for human rights</b></p> <p>↕</p> <p>Enabling environment for HRDs (freedom of expression and information, freedom of association and assembly)</p>
	<p>Ability to freely determine priorities and activities</p>	<p><i>Is the NHRI able to freely determine priorities and activities without external influence?</i></p>	
	<p>Experience of threats and attacks</p>	<p><i>Is the NHRI subject to threats or attacks?</i></p> <p><i>Have threats or attacks come from public authorities?</i></p> <p><i>Are prompt and effective investigation brought by the State to bring perpetrators to justice?</i></p>	<p><b>Access to justice and effective judicial review</b></p> <p>↕</p> <p>Facilitating access to justice for human rights violations</p>

<b>Adequate resources</b>	Appropriate level of funding	<p><i>Does NHRI funding ensure the gradual and progressive realisation of NHRI's mandated activities?</i></p> <p><i>Is the NHRI provided with additional resources when designated with additional responsibilities?</i></p> <p><i>Do the resources available to the NHRI also cover premises accessible to the wider community, adequate staff and decision-making level remuneration, well-functioning communication systems?</i></p>	<p><b>Prohibition of arbitrariness of executive powers</b></p> <p>↕</p> <p>Separation of powers</p>
	Sources of funding	<p><i>Does government funding compose the NHRI core funding?</i></p> <p><i>Is such funding regularly and fairly released, under a dedicated budget line?</i></p> <p><i>Can the NHRI benefit from funding from external sources without constriction (e.g. State approval)?</i></p>	<p>Government subject to checks by independent and permanent human rights State body</p> <p><b>Respect for human rights</b></p> <p>↕</p> <p>Enabling environment for HRDs (freedom of expression and information)</p>
	Power to allocate funding	<p><i>Is the NHRI able to freely and autonomously allocate funding according to its own-determined priorities?</i></p> <p><i>Is the NHRI subject to financial accountability requirements applicable to other independent State bodies?</i></p>	