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Committee on Legal Affairs and Human Rights

Updating the Venice Commission Rule of Law Checklist: a contribution by the Assembly

Introductory memorandum

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1. Introduction

1. The present introductory memorandum is based on a motion for a resolution tabled by the Committee on 2 October 2024, which was referred by the Bureau to the Committee for report on 4 October 2024.¹ The Committee appointed me as rapporteur at its meeting on 28 January 2025.

2. The motion recalls that in 2007, the Assembly invited the European Commission for Democracy through Law (Venice Commission) to reflect in depth on the concepts of “rule of law” and “prééminence du droit”.

3. In March 2016, the Venice Commission adopted the Rule of Law Checklist² in close co-operation with the Assembly which prepared a report on the same subject. In its [Resolution 2187 \(2017\)](#), the Assembly decided to endorse the Venice Commission's checklist, to use it systematically in its own relevant work and to recommend to Council of Europe member States to do the same. The Assembly welcomed that there was a consensus as to the core elements covered by the terms “rule of law”, “Rechtsstaat” and “État de droit”, namely: legality, legal certainty, the prohibition of arbitrariness, access to justice, respect for human rights, non-discrimination and equality before the law.

4. Since its adoption, the Rule of Law Checklist has been referred to in numerous resolutions and/or recommendations adopted by the Assembly and in their accompanying reports, including: [Resolution 2188 \(2017\)](#) “New threats to the rule of law in Council of Europe member States: selected examples”, [Recommendation 2121 \(2018\)](#) “The case for drafting a European convention on the profession of lawyer”, [Resolution 2273 \(2019\)](#) “Establishment of a European Union mechanism on democracy, the rule of law and fundamental rights”, [Resolution 2277 \(2019\)](#) “Role and mission of the Parliamentary Assembly: main challenges for the future”, [Resolution 2293 \(2019\)](#) “Daphne Caruana Galizia's assassination and the rule of law in Malta and beyond: ensuring that the whole truth emerges”, [Resolution 2300 \(2019\)](#) “Improving the protection of whistle-blowers all over Europe”, [Resolution 2348 \(2020\)](#) “The principles and guarantees applicable to advocates”, [Resolution 2359 \(2021\)](#) “Judges in Poland and in the Republic of Moldova must remain independent”, [Resolution 2399 \(2021\)](#) “The climate crisis and the rule of law”, [Resolution 2437 \(2022\)](#) “Safeguarding and promoting genuine democracy in Europe”, [Resolution 2460 \(2022\)](#) “The honouring of membership obligations to the Council of Europe by Hungary”, [Resolution 2509 \(2023\)](#) “Transnational repression as a growing threat to the rule of law and human rights”, and [Opinion 303 \(2024\)](#) “Draft Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law”.

* Document declassified by the Committee on 3 March 2025.

¹ Motion number 16059, reference number 4836.

² Venice Commission, [CDL-AD\(2016\)007](#), Rule of Law Checklist.

5. The topicality of these reports shows that the Assembly has consistently stood at the forefront of challenges to the rule of law, often working hand in hand with the Venice Commission. The Rule of Law Checklist has never been intended to be exhaustive, but to facilitate comprehensive, transparent, and objective assessments of the rule of law, mindful of the need for regular updates to reflect new challenges and developments. The global phenomenon of backsliding democracy in recent years, coupled with an unprecedented pace of technological progress, poses new challenges to the rule of law.

6. During its meeting held in Paris, on 10 September 2024, the Committee on Legal Affairs and Human Rights held a hearing with the participation of Mr Kaarlo Heikki Tuori, Honorary President of the Venice Commission and Mr Serhiy Holovaty, Chair of the Sub-Commission on the Rule of Law of the Venice Commission, who informed the committee about the upcoming process of updating the Checklist, which will involve contributions from numerous stakeholders, including the Assembly and civil society organisations.

7. In this document, I will summarise the value of the Rule of Law Checklist, its impact on the rule of law in Europe and make some preliminary proposals for the Assembly's contribution to this update.

2. Value of the Rule of Law Checklist

8. The adoption of the current Checklist was preceded by a rule of law report, adopted already in 2011.³ One of its central ideas was to show the differences between the rule of law and the rule by law. The intention was to demonstrate that the rule of law was not only a political or ideological slogan but a specific legal term corresponding to specific standards. The present Checklist is divided into five main sections. Benchmarks are presented within each of these sections in the form of questions. These sections are: legality, legal certainty, prevention of abuse of powers, equality and non-discrimination, and access to justice. Challenges to the rule of law, namely corruption and collection data and surveillance, are also addressed.

9. The Rule of Law Checklist has become a uniform benchmark to assess the condition of the rule of law in a given State. It aims to build on the universal validity of the rule of law, by providing a structured framework for evaluating its principles within national and international contexts. The checklist emphasises the interconnection between the rule of law, democracy, and human rights – the three founding principles of the Council of Europe. It is primarily focused on assessing legal safeguards but also addresses their practical implementation to ensure the protection of individual rights and proper governance. It encompasses various dimensions of the rule of law such as legality, legal certainty, prevention of abuse of powers, equality before the law, and access to justice. It is aimed at a broad range of actors including parliaments, state authorities, civil society, and international organisations. The checklist also underscores the need for national and international adherence to the rule of law and its implementation, highlighting the role of an independent judiciary and the requirement for effective legal remedies against any breaches of the law.

10. Its application was intended to consider the entire legal, historical, political, and social context of the State being evaluated, ensuring that the rule of law is adapted to the local circumstances while maintaining core universal principles. The checklist's ultimate goal is to ensure that national practices align with international standards, thereby fostering a robust and just legal system globally.

3. Use of the Rule of Law Checklist beyond the Council of Europe

11. The European Commission's Rule of Law Reports, initiated in 2020 under President Ursula von der Leyen,⁴ represent a key point of the EU's strategy to safeguard and promote democratic values. These annual reports monitor compliance with rule of law principles across all 27 Member States, identifying trends and recommending reforms to address systemic risks. The Commission's methodology for preparing the Annual Rule of Law Report explicitly mentions the Venice Commission's Rule of Law Checklist as a relevant standard for assessment.⁵ This includes aspects such as judicial independence, the appointment process for judges, and the efficiency of the justice system. The importance of institutional checks and balances is also reflected in the Commission's reports. The 2023 and 2024 reports, for instance, examine the role of independent institutions like ombudspersons, national human rights bodies, and the role of civil society organisations in safeguarding the rule of law, which aligns with the Rule of Law Checklist's recommendations.

³ [CDL-AD\(2011\)003rev-e](#). Report on the rule of law - Adopted by the Venice Commission at its 86th plenary session (Venice, 25-26 March 2011).

⁴ https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf.

⁵ https://commission.europa.eu/system/files/2023-07/63_1_52674_rol_methodology_en.pdf.

12. The Rule of Law Checklist is also referred to in the groundbreaking regulation on a general regime of conditionality for the protection of the Union budget, which came into force on 1 January 2021.⁶ The principal aim of this instrument is to protect the EU budget from misuse in Member States where rule of law breaches occur. It establishes a direct link between adherence to rule of law principles and access to EU funds, ensuring that European taxpayers' money is spent responsibly and in line with EU values.

13. In the landmark judgments of 16 February 2022 (cases C-156/21 and C-157/21), the Court of Justice of the European Union explicitly referenced the Venice Commission's Rule of Law Checklist, rejecting arguments raised by Poland and Hungary to limit the EU's notion of the rule of law, particularly regarding the protection of fundamental rights and non-discrimination. By referencing the Rule of Law Checklist, the CJEU acknowledges the importance of external benchmarks in shaping the EU's understanding and application of rule of law principles.

14. I believe that the European Union, as a supranational organisation adhering to the principles of the rule of law, just as much as its member States, should also be able to apply the Rule of Law Checklist to its functioning. This could include ensuring that all EU's actions, whether legislative, judicial, or executive, are grounded in clear legal frameworks that respect human rights and the rule of law. Given the EU's growing role in areas such as defence, taxation, and security, it is crucial that human rights and the rule of law are embedded in its institutional structures. I would suggest to the Venice Commission to consider adding specific criteria for assessing the compliance with the rule of law of supranational organisations such as the EU. In the case of the EU, this could help ensure that the EU itself serves as a model for the observance of the rule of law on the global stage.

4. Preliminary proposals for updating the Rule of Law Checklist

15. The Venice Commission's intention to update its Rule of Law Checklist presents an opportunity to strengthen and expand this important tool. On the basis of the recent work of the Parliamentary Assembly, my preliminary analysis leads me to suggest certain improvements in the following areas.

a. The impact of new technologies on the rule of law

16. The Assembly has consistently addressed possible risks and opportunities arising from the development of new technologies, in particular artificial intelligence. In October 2020, the Assembly adopted a set of resolutions and recommendations (based on 7 reports prepared by its different Committees), examining the opportunities and risks of AI for democracy, human rights and the rule of law. The Assembly endorsed a set of key ethical principles that should be respected when developing and implementing AI applications. These principles, which were further elaborated in a common appendix to the reports, are: transparency, including accessibility and explicability; justice and fairness, including non-discrimination; human responsibility for decisions, including liability and the availability of remedies; safety and security; and privacy and data protection. In each of the situations examined in its reports, the Assembly concluded that legal regulation was necessary in order to avoid or minimise the potential risks to democracy, human rights and the rule of law.

17. Although AI has the potential to contribute to the efficiency of justice by enhancing the quality and speed of legal research, AI can also impact the functioning of the rule of law, including the independence and integrity of the judiciary and access to justice. For instance, the use of AI by the police and criminal justice systems raises serious issues with regard to the principles of human responsibility for decision-making, justice and fairness.⁷ Such technology provides the tools to interfere with the procedures and processes of democracies and undermine democratic institutions.⁸ The use of AI, and its potential for abuse by States and by private actors, poses a real threat to the institutions, processes, and norms of our rights-based democracies.

18. The Assembly strongly advocated in favour of a binding international instrument governing the use of that technology, recognising AI's potential to disrupt the functioning of democratic institutions and processes, for instance through interference in electoral processes, misinformation and manipulation of public opinion. In

⁶ Recital 16, Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget (OJ 2020 L 433I, p. 1, and corrigendum OJ 2021 L 373).

⁷ See [Resolution 2342 \(2020\)](#) "Justice by algorithm – The role of artificial intelligence in policing and criminal justice systems".

⁸ See [Opinion 303 \(2024\)](#) "Draft Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law".

fact, the Council of Europe Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law (CETS No. 225) is intended to protect not only human rights but also democratic processes and the rule of law in the context of AI. Its Article 5 obliges Parties to adopt or maintain measures that seek to ensure that artificial intelligence systems are not used to undermine the integrity, independence and effectiveness of democratic institutions and processes, including the principle of the separation of powers, respect for judicial independence and access to justice. Citizens should have the ability to freely form an opinion on matters of public relevance and act on it. They should equally have the capacity to affect decisions made on their behalf. The Explanatory Report to this Convention clarified that this could refer to, for example, general cybersecurity measures against malicious foreign interference in the electoral process or measures to address the spreading of misinformation and disinformation. In its Opinion on the Draft Framework Convention, the Assembly noted that the interpretation of “democratic institutions and processes” and “the rule of law” within the meaning of framework convention should be guided by the relevant standards developed by the European Court of Human Rights and the Venice Commission.

19. On 6 December 2024, the Constitutional Court of Romania annulled the results of presidential elections. Relying on information from Romania’s intelligence agencies, it held that voter manipulation and distortion of equal opportunities for electoral competitors was discovered, through the non-transparent use of digital technologies and artificial intelligence in the electoral campaign, in violation of the electoral legislation, as well as through the financing of the electoral campaign from undeclared sources, including online. In response to this ruling, the President of the Parliamentary Assembly requested an urgent opinion of the Venice Commission on the cancellation of election results by constitutional courts. In its urgent report,⁹ the Venice Commission referred to the Interpretative declaration of the Code of good practice in electoral matters¹⁰ and recommended that States regulate the consequences of information disorders, cyber-attacks and other digital threats on electoral integrity. The Venice Commission further recommended that regulations should be implemented to ensure that artificial intelligence systems by internet intermediaries do not favour certain parties or candidates over others.

20. In my view, the Venice Commission should consider addressing these aspects in the updated Rule of Law Checklist. This could involve updating the relevant benchmarks (e.g. access to justice) and introducing a specific section devoted to new technologies. There is no doubt that the development of new technologies, in particular artificial intelligence, is an example of contemporary challenges to the Rule of Law, including in the electoral context. While analysing the impact of new technologies on the rule of law, including their use by public authorities, the Venice Commission should strive for the implementation of the key ethical principles endorsed by the Assembly (see paragraph 15 above) and the standards laid down in the new Council of Europe Framework Convention. I welcome the fact that the Venice Commission has already addressed some of these issues in its recently adopted Interpretative declaration of the Code of good practice in electoral matters as concerns digital technologies and artificial intelligence. I would also point out that the PACE Committee on Political Affairs and Democracy is in the course of preparing a report entitled “Protecting democracy from disruptions caused by artificial intelligence”, which might be of further interest to the Venice Commission.¹¹ Other PACE Committees are also working on different topics related to AI: migration and gender equality.

21. With regard to new surveillance technologies, the Rule of Law Checklist should also address the new challenges posed by spyware such as Pegasus. It could for instance draw on its recently adopted “Report on a rule of law and human rights compliant regulation of spyware”, adopted at its 141st plenary session (Venice, 6-7 December 2024) at the request of the former President of the Assembly (in the context of the follow-up to Resolution 2513 (2023) “Pegasus and similar spyware and secret State surveillance”).

b. The impact of private power and influence on the rule of law

22. The rule of law is meant to protect individuals from the arbitrary exercise of power. Although recent years have brought the focus on violations of the rule of law by public authorities, the possible impact of private power on the shaping of legal norms has emerged as another significant concern. The rapid pace of technological progress, coupled with an unprecedented concentration of capital, have deepened economical gaps and led to a situation in which the richest 1 percent have more wealth than the bottom 95 percent of the

⁹ Venice Commission, CDL-PI(2025)001, Urgent report on the cancellation of election results by constitutional courts.

¹⁰ Venice Commission, CDL-AD(2024)044, Interpretative declaration of the Code of good practice in electoral matters as concerns digital technologies and artificial intelligence.

¹¹ Doc. 15978 “Protecting democracy from disruptions caused by artificial intelligence” (Rapporteur: Ms Deborah Bergamini, Italy, EPP/CD).

world's population put together.¹² This inevitably leads to private actors – such as corporations and holders of massive wealth – gaining substantial influence over societal, economic, and political dynamics. This influence raises critical questions about accountability, transparency, and the potential for arbitrary power, which fundamentally challenge the principles underpinning the rule of law. As evidenced by recent events in the United States, private actors can wield comparable levels of influence as public authorities, leading to situations where their actions may not be subject to the same checks and balances that govern State conduct. This can result in significant risks, such as increasing the risk of corruption, lack of accountability,¹³ and exploitation of vulnerable individuals.

23. The current wording of the Rule of Law Checklist includes a reference to private entities, but only in so far as these entities act as outsourcers of public authority. The Venice Commission should elaborate a set of criteria that evaluate the level of protection of individuals against an arbitrary exercise of power by private actors or the risks arising from their activities. Already existing measures such as consumer protection, environmental protection, labour law guarantees and competition law are, in essence, about tempering the power of private actors vis-à-vis individuals. The existence of such protective measures underscores that while private power is necessary for economic development, it must be regulated to prevent abuses that undermine public interests. States have positive obligations to protect human rights, democracy and the rule of law vis-à-vis private actors, in accordance with the European Convention on Human Rights, relevant Council of Europe standards and other international human rights texts.¹⁴ As societies continue to evolve in response to globalisation and technological advancements, adapting legal norms to encompass the complexities of private power and influence will be crucial for upholding the principles of justice and equality inherent in the rule of law.

c. Respect for international law: the international rule of law

24. The Russian invasion of Ukraine, initiated in 2014 before reaching its full scale in February 2022, violated the legal and moral norms that govern the peaceful coexistence of States (see PACE Opinion 300 (2022)). War unleashed by the regime of Vladimir Putin exposed Russian Federation's blatant disregard for its international legal obligations, including the United Nations Charter and norms of international humanitarian law. Attacks against civilian infrastructure, schools, hospitals and residential buildings have become widespread, as Russia's frustration at the Ukrainian resilience grew. Ukrainian prisoners of war are subjected to starvation, charged with fabricated offences and often tortured. Despite a staggering number of evidence of Russian troops committing war crimes, their perpetrators enjoy complete impunity. The Russian Federation's war of aggression against Ukraine has been described by the Assembly as "the most brutal violation of the rules-based international order in recent history".¹⁵

25. Although the Rule of Law Checklist contains a section on the relationship between international and domestic law, the experience of the recent past suggests that it should be expanded in this regard. States should be required to demonstrate adherence to their international legal obligations including those stemming from the UN Charter (first and foremost the prohibition of the threat or use of force against another state and of acts of aggression) as well as norms of international humanitarian law. The Checklist should also verify, based on objective criteria, their fulfilment of other international obligations, such as the duty to cooperate with the International Criminal Court for States Parties to the Rome Statute; implementation of decisions of international courts or tribunals, or bodies established by an international organisation. A commitment to uphold the mandate of international justice and other accountability mechanisms for violations of international law should be inherent in any State that adheres to the rule of law.

d. Addressing post-crisis and transitional situations

26. Since the adoption of the Rule of Law Checklist, our societies have faced unprecedented crises, such as the use of hybrid tools by totalitarian regimes to destabilise States, the Covid-19 pandemic, the Russian Federation's full-scale invasion of Ukraine, climate change and democratic backsliding. The Venice Commission, through the creation of its Observatory of situations of emergency in the Venice Commission member States, has made an excellent contribution to compiling experiences of different States in dealing with a public health crisis. Although the Rule of Law Checklist contains a chapter on exceptions in emergency

¹² <https://www.oxfam.org/en/press-releases/worlds-top-1-own-more-wealth-95-humanity-shadow-global-oligarchy-hangs-over-un>.

¹³ Veraldi, J., Private Power, the Rule of Law and the European Union (July 19, 2023). Hague Journal on the Rule of Law (2023) 15, pp. 471–491, available at <https://ssrn.com/abstract=4515322>.

¹⁴ See Recommendation CM/Rec(2016)3 of the Committee of Ministers to member states on human rights and business; United Nations Guiding Principles on Business and Human Rights.

¹⁵ Resolution 2581 (2025) "The need for a renewed rules-based international order".

situations, it does not explicitly address a very specific context of returning to the *status quo* in post-crisis situations and democratic transitions – resulting either from historical changes or reversing the process of democratic backsliding.

27. In recent times, the Venice Commission has been seized for several opinions associated with what became widely referred to as a rule of law crisis in Poland.¹⁶ Assessing far-reaching judicial reforms enacted in the aftermath of parliamentary elections of October 2015, the Venice Commission noted that the reforms “enable the legislative and executive powers to interfere in a severe and extensive manner in the administration of justice, and thereby pose a grave threat to the judicial independence as a key element of the rule of law”.¹⁷ A new government, appointed in December 2023, announced an Action Plan aimed at restoring the rule of law in Poland. While acknowledging that no comparable situation has occurred in the past, the Venice Commission explicitly stated that the restoration of the rule of law should not itself cause a breakdown of the system and should not itself infringe the principles of the rule of law.¹⁸

28. Experience drawn from the process of reinstating the rule of law should be reflected in the updated Rule of Law Checklist. Similarly, relying on its past work in assisting States in processes of democratisation, the Venice Commission could consider developing criteria that would be helpful in assessing the compliance with the rule of law in post—transitional situations. This could cover transitions in countries emerging from armed conflicts (international or internal) or authoritarian rule, for instance criteria on how to ensure accountability and redress for past human rights violations, prevent future abuses and promote truth and reconciliation. The Assembly has recently called for more action by the Council of Europe in this area, through the establishment of a mediated process under the auspices of the Organisation, to help to address the conflicts of the past and to promote reconciliation and reparation in relation to conflicts between Council of Europe member States.¹⁹ The development of new criteria for post-conflict situations based on the rule of law would be a valuable contribution by the organisation and would fill an existing gap. It could also have a potential global reach, given the current membership of the Venice Commission.

e. Accessibility

29. The revision of the Rule of Law Checklist might also become an opportunity to enhance its practical application and accessibility. This could include providing more concrete guidance on how to measure and assess compliance with the rule of law principles mentioned in each of its sections, in different national contexts. At present, the Checklist contains only a brief explanation of each section, thus exposing itself to criticism that it does not adequately account for the existing diversity of legal systems.²⁰ Relying on its voluminous body of work concerning various national contexts, the Venice Commission could refer to its past opinions pertaining to particular points in the Checklist, as indicators of the relevant benchmark. This would allow for the Checklist to become more applicable in practice and demonstrate certain flexibility in the interpretation of particular sections.

5. Preliminary conclusions and proposal for further work

30. In sum, my preliminary proposals for updates to the Venice Commission’s Rule of Law Checklist aim to address contemporary challenges that can impact the rule of law, including technological progress, the influence of private power, threats to the rules-based international order, the conditions in post-crisis or transitional situations, and the growing powers of supranational organisations such as the EU. These updates are essential to maintaining the Checklist as a comprehensive, transparent, and objective tool for evaluating the respect for the rule of law, thereby fostering just governance worldwide.

31. I welcome the fact that the Venice Commission seeks to ensure that the Assembly’s contribution is taken into account in this exercise. In order to finalise my work and complete the report, in the coming months, I

¹⁶ See *Grzęda v. Poland* [GC], no. 43572/18, § 15, 15 March 2022.

¹⁷ Venice Commission, CDL-AD(2017)031, Poland - Opinion on the Draft Act amending the Act on the National Council of the Judiciary; on the Draft Act amending the Act on the Supreme Court, proposed by the President of Poland, and on the Act on the Organisation of Ordinary Courts. See also: Venice Commission, CDL-AD(2020)017, Poland - Urgent Joint Opinion of the Venice Commission and the DGI of the Council of Europe on amendments to the Law on the Common courts, the Law on the Supreme court and some other Laws.

¹⁸ Venice Commission, CDL-AD(2024)029, Poland – Joint Opinion of the Venice Commission and the DGI of the Council of Europe on European standards regulating the status of judges.

¹⁹ Resolution 2559 (2024) “Reparation and reconciliation processes to overcome past conflicts and build a common peaceful future: the question of just and equal redress”.

²⁰ J. Polakiewicz and J. Sandvig, ‘The Council of Europe and the Rule of Law’ in W. Schroeder (ed), *Strengthening the Rule of Law in Europe: From a Common Concept to Mechanisms of Implementation* (Hart Publishing 2016) 130.

would like to organise a hearing with participation of experts, possibly also inviting representatives of the Venice Commission to an exchange of views. By addressing new challenges and building on past experience, we can ensure that the updated Rule of Law Checklist remains a vital tool for safeguarding democracy, human rights, and the rule of law in the evolving global context.

32. Finally, I propose that this introductory memorandum be declassified immediately after its consideration by the committee and shared with the Venice Commission as a preliminary contribution to its work.