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Or. Engl.

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**OF THE COUNCIL OF EUROPE**  
**(VENICE COMMISSION)**

**BRIEF**

**TO THE CONSTITUTION COMMITTEE OF THE HOUSE OF LORDS OF  
THE UNITED KINGDOM**

**IN RELATION TO ITS INQUIRY INTO THE RULE OF LAW**

**Issued on 14 May 2025 pursuant to Article 14a  
of the Venice Commission's Revised Rules of Procedure**

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## I. Introduction

1. The Constitution Committee of the House of Lords of the United Kingdom, chaired by Lord Strathclyde, is conducting an inquiry into the rule of law. The Committee has invited interested organisations and individuals to submit written evidence to the inquiry by 15 April 2025. At its 142<sup>nd</sup> session on 14-15 March 2025, the Venice Commission of the Council of Europe decided to prepare a brief for urgent submission.

2. This brief was issued on 14 May 2025 pursuant to Article 14a of the Venice Commission's Revised Rules of Procedure and in accordance with the Venice Commission's protocol on the preparation of urgent opinions ([CDL-AD\(2018\)019](#)) and will be presented to the Venice Commission for endorsement at its 143<sup>rd</sup> Plenary Session (online, 13-14 June 2025).

## II. Submission

3. The Venice Commission submits the comments below and the materials attached by way of response to the Committee's call for evidence published on 12 March 2025. Although the Commission does not purport to comment on the particular context of the United Kingdom it is hoped that its response will be of assistance to the Committee in the consideration of the Questions it has raised and, in particular, in relation to Questions 1 ii) and iii), 3 to 7 and 9.

4. The European Commission for Democracy through Law - better known as the Venice Commission - is the Council of Europe's advisory body on constitutional matters, counting 61 members: the 46 Council of Europe member States, plus 15 others.<sup>1</sup> It was created after the fall of the Berlin wall to develop and disseminate common European standards in the field of constitutional law – the European constitutional heritage. The role of the Venice Commission is to provide legal advice to its member states and, in particular, to help states wishing to bring their legal and institutional structures into line with European and international standards in the fields of democracy, human rights and the rule of law, the three pillars of the Council of Europe.

5. In 2011 the Venice Commission carried out a detailed study on the concept of the Rule of Law in an attempt to identify a definition of its core elements and its subsequent report was adopted by the Commission at its 86<sup>th</sup> Plenary Session ([CDL-AD\(2011\)003rev](#)) ("the 2011 VC Report").

6. The purpose of the 2011 VC Report was to assist international organisations, and both domestic and international courts, in interpreting and applying what is widely recognised as a fundamental value in all democratic systems. It gave careful consideration to the historical origins of the Rule of Law and paid particularly close regard to the work of Professor A.V. Dicey in relation to the law of the United Kingdom, related concepts recognised in French and German legal history, and more recent domestic and international articulations of such concepts.

7. The Commission reviewed a wide range of domestic legal systems, international instruments, domestic constitutions and legal and political writing. In the light of this review the Commission concluded that a consensus could be found as to the necessary elements of the Rule of Law which were not only formal, but also substantive. These were (1) Legality, including a transparent, accountable and democratic process for enacting law; (2) Legal certainty, including the principle against retrospectivity, so as to allow public and private actors properly to regulate their conduct; (3) Prohibition of arbitrariness in the exercise of public power; (4) Access to justice before independent and impartial courts, including judicial review of administrative acts; (5) Respect for human rights; and (6) Non-discrimination and equality before the law.

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<sup>1</sup> See [Member states - Venice Commission](#).

8. The 2011 VC Report also contained, as an annex, a first version of a short form checklist for evaluating the state of the rule of law in single states, identifying key questions falling for consideration in relation to each of the six elements referenced above.

9. In March 2016, following further extensive studies, a workshop on the rule of law organised in Oxford on 23-24 September 2011 by the Bingham Centre for the Rule of Law and the Oxford All Souls College, a conference on “The Rule of Law as a practical concept” organised at Lancaster House on 2 March 2012 by the Venice Commission in co-operation with the Foreign and Commonwealth Office of the United Kingdom and the Bingham Centre for the Rule of Law; and a number of developments referencing the rule of law at both the European and the United Nations level, the Venice Commission produced a further substantive document, The Rule of Law Checklist [CDL-AD\(2016\)007](#) (“The 2016 Checklist”). The 2016 Checklist expanded on the work of the 2011 Report and contained the following core observations and conclusions each of which the Commission takes this opportunity to endorse and confirm:

- (1) The Rule of Law was a concept of universal validity reflected in the work of the United Nations, the Organization of American States, the African Union, the Arab League, the Council of Europe and the European Union (see [9]-[14]);
- (2) The notion of the Rule of Law required a system of certain and foreseeable law, where everyone had the right to be treated by all decision makers with dignity, equality, rationality and in accordance with the laws, and to have the opportunity to challenge decisions before independent and impartial courts through fair procedures. The consensus identified in the 2011 VC Report and summarised above remained valid (see [15, 18]);
- (3) The Rule of Law and human rights were properly described as inextricably interlinked. The Commission considered that the Rule of Law would be an “empty shell” without permitting access to human rights and that the protection and promotion of human rights were only capable of being realised through respect for the Rule of Law. In addition, the Commission was of the view that the Rule of Law and a series of individual human rights directly overlapped, with the most obvious examples being the right to a fair trial (including access to an independent and impartial court), the right to equal treatment, the right to dignity, the right to liberty, the right not to be the subject of retrospective sanction, the right to freedom of expression, the right to freedom from torture and the limited derogations permitted in emergency contexts (see e.g. [31, 34, 38, 52, 62, 64, 69, 70, 73, 74-107]);
- (4) There were, in contrast, significant risks in an overly formalistic approach to the Rule of Law which might merely require that actions of public authorities be authorised by law. “Rule by law” and similar concepts would involve a distortion of what was meant by the Rule of Law (see [15]);
- (5) The enjoyment of individual human rights could be affected by public authorities, hybrid public – private actors and private entities as well as by international and supra national organisations. Rule of Law principles had to apply in all such areas and required, inter alia, consideration of the nature and extent (and if necessary, development) of positive obligations owed by States in the protection and promotion of human rights (see [16-17, 34-36]);
- (6) The Checklist did not purport to be exhaustive or final: it aimed to cover the core elements of the Rule of Law. It could change over time and new issues might arise which would particularly require its revision. The Commission accordingly undertook to carry out regular updating of the Checklist (see [31]).

10. The 2016 Checklist has since been endorsed and cited on numerous occasions by a range of bodies including the Committee of Ministers of the Council of Europe,<sup>2</sup> the Parliamentary Assembly of the Council of Europe (“PACE”)<sup>3</sup>, the Congress of Local and Regional Authorities of the Council of Europe (“CLRAE”),<sup>4</sup> the Court of Justice of the European Union (“CJEU”)<sup>5</sup> and the European Court of Human Rights (“ECHR”)<sup>6</sup> as well as the Venice Commission itself.<sup>7</sup> The Reykjavik Declaration, adopted at the 4<sup>th</sup> Summit of Heads of State and Government of the Council of Europe (May 2023), called for “*raising the profile of, and strengthening, the Venice Commission, for example by giving more visibility and status to its Rule of Law Checklist and exploring ways the Organisation can better support the implementation of its recommendations*”. In its action plan for implementation of the Reykjavik Declaration, the Committee of Ministers of the Council of Europe also called for the updating of the 2016 Checklist.

11. The 2016 Checklist is intended to provide a tool for assessing the Rule of Law in a given country from the viewpoint of its constitutional and legal structures, the legislation in force and the existing case-law. The checklist aims at enabling an objective, thorough, transparent and equal assessment.

12. The 2016 Checklist is mainly directed at assessing national legal safeguards for the Rule of Law. However, it is also recognised that the rule of law cannot be fully realised without a supportive legal and political culture, free media and vigilant civil society. Where appropriate, these prerequisites have been taken into consideration in the benchmarks which it sets out.

<sup>2</sup> The Checklist was endorsed by the Ministers’ Deputies of the Council of Europe at its 1263<sup>rd</sup> Meeting (6-7 September 2016).

<sup>3</sup> The Checklist was endorsed by the Parliamentary Assembly of the Council of Europe at its 4th part Session (11 October 2017); see Resolution 2187(2017), based on the report prepared by Philippe Mahoux (Doc. 14387, 17 July 2017). The Checklist has been referred to in numerous resolutions and/or recommendations adopted by the Parliamentary Assembly (PACE) 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”.

<sup>4</sup> The Checklist was endorsed by the Congress of Local and Regional Authorities of the Council of Europe at its 31<sup>st</sup> Session (19-21 October 2016).

<sup>5</sup> See for example the judgment of the Full Court of 16 February 2022 in Case C-156/21 (ECLI:EU:C:2022:97) in which the Court of Justice rejected the actions for annulment brought by Hungary and Poland against the so-called Budgetary Conditionality Regulation. See also C-157/21 Judgment [ECLI:EU:C:2022:98](#), 16/02/2022, *Poland v Parliament and Council*; and C-156/21 Judgment [ECLI:EU:C:2022:97](#), 16/02/2022, *Hungary v Parliament and Council*.

<sup>6</sup> See for example the Grand Chamber judgment of the Court in the case of *Grzęda v. Poland* (judgment of 15 March 2022, application no. 43572/18) in which the Court found a violation of Article 6 ECHR as there was a lack of judicial review for the shortening of office terms of the judicial members of the National Council of the Judiciary in Poland. See also *Guðmundur Andri Ástráðsson v. Iceland*, Application no. 26374/18, 1 December 2020.

<sup>7</sup> From 2016 to 2023, the Checklist was referred to in 125 Opinions and Reports, including [CDL-AD\(2023\)004](#), Ukraine - *Amicus curiae* brief on certain questions related to the procedure for appointing to office and dismissing the Director of the national anti-corruption Bureau and the Director of the State Bureau of investigation; [CDL-AD\(2022\)048](#), Armenia - *Amicus curiae* brief for the Constitutional Court of Armenia on certain questions relating to the law on the forfeiture of assets of illicit origin; [CDL-AD\(2022\)002](#), Armenia - Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft laws on making amendments to the constitutional law on the Judicial Code and to the constitutional law on the Constitutional Court; [CDL-AD\(2021\)005](#), Russian Federation - Interim Opinion on constitutional amendments and the procedure for their adoption; and [CDL-AD\(2021\)032](#) - Serbia - Opinion on the draft constitutional amendments on the judiciary and the draft constitutional law for the implementation of the constitutional amendments.

13. Since the Venice Commission is a body of the Council of Europe, the 2016 Checklist emphasises the legal situation in Europe, as expressed in particular in the case-law of the ECtHR and CJEU. The Rule of Law is however seen by the Commission to be a universal principle, and this document also refers, where appropriate, to developments at a global level as well as in other regions of the world, in particular in part III enumerating international standards.

14. Assessing whether the standards have been met in turn requires sources of verification. For legal standards, these will be the law in force, as well as, for example, in Europe, the legal assessments of those standards by the ECtHR, the CJEU, the Venice Commission, Council of Europe monitoring bodies, the Commission and the Council of the European Union and other institutional sources. For the analysis of the standards relating to the operation of the rule of law in practice, multiple sources will have to be used, including institutional ones such as the European Commission for the Efficiency of Justice (“CEPEJ”) and the European Union Agency for Fundamental Rights as well as other reporting bodies, including international organisations and non-governmental organisations.

15. The 2016 Checklist is accordingly meant as a tool for a variety of actors who may decide to carry out a relevant rule of law assessment. These may include Parliaments, Governments, domestic courts and other State authorities when addressing the need for, and content of, legislative reform, civil society and international organisations, including regional ones – notably the Council of Europe and the European Union.

16. In line with the Commission’s 2016 undertaking to update the Checklist, the Reykjavik Declaration of 2023 and the call of the Committee of Ministers in October 2024, the Commission established a group of experts, from within the Commission’s current Members and Substitute Members to consider that updating, having regard to particular challenges and developments identified since the 2016 Checklist.

17. In its preparatory work, the Venice Commission expert group has received feedback and suggestions for updating the checklist from a wide range of stakeholders. PACE has organised two hearings (in July and September 2024). The first hearing was open, in particular, to relevant civil society organisations. In addition to the contributions from those organisations, written input has been provided by 21 Member States of the Venice Commission, the Congress of Local and Regional Authorities, the Committee of Human Rights and Legal Affairs of PACE, the European Court of Human Rights, the Consultative Council of European Judges (CCJE), the Group of States against Corruption (“GRECO”), the Access Info Group (AIG, Tromsø Convention), the Committee of Convention 108+ (Data Protection), the Advisory Council of Youth (CCJ), the European Commission, the European Union Agency for Fundamental Rights, members and substitute members of the Venice Commission and the Association of Former Members of the Venice Commission. Concrete proposals have also been received from a range of other entities including ombudsman organisations, the UN Special Rapporteur on the independence of judges and lawyers, and civil society organisations. In the drafting process, four academic seminars have been or will also be organised by the Venice Commission and its partners: on respect for the judgements of constitutional courts (Yerevan, 14-15 November 2024); on private powers (Madrid, 28-29 November 2024); on transnational constitutional standards (Venice, 12 March 2025); and on “The Venice Commission 1990-2025 – Taking stock of 35 years of democracy through law” (Milan, 15-16 May 2025).

18. The recent developments since the 2016 Checklist which have been considered for the purpose of the updating exercise include the following:

- (1) examples in certain jurisdictions of the rise of illiberalism and an associated threat to minority rights;
- (2) instances of regression in the protection of the rule of law in certain jurisdictions and the dilemmas later presented by measures designed to restore it;

- (3) rapid developments and advances in digitalisation and artificial intelligence;
- (4) further problems linked with data protection and arising from greater surveillance capacities of both state and private actors;
- (5) the rise in influence of social media (in particular when using new technologies) on public opinion especially during electoral processes;
- (6) the need to ensure adequate legal and civic education on the Rule of Law;
- (7) the emergence of further examples of significant power being vested in the hands of private actors particularly in the areas of technology – including internet intermediaries and online platforms - and media ownership); and
- (8) unexpected emergency situations as illustrated by the Covid-19 pandemic.

### **III. Conclusion**

19. The Commission is pleased to have participated in this call for evidence and, if it would be of assistance, it undertakes to provide further updates to the Committee as its work on updating the 2016 Checklist progresses. In the meantime, it is hoped that the VC 2011 Report, the 2016 Checklist and the summary provided above will be of assistance to the Committee in its important Inquiry.

20. The Venice Commission remains at the disposal of the Committee for further assistance in this matter.