

4. GOVERNANCE OF THE POLICY CYCLE

Rule of law

Modern societies require stability and a clear system for resolving conflicts both within a community and between people and the state. The rule of law is one of the foundations of democratic governance, ensuring that the same rules, standards, and principles apply to all individuals and organisations, including the government itself. The rule of law requires that everyone is treated equally in accordance with the law and receives fair treatment from independent and impartial courts (Venice Commission, 2011). The legal culture is enshrined in laws, codes, statutes, traditions, rulings procedures and international agreements. Strengthening the rule of law is an essential prerequisite for ensuring the effective provision of public goods and services, for promoting economic development, maintaining peace and order, and ensuring accountability in the case of integrity breaches and corruption.

Judicial independence guarantees that judges are free to decide openly and impartially without fear of interference. On average, only 42.1% of respondents to the OECD Trust Survey expect that a court in their country be impartial on a decision that could negatively influence the government's image. Perceptions are most positive in Ireland (58%), Denmark (56%) and the Netherlands (53%), where more than half of respondents expect the judiciary to make decisions free from political influence (Figure 4.13).

Additional sources of data provide a more comprehensive picture. The World Justice Project (WJP) Rule of Law Index assesses several dimensions of the rule of law. During the COVID-19 pandemic, governments temporarily restricted parts of citizens' liberties and introduced exceptional governance procedures. Once government restrictions and emergency measures had been lifted, OECD countries fared slightly better on the index than before the pandemic and this may indicate a high level of resilience and the adaptability of their institutional frameworks and legal systems (Grogan 2022; WJP 2022).

Most OECD countries score highly across the WJP index dimensions. The *constraints on government powers* dimension of the WJP index measures the ability to exercise checks and controls on other parts of the government (i.e. effective horizontal accountability) and non-government checks such as a free and independent press; accountability and sanctioning of government officials; and transition of power subject to the law. The *fundamental rights* dimension covers how far governments abide by international human rights established under the United Nations Universal Declaration of Human Rights, including rights to equal treatment and absence of discrimination, to life and security, and to freedom of opinion and expression. The two dimensions are highly correlated across countries. With scores above or close to 0.9 (where 0 is the weakest and 1 the strongest adherence to the rule of law) Nordic countries are top performers on both dimensions (Figure 4.14).

Methodology and definitions

The Rule of Law Index captures eight dimensions: 1) *constraints on government powers*; 2) *absence of corruption*; 3) *open government*; 4) *fundamental rights*; 5) *order and security*; 6) *regulatory enforcement*; 7) *civil justice*; and 8) *criminal justice*. The World Justice Project collects nationally representative samples (some countries restrict their sample to major urban areas) in a mix of face-to-face/online surveys and local expert interviews in each country. Data are available for 36 OECD countries as well as 1 accession country (Brazil) and 4 strategic partners. All country scores are normalised to a range between 0 (weakest adherence to the rule of law) and 1 (strongest adherence to the rule of law) and component scores are aggregated using simple averages.

The OECD explores perceptions of public governance using nationally representative data from the OECD Trust Survey conducted across 22 countries. Most countries were surveyed in November-December 2021, with a few surveys taking place in 2020 and January-March 2022.

Further reading

Grogan, J. (2022), "COVID-19, The Rule of Law and Democracy. Analysis of Legal Responses to a Global Health Crisis", *Hague Journal on the Rule of Law*, Vol. 14/2-3, pp. 349-369, <https://doi.org/10.1007/s40803-022-00168-8>.

WJP (2022), *Rule of Law Index 2022*, World Justice Project, Washington, DC, <https://worldjusticeproject.org/rule-of-law-index/downloads/WJPIndex2022.pdf>.

Venice Commission (2011), *Report on the Rule of Law*, Venice Commission of the Council of Europe, [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)003rev-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)003rev-e).

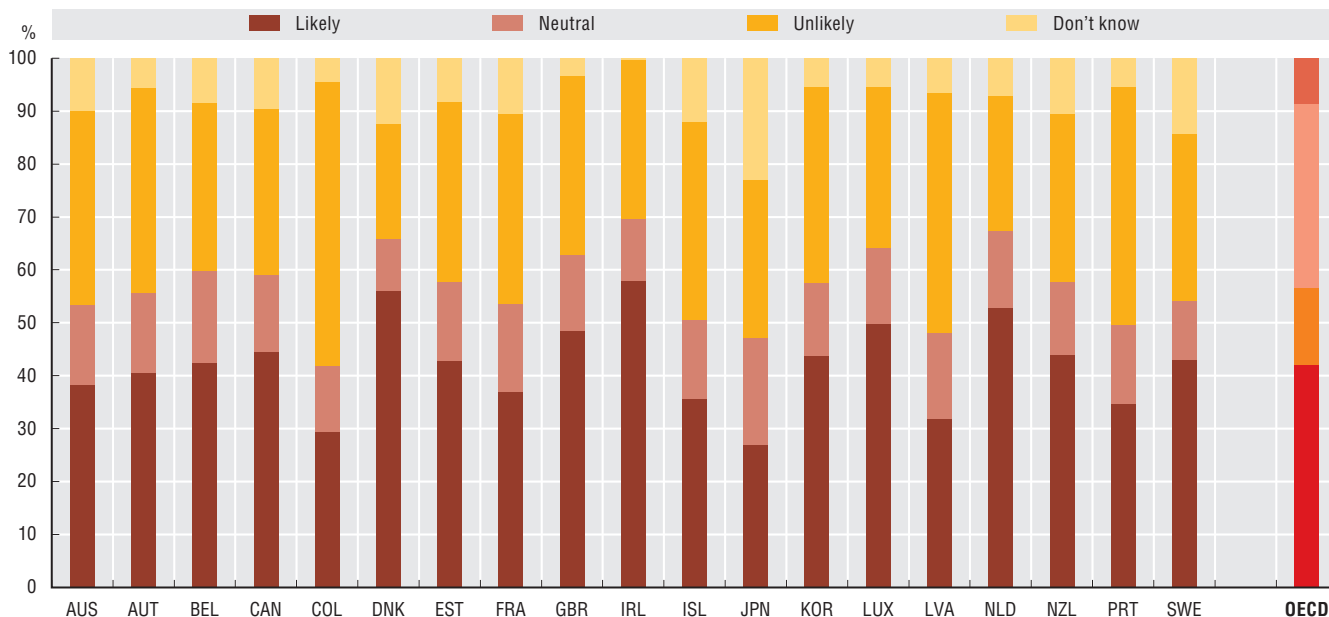
Figure notes

4.13. Refers to the question "If a court is about to make a decision that could negatively impact on the government's image, how likely or unlikely do you think it is that the court would make the decision free from political influence?". "Likely" corresponds to responses of 6-10 on a 0-10 scale, "Neutral" to 5 and "Unlikely" to 0-4; "Don't know" was a separate option. "OECD" presents the unweighted average across countries. Data for Finland, Mexico and Norway are not available.

4.14. Data for Iceland, Israel and Switzerland are not available. Latvia, Lithuania, Luxembourg and the Slovak Republic were included for the first time in 2022.

4.13. Trust in judicial independence, 2021

Share of respondents reporting different levels of perceived likelihood that a court would make a decision that could negatively affect the government's image

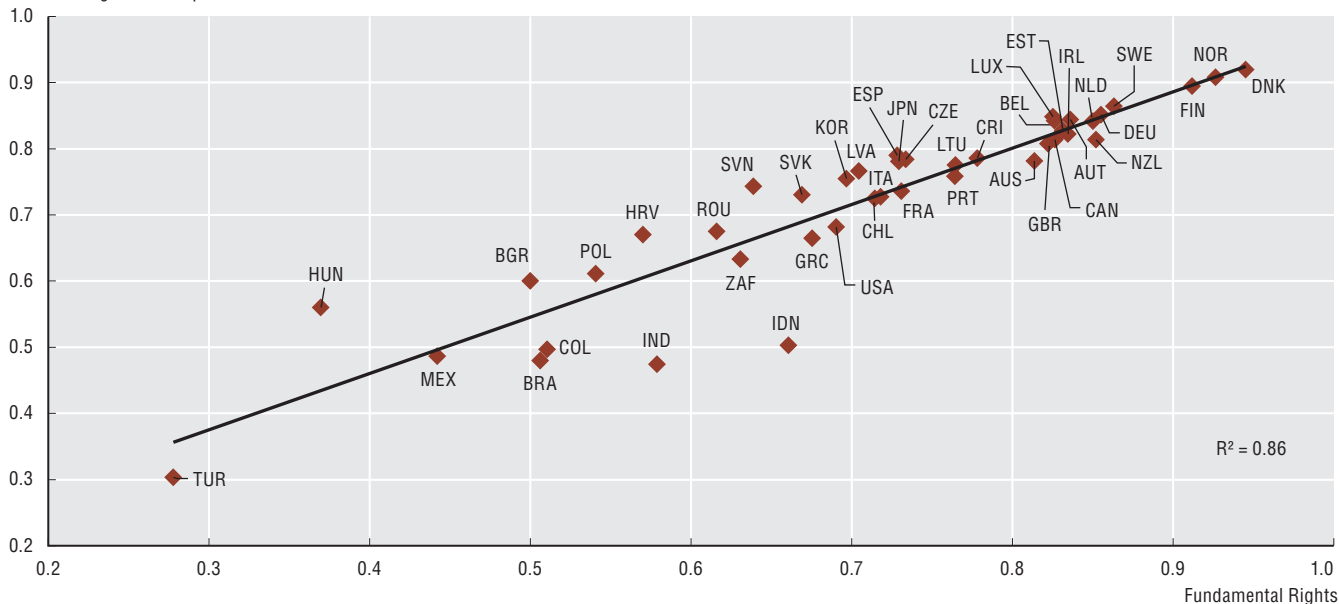


Source: OECD Trust Survey (<http://oe.cd/trust>).

StatLink <https://stat.link/csabjz>

4.14. Limited government powers versus fundamental rights, 2022

Constraints on government powers



Source: WJP (2022), Rule of Law Index 2022.

StatLink <https://stat.link/71z5n4>



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