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2023 Rule of Law Report Country Chapter on the rule of law situation in Belgium

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2023 Rule of Law Report

The rule of law situation in the European Union

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ABSTRACT

The independence of the judiciary is expected to increase further with the transfer of budgetary management powers from the executive to the judiciary planned for 2024. Following criticism by the High Council for Justice, the Government is now reflecting on revisions to the proposal to introduce regular security checks conducted by the National Security Agency on all judges, which would otherwise raise concerns. Concerning budgetary and staff shortages in the justice system despite important investments and initiatives, structural resource deficiencies persist. New binding directives prohibit the recording of meetings between lawyers and clients, safeguarding lawyer-client confidentiality. A number of steps have been taken to significantly increase the level of digitalisation of the justice system by 2026, notably by allowing for the electronic submission of documents. A persistent lack of data on court proceedings still hampers progress on the efficiency of justice, with efforts ongoing to map judicial backlogs.

Elements relating to anti-corruption are included in various relevant strategies and action plans. The Central Office for the Repression of Corruption and prosecution services continue to tackle high-level corruption cases, despite overall limited resources. Specific measures are being taken to address corruption linked to organised crime groups and drugs trafficking, which is seen as a growing phenomenon. The investigation and prosecution of foreign bribery cases remain difficult. On integrity policy, the overall Code of Conduct for federal public office holders is to be extended to all members of ministerial private offices, and a code of conduct for Ministers was put in place, which includes guidance on conflicts of interest, revolving doors and gifts and benefits. However, important gaps remain in the integrity policy for Ministers and their private offices as well as for members of Parliament, in areas such as revolving doors as well as rules on gifts and benefits, with overall awareness of the concept of conflicts of interest being low. Shortcomings also exist regarding asset declarations. There is still no cohesive integrity policy within the police forces, although several integrity initiatives are ongoing. No concrete steps were taken on the reform of lobbying legislation. New whistleblowing legislation was adopted covering the private and public sector to different degrees.

Media freedom and pluralism continue to be ensured by a robust legal framework providing for independent media regulators and public service broadcasters. However, the response time and appeal procedures regarding the public access to documents still have to be improved. The safety of journalists remains an issue, particularly online, and measures are being taken to improve it. In Flanders the initiative *PersVeilig* was launched, with safety training for journalists, ad-hoc legal and non-legal assistance, and a possibility to report attacks.

The judicial scrutiny of COVID-19 pandemic legislation has continued after the end of the state of epidemic emergency in March 2022. The Federal Human Rights Institute has continued to play an active role during its second year of activity, while the establishment of a separate Flemish Human Rights Institute requires close cooperation between the two governance levels. Non-compliance of the Federal Government with court judgments and orders imposing periodic penalty payments, raises concerns. Some concerns have been raised regarding the civil society landscape.

RECOMMENDATIONS

Overall, concerning the recommendations in the 2022 Rule of Law Report, Belgium has made:

- Some further progress on measures to provide adequate human and financial resources for the justice system as a whole, taking into account European standards on resources for the justice system.
- Significant progress on strengthening the integrity framework as regards the extension of the existing Code of Conduct to cover all members of ministerial private offices; some progress on rules on gifts and benefits for members of Parliament and Government; and some progress on rules on revolving doors for Government and their private offices.
- No progress on completing the legislative reform on lobbying, including a transparency register and a legislative footprint, covering both members of Parliament and Government.
- Some progress on strengthening the framework for access to official documents, in particular by improving request and appeal processes, taking into account European standards on access to official documents.

On this basis, and considering other developments that took place in the period of reference, it is recommended to Belgium to:

- Further continue efforts made to provide adequate human and financial resources for the justice system as a whole, taking into account European standards on resources for the justice system.
- Strengthen the integrity framework, including by adopting rules on gifts and benefits for members of Parliament and by strengthening rules on revolving doors for Government and their private offices.
- Complete the legislative reform on lobbying, establishing a framework including a transparency register and a legislative footprint, covering both members of Parliament and Government.
- Continue efforts to strengthen the framework for access to official documents, in particular by improving request and appeal processes, taking into account European standards on access to official documents.

I. JUSTICE SYSTEM

The justice system includes 13 first-instance courts of general jurisdiction¹, a number of specialised first instance courts², five appeal courts, a Court of Cassation³ and a Constitutional Court. The judicial branch of the Council of State⁴ acts as the highest administrative court. A non-permanent court of assizes hears the most serious criminal cases⁵. The Constitutional Court is exclusively competent to scrutinise the constitutionality of legislation. Most competences related to justice are federal⁶. The independence of the judiciary and of the prosecution service is enshrined in the Constitution⁷. An independent High Council for Justice⁸ is tasked with recruitment for the judiciary and with fostering the quality of justice through control mechanisms such as audits, as well as by giving advice on justice-related matters to the Government and to Parliament, both on request and on its own initiative. Candidate judges are selected by the High Council for Justice and are appointed for life by the King on the proposal of the Minister of Justice⁹. The College of Courts and Tribunals, which consists of court presidents elected by their peers, is responsible for the general functioning of the courts. The Flemish Bar Association and the French- and German-speaking Bar Association represent lawyers from different parts of the country. Belgium participates in the European Public Prosecutor's Office (EPPO).

Independence

The level of perceived judicial independence in Belgium continues to be high among the general public and is now average among companies. Overall, 66% of the general population and 59% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2023¹⁰. According to data in the 2023 EU Justice Scoreboard, no clear trend can be identified in the evolution of the perceived level of independence among the general public since 2016. Nevertheless, the figure has increased in comparison with 2022

¹ These courts also hear appeal cases against decisions by the justices of the peace and by the police courts.

² Including 162 justices of the peace, 15 police courts, 9 commercial courts, 9 labour courts and 5 administrative courts.

³ The Court of Cassation reviews decisions of lower courts on points of law in cassation proceedings.

⁴ The Council of State also has an advisory branch, which renders opinions on legislative and regulatory proposals.

⁵ It is composed of 3 judges and a jury of 12 citizens. Proceedings against the suspects of the terrorist attacks in Brussels and Zaventem commenced in front of the court of assizes in December 2022.

⁶ A number of specialised Flemish administrative courts exist.

⁷ Article 151 of the Constitution.

⁸ The High Council for Justice comprises 22 members of the judiciary, 8 lawyers, 6 professors and 8 members from civil society. Half of its members are French-speaking and half are Dutch-speaking.

⁹ The executive can only refuse to appoint the candidate nominated by the High Council for Justice on explicit grounds (for example an irregularity) and cannot decide to appoint a different candidate. Instead, the executive must refer the appointment file back to the High Council and ask for a new proposal. The decision of the executive not to appoint a candidate judge can be challenged before the Council of State. The lawfulness of the proposal of the High Council can also be assessed in the context of such legal action. Figures 61 and 62, 2018 EU Justice Scoreboard.

¹⁰ Figures 49 and 51, 2023 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

(60%) and 2016 (62%). The perceived judicial independence among companies has decreased in comparison with 2022 (63%), although it remains higher than in 2016 (54%).

The independence of the judiciary is expected to increase further through the transfer of budgetary management powers from the executive to the judiciary planned for 2024¹¹. Once completed, the three ‘pillars’ of the judiciary (the Court of Cassation, the College of Courts and Tribunals and the College of Public Prosecutors) will be directly responsible for managing staff budgets and policy¹², including decisions on the transfer of magistrates and court staff referred to in the 2022 Rule of Law Report¹³. The law adopted on 26 December 2022 with regard to the judicial organisation¹⁴ already allows for greater flexibility in the allocation of human resources among judicial entities¹⁵. The High Council for Justice has continued its efforts to improve safeguards for judicial independence, including by drawing up reports on disciplinary procedures conducted regarding judges and prosecutors and on initiatives taken concerning the compliance with general ethical principles applicable to them¹⁶. A first consolidated report on disciplinary actions was adopted by the General Assembly of the High Council for Justice on 23 November 2022¹⁷. On 12 April 2022, the High Council for Justice also issued an advisory opinion on asset declaration by magistrates and on registration of their outside activities¹⁸.

Following criticism by the High Council for Justice, the Government is now reflecting on revisions to the proposal to introduce regular security checks conducted by the National Security Agency on all judges, which would otherwise raise concerns. The Minister of Justice has proposed to introduce both initial and regular (every five years) security checks conducted by the National Security Agency on magistrates and employees in the judiciary¹⁹. This has been criticised by the High Council of Justice²⁰, which submits that the proposal

¹¹ The judiciary, represented by the College of Courts and Tribunals, the College of Public Prosecutors and the Court of Cassation, continues to negotiate with the Ministry of Justice on the implementation of their autonomous management of human and budgetary resources, in execution of the law of 18 of February 2014. The intention is to conclude the first autonomous management agreements in early 2024; Input received from Belgium in the context of the country visit to Belgium.

¹² Input from Belgium for the 2023 Rule of Law Report.

¹³ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 4.

¹⁴ The Law of 26 December 2022 laying down various provisions on judicial organisation II, published in the Belgian Official Gazette on 12 January 2023.

¹⁵ The adoption of a Royal decree will make it possible to more rapidly address the need to increase the fixed number of staff of a court, provided that all the positions are not filled in another court and that filling that vacancy is not necessary for the proper functioning of that other court. Therefore, if it appears that an entity requires more magistrates than foreseen in the numbers of staff fixed by law and that another entity requires less of them, the College of courts and tribunals and the College of the public prosecutor’s office may propose to the King to deviate from the numbers of staff fixed by law, within certain limits, by using the so-called flexible numbers of staff; Input from Belgium for the 2023 Rule of Law Report.

¹⁶ Information received from the High Council for Justice in the context of the country visit to Belgium.

¹⁷ Ibidem.

¹⁸ Ibidem.

¹⁹ The stated aim of the proposed measure is to prevent corruption risks and infiltration of criminal organisations. The security checks would be introduced both upon commencement of employment or participation in examinations, and afterwards every 5 years during active service. An already existing regime of security checks for high-risk professions (such as staff in nuclear power plants) would be extended to also cover the judiciary (Law of 11 December 1998 on classification of security certifications, attestations and advices). Written contribution from the Ministry of Justice in the context of the country visit to Belgium.

²⁰ High Council of Justice (2023), Advice on the draft proposal for a law concerning the social statute of the magistrate and the introduction of a security screening, 11 April 2023; Negative opinions have also been issued

threatens the separation of powers due to the risk of interference by the executive in the functioning of the judiciary. The High Council also argues that the proposal does not comply with the principles of legality, legal certainty, the right to a fair hearing, and proportionality because it would apply indiscriminately to any existing or candidate magistrate and judicial staff, under penalty of heavy sanctions²¹. Finally, the High Council submits that guarantees of integrity already exist, notably through the ethics and judicial discipline framework. It is important that the regime on security checks takes into account European standards regarding judicial independence and autonomy of prosecutors, which provide that ‘independence means that the judiciary is free from external pressure, and is not subject to political influence or manipulation, in particular by the executive branch’²². Security checks on judges, especially when carried out by an executive body, may constitute such an external pressure²³. The introduction of such regular security checks on all existing magistrates (and judicial staff)²⁴, and which are conducted by the National Security Agency, a body under the control of the executive, would raise concerns. The proposal is not yet adopted by the Government, and a revised proposal that would take into account the advice of the High Council remains under preparation²⁵.

New binding directives prohibit the recording of meetings between lawyers and clients, safeguarding lawyer-client confidentiality. The 2022 and 2021 Rule of Law Reports mentioned that meetings between suspects in criminal proceedings and their lawyers in a police station had potentially been recorded, triggering allegations of breaches of lawyer-client confidentiality²⁶. Criminal investigations with respect to these alleged breaches are still ongoing²⁷. On 22 July 2022, the College of Prosecutors-General drafted new binding directives²⁸ clarifying that the police is not allowed to record meetings between suspects and their lawyers in a police station²⁹. At the same time, Bar associations report that public

by the College of Courts and Tribunals and the Court of Cassation. These opinions have not been made public; Information received from the High Council for Justice in the context of the country visit to Belgium.

²¹ The High Council furthermore the practical feasibility of the proposal due to the large amount of employees that would need to be screened (more than 15.000) every five years).

²² Venice Commission, Rule of Law checklist (CDL-AD(2016)007), para. 74. See also Recommendation CM/Rec(2000)19 of the Committee of Ministers of the Council of Europe, para. 11.

²³ Venice Commission opinion (CDL(2022)005), para. 13. When security/integrity checks are not carried out by self-governing bodies of the judiciary themselves but by an external body, utmost consideration must be given to respecting the principles of separation of powers and checks and balances. Venice Commission opinion (CDL-AD(2021)046), para. 16.

²⁴ From a comparative perspective, in the few Member States where bodies comparable to the National Security Agency conduct security checks on judges, this happens only regarding candidates or for judges in specific positions. In one Member State, where such security checks were introduced on all judges, the amendments were since, in February 2023, annulled by the Constitutional Court. Figure 56, 2022 EU Justice Scoreboard.

²⁵ Written contribution from the Ministry of Justice in the context of the country visit to Belgium.

²⁶ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 4 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 3.

²⁷ 2022 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 4 and p. 3 respectively; Contribution from the Council of Bars and Law Societies of Europe for the 2023 Rule of Law Report, p. 16; Contribution of the French- and German-speaking Bar Associations for the 2023 Rule of Law Report, p. 12.

²⁸ The Public Prosecutor's Office issues circulars containing guidelines for the management of the public prosecutor's office. These directives are binding on the attorneys general at the courts of appeal, the federal prosecutor and all members of the public prosecutor's office who are under the supervision and direction of the latter.

²⁹ Circular No 09/2022 of the College of General Prosecutors of the Courts of Appeal, 11 July 2022.

authorities, including Government ministers criticising lawyers for defending certain clients, increasingly raise hurdles as to the free exercise of their profession³⁰.

Quality

Some further progress has been made on providing adequate human and financial resources for the justice system but despite important investments and initiatives, structural resource deficiencies persist. The 2022 Rule of Law Report recommended to Belgium to “continue measures to provide adequate human and financial resources for the justice system as a whole, taking into account European standards on resources for the justice system”. As noted in the 2020, 2021 and 2022 Rule of Law Reports³¹, a lack of adequate³² human and financial resources remains a challenge for the justice system. According to the 2023 EU Justice Scoreboard, the number of professional judges per 100 000 inhabitants in 2021 remained below the EU average³³. Budget spent on the justice system is below the EU average as well³⁴. A particularly serious example concerns the Brussels Court of Appeal on which the High Council for Justice performed an audit, concluding that further problems may arise due to the combination of the staff shortages with the heavy and complex case load³⁵. The Government’s 2021 Plan³⁶ provided for additional financial resources for the justice system. In this context, further policy and legislative initiatives have been taken to remedy the budgetary and staff shortages³⁷. In 2022, these additional financial resources continued to be distributed among the three pillars of the judiciary³⁸. The High Council for Justice indicates that although serious efforts are made in the field of recruitment, the availability of sufficient human resources remains a concern, particularly at certain courts of appeal³⁹. The Court of Cassation and the High Council for Justice point out that the career of judge and prosecutor clearly suffers from a lack of attractiveness, but that attempts are made to counter this. The

³⁰ Other issues mentioned concern the access by law enforcement authorities to confidential correspondence between lawyers and their clients and prosecutions for alleged participation in the criminal behaviour of which their client is suspected. Contribution from the Council of Bars and Law Societies of Europe for the 2023 Rule of Law Report, p. 16; Contribution from the French- and German-speaking Bar Associations for the 2023 Rule of Law Report, p. 12.

³¹ 2022, 2021 and 2020 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 4.

³² According to Council of Europe recommendations, each state should allocate adequate resources, facilities and equipment to the courts to enable them to function in accordance with the standards laid down in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms and to enable judges to work efficiently, see Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para 33.

³³ Figure 35, 2023 EU Justice Scoreboard.

³⁴ Figure 33, 2023 EU Justice Scoreboard.

³⁵ Audit of the Brussels Court of Appeal. Report approved by the Committee of Opinions and Inquiry of the High Council of Justice on 30 June 2022.

³⁶ Plan to make Justice Faster, more Human and Firmer. The plan is available on the Team Justice website.

³⁷ An additional EUR 0,5 billion by 2024 on top of the existing annual budget of EUR 2 billion.

³⁸ In 2021-2022, 119 vacant positions for magistrates were planned, 102 of which have been filled in the meantime. Regarding court staff, 800 positions were planned, 690 of which have already been filled. For 2023-2024, 96 vacant positions for magistrates are planned, as well as 266 vacant positions for court staff; Input received from Belgium in the context of the 2023 country visit; The Court of Cassation expresses concerns about cassation not (or no longer) being seen as a priority despite the Court’s specific role with regard to legal unity, law formation and internal quality control. It also points out that notwithstanding repeated requests the number of judges in the Court has not been increased since 1997; Information provided by the Court of Cassation in the context of the country visit to Belgium.

³⁹ Contribution received from the European Network of Councils for the Judiciary for the 2023 Rule of Law report, p. 18.

Government is for instance preparing a proposal for a “social statute” that is meant to improve magistrates’ working conditions⁴⁰. In the context of its follow up to the backlog of cases first mentioned in the 2008 European Court of Human Rights case of *Bell v. Belgium*⁴¹, the Committee of Ministers of the Council of Europe calls for ‘a long-term structural perspective’ on judicial staff and budget for Justice⁴². Furthermore, the Committee and several stakeholders expressed concerns regarding the Executive’s choice to condition the allocation of additional resources on results, which might undermine the quality of judicial work, its independence and citizens’ effective access to justice⁴³. All this shows that despite efforts by the Government to increase the budget for the justice system, structural resource deficiencies persist and budgetary and staff shortages in the justice system remain an important challenge⁴⁴. Therefore, there has been some progress on the recommendation made in the 2022 Report.

New measures have been implemented to further improve the quality of the justice system. In line with GRECO recommendations⁴⁵, the standard forms concerning the reporting by the courts and the prosecution service on their annual activity and functioning were adapted in 2022⁴⁶. The eligibility thresholds for legal aid have been steadily increasing with a fixed rate until 2023. From 2024, the amount will be indexed each year in light of changes in the consumer price index⁴⁷. A slight increase is noted with regard to the number of people who had access to legal aid in years 2021-2022 compared to years 2020-2021⁴⁸. From a comparative perspective, the 2023 EU Justice Scoreboard shows that in consumer cases, the thresholds for

⁴⁰ Information received from the Court of Cassation in the context of the country visit to Belgium.

⁴¹ Judgment of European Court of Human Rights of 4 November 2008, *Bell v Belgium* (application nr. 44826/05).

⁴² Decision of the Committee of Ministers of the Council of Europe, 22 September 2022, H46-77, paragraph 7: ‘took note with interest of the recent increase in judicial staff and the budget for Justice, while stressing the need for this to be part of a long-term structural perspective and not to be conditioned on results in such a way as to undermine the quality of judicial work, its independence and citizens’ effective access to justice; once again, encouraged the authorities to develop, as quickly as possible, the AMAI model aimed at a better allocation of resources and, in the meantime, invited them to fill in the legal framework for judicial staff, or even to increase it where the judicial backlog is most significant’.

⁴³ Decision of the Committee of Ministers adopted during its meeting of 20-22 September 2022, H46-7 Bell group v. Belgium (Application No. 44826/05) CM/Del/Dec(2022)1443/H46-7, paragraph 7: ‘took note with interest of the recent increase in judicial staff and the budget for Justice, while stressing the need for this to be part of a long-term structural perspective and not to be conditioned on results in such a way as to undermine the quality of judicial work, its independence and citizens’ effective access to justice’; Input received from the European Network of National Human Rights Institutions for the 2023 Rule of Law report, p. 11; Information provided by the Council of State in the context of the country visit to Belgium; The High Council for Justice will also prepare an advisory opinion to the Minister of Justice on the extension of amicable settlement chambers to most courts and tribunals handling civil and commercial cases.

⁴⁴ Decision of the Committee of Ministers of the Council of Europe, 22 September 2022, H46-77, paragraph 7, as cited in footnote 42.

⁴⁵ GRECO Fourth Evaluation Round – Evaluation Report, recommendation xiv.

⁴⁶ The regulation formalising the adaptation of the standard forms was published in in the Belgian Official Gazette on 18 February, 2022. GRECO had evaluated the recommendation as being only partly implemented until such regulation would be adopted. See GRECO Fourth Evaluation Round – Second Compliance Report, p. 10. The standard forms will be used in the preparation of the activity reports for the year 2021.

⁴⁷ The eligibility thresholds for legal aid were raised in September 2020 by EUR 200 and are increased by EUR 100 every year until 2023.

⁴⁸ Information received from the Ministry of Justice in the context of the country visit to Belgium and input from Belgium for the 2023 Rule of Law Report. The increase of 3,6% is counted on the basis of the number of lawyers who have been appointed for a case under the legal aid system. The increase of 9,1% is counted on the number of cases by categories of people eligible to legal aid, based on the completed cases per year (the moment of giving a closure report by the lawyer to the legal aid bureau).

accessing legal aid remain above the Eurostat poverty threshold⁴⁹. Finally, the High Council for Justice will conduct a further assessment of the judicial investigation into the death of Jozef Chovanec once the ongoing judicial investigation will be concluded⁵⁰.

A number of steps have been taken to significantly increase the level of digitalisation of the justice system by 2026, notably by allowing for the electronic submission of documents. The Government's *Digital Transformation Plan*⁵¹ aims at equipping all Belgian courts and tribunals with a digital case management system⁵². Some steps have already been taken to implement the plan, for instance, the *Just-on-Web* platform⁵³ was made available to the public in 2022. The platform allows citizens to request access to and consult judicial files, to submit documents to the courts, make applications, manage the payment of traffic and criminal fines, submit documents to the courts and tribunals and request documents from the civil registry. These developments are also reflected in the 2023 EU Justice Scoreboard, which shows improvement in the level of digitalisation of justice in Belgium⁵⁴. Furthermore, a draft law for virtual hearings in judicial proceedings in civil and criminal matters⁵⁵ has been approved by the Government on 23 December 2022 and will be submitted to Parliament for discussion, after receiving opinions from the Council of State and the Data Protection Authority. The legal basis for the Central Register for judicial decisions was published in the Belgian Official Gazette on 24 October 2022⁵⁶. Whilst recognising the considerable efforts made to increase the digitalisation of justice, practitioners consider that the justice system remains insufficiently digitalised⁵⁷.

Efficiency

A persistent lack of data on court proceedings still hampers progress on the efficiency of justice, with efforts ongoing to map judicial backlogs. Significant gaps remain in the availability of data on court proceedings⁵⁸. The Council of Europe's Committee of Ministers continues its enhanced supervision of Belgium regarding the excessive length of proceedings in civil cases at first instance and has again expressed deep concerns at the persistent lack of

⁴⁹ Figure 24, 2023 EU Justice Scoreboard.

⁵⁰ Information received from the High Council of Justice in the context of the country visit to Belgium; 2022 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, pp. 6 and 4 respectively.

⁵¹ Which is part of the *Plan to make Justice Faster, more Human and Firmer*, see footnote 36.

⁵² A digital case management system is planned to be implemented at seven judicial entities by the end of 2025. The new system will be introduced by the end of the second quarter of 2023 in a pilot entity (Court of Cassation).

⁵³ An online platform available in Dutch, French, German and English where citizens can, among others, access to and consult judicial files, manage traffic and criminal fines and submit petitions, conclusions and letters to courts.

⁵⁴ Figures 40, 45 and 46 of the 2023 EU Justice Scoreboard.

⁵⁵ The Bar Associations, in the context of the country visit to Belgium, expressed their concerns that the draft law would result in a lack of physical appearance of the suspect before a judge and risk to deny the lawyer the possibility to assist the client in person.

⁵⁶ The first part of the law related to the non-public component, containing non-pseudonymised decisions of courts will enter into force on 30 September 2023. The second part of the law related to the public component, containing pseudonymised decisions of courts, will enter into force on 31 December 2023; Royal decrees are prepared to implement Just Restart, the digital counterpart in collective debt settlement, before the end of this year.

⁵⁷ Information received from the Bar Associations and the Court of Cassation in the context of the country visit to Belgium.

⁵⁸ Figures 6, 7, 14, and 15 of the 2023 EU Justice Scoreboard.

comprehensive statistical data on the first-instance civil tribunals⁵⁹. The limited data currently available shows that the rate of resolving first-instance civil and commercial cases has increased above 100% for 2021⁶⁰ and above 130% for administrative cases⁶¹. Furthermore, the overall clearance rate of cases before the Court of Cassation for 2021 was above 100% for civil and commercial litigious cases, yet below 100% for administrative and criminal law cases (78,6% and 94,8% respectively)⁶². Particularly lengthy delays are reported in certain courts including the Brussels Court of Appeal⁶³. As mentioned above in the context of the quality of the justice system, the High Council for Justice carried out an extensive audit into its functioning and published a report in 2022 including recommendations⁶⁴. The College of Courts and Tribunals and the Public Prosecutor's Office are preparing a model for better distribution of resources taking into account their workload. They completed the first phase of mapping judicial backlogs across courts in 2021 and are currently analysing the results⁶⁵.

II. ANTI-CORRUPTION FRAMEWORK

The competence to investigate and prosecute corruption is shared between several authorities. The Central Office for the Repression of Corruption (CDBC-OCRC) remains the specialised central service within the federal police with competences to investigate and support the investigation of serious corruption offences. The 'Committee P' is the external independent oversight body of the police forces responsible for monitoring compliance with integrity rules. The Court of Audit exercises external scrutiny of the budgetary, accounting, and financial operations of the federal state, whilst the Interfederal Corps of the Inspectorate of Finance is a public service performing controls related to the legality, feasibility, and appropriateness of public expenditure. The Unit for Integrity and Culture within the Federal Public Service for Policy and Support (FOD BOSA) will be transformed into a "Integrity Bureau" which remains in charge of developing the federal integrity policy and integrity management for federal civil servants. The Federal Deontological Commission serves as an advisory commission on ethics to the Parliament. Other preventive systems and institutions exist at regional level. Anti-

⁵⁹ Decision of the Committee of Ministers adopted during its meeting of 20-22 September 2022, H46-7 Bell group v. Belgium (Application No. 44826/05) CM/Del/Dec(2022)1443/H46-7, paragraph 5: 'deplored the persistent lack of data on the average processing time ("disposition time") of civil proceedings at first instance and recalled that there is a more general weakness in judicial statistics, preventing the measurement of the efficiency of the Belgian Justice system, the full assessment of the execution of judgments and, above all, the adoption of appropriate policies and measures; invited thus the authorities to rapidly strengthen their dialogue with the Secretariat and with the CEPEJ to explore possible solutions and to deploy all other useful means to transmit, as soon as possible, complete judicial statistics, as detailed as possible, on civil and criminal proceedings'; Report of the Federal Institute for the Protection and Promotion of Human Rights from 29 July 2022, p. 3; Interim Resolution CM/ResDH(2021)103 of the Committee of Ministers of 9 June 2021 and 2022 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 6.

⁶⁰ Figure 12, 2023 EU Justice Scoreboard.

⁶¹ Figure 13, 2023 EU Justice Scoreboard.

⁶² CEPEJ data, Belgium country fiches for year 2021.

⁶³ Input received from the Federal Institute for the Protection and Promotion of Human Rights for the 2023 Rule of Law report. According to the information provided, excessively long proceedings do not concern all of the Belgian courts, but particularly those placed in the largest Belgium cities, such as Brussels and Antwerp. According to the information received from the Bar Association in the context of the country visit to Belgium, in the Brussels court of appeal 12.000 cases were pending last year.

⁶⁴ High Council of Justice, Audit, Court of Appeal of Brussels, 30 June 2022.

⁶⁵ Input received from Belgium for the 2023 Rule of law report.

corruption is part of relevant strategies and action plans while there is no single anti-corruption strategic framework; nor any overall coordination body in charge of anti-corruption policy⁶⁶.

The perception among experts and business executives is that the level of corruption in the public sector remains relatively low. In the 2022 Corruption Perceptions Index by Transparency International, Belgium scores 73/100 and ranks 9th in the European Union and 18th globally⁶⁷. This perception has been relatively stable⁶⁸ over the past five years. The 2023 Special Eurobarometer on Corruption shows that 62% of respondents consider corruption widespread in their country (EU average 70%) and 14% of respondents feel personally affected by corruption in their daily lives (EU average 24%)⁶⁹. As regards businesses, 54% of companies consider that corruption is widespread (EU average 65%) and 30% consider that corruption is a problem when doing business (EU average 35%)⁷⁰. Furthermore, 40% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 32%)⁷¹, while 43% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 30%)⁷².

The Central Office for the Repression of Corruption (CDBC-OCRC) and prosecution services continued to tackle several prominent high-level corruption cases, despite overall limited resources. There is good cooperation between the CDBC-OCRC and the prosecution service⁷³, in particular during multiple complex and high-level cases that were handled in the reporting period⁷⁴. While resources of the CDBC-OCRC have improved over the past years⁷⁵, they remain limited overall, particularly considering the increasing number of complex

⁶⁶ Aspects of fraud are dealt with in the National Security Plan 2022-2025, as priorities for the police. There are several networks and cooperation platforms at federal level that deal with coordination of some aspects of anti-corruption policy, although no body was identified that coordinates anti-corruption policy as a whole. 2022 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 8, information received from the Ministry of Justice in the context of the country visit to Belgium and written contribution from the Ministry of Justice received in the context of the country visit to Belgium.

⁶⁷ Transparency International (2023), Corruption Perceptions Index 2022, pp. 2-3. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

⁶⁸ In 2018 the score was 75, while, in 2022, the score is 73. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last five years.

⁶⁹ Special Eurobarometer 534 on Corruption (2023). The Eurobarometer data on citizens' corruption perception and experience is updated every year. The previous data set is the Special Eurobarometer 523 (2022).

⁷⁰ Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023). The Eurobarometer data on business attitudes towards corruption as is updated every year. The previous data set is the Flash Eurobarometer 507 (2022).

⁷¹ Special Eurobarometer 534 on Corruption (2023).

⁷² Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023).

⁷³ Information received from the CDBC-OCRC in the context of the country visit to Belgium and written contribution from the CDBC-OCRC received in the context of the country visit to Belgium.

⁷⁴ This includes the corruption scandal at the European Parliament, but also cases involving Members of regional Parliaments and corruption cases linked to drugs criminality. Information received from the CDBC-OCRC and Transparency International in the context of the country visit to Belgium.

⁷⁵ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 9.

corruption cases⁷⁶. Around 60 investigators work on corruption cases at the CDBC-OCRC. 80% of their cases involve bribery of public officials⁷⁷. The Government has proposed to allocate additional resources for the federal judicial police⁷⁸. Cooperation with the European Public Prosecutor's Office (EPPO) is going well, with only minor problems as regards reporting of cases signalled⁷⁹.

Specific measures are being taken to address corruption linked to organised crime groups and drugs trafficking, which is seen as a growing phenomenon, while integrity rules in the Police remain lacking. Investigators report an increasing number of cases of corruption of public officials linked to organised crime (mainly drug-related), for example public officials accessing databases unauthorised to obtain specific data for criminal groups in return for substantial payments⁸⁰. This increase leads to difficulties in prioritising resources, for example when trying to determine which cases can lead to “ringleaders” instead of “smaller” cases⁸¹. In early 2023, the Federal Government appointed a federal magistrate as “drugs commissioner” to address all aspects linked to organised drugs criminality, including corruption and integrity, in a more coordinated and multidisciplinary manner⁸². In this context, existing integrity policy within the police force appears insufficient to adequately prevent cases of criminal infiltration within law enforcement. The 184 local police zones maintain disparate integrity policies, with few horizontal aspects shared between them⁸³. Smaller police zones are not able or willing to maintain an effective integrity policy, which also affects the response to possible cases of criminal infiltration⁸⁴. Nonetheless, a “vision text” on integrity policy for the entire police is in the final stages of preparation, which, if approved, could represent a significant cooperation of the entire Police on integrity⁸⁵. The authorities did not move forward on a Code of Conduct for

⁷⁶ Information received from the CDBC-OCRC in the context of the country visit to Belgium and written contribution from the CDBC-OCRC received in the context of the country visit to Belgium.

⁷⁷ Belgian Federal Police (2022), Corruption, a difficult to prove crime (Statement for International Anti-Corruption Day).

⁷⁸ College of Prosecutors-General (2022), Press Release – The College responds to the parliamentary hearing of the ministers on the refinancing of the Judicial Police and Minister of Interior (2022), Additional resources for integrated police approved.

⁷⁹ In some cases, there is still lack of knowledge of the EPPO's powers and therefore immediate reporting to the EPPO has been affected (the cases get reported to the “regular” prosecution). EPPO input p. 3.

⁸⁰ The police indicated that the main targets of bribery by drugs-related organised crime groups are the police, customs, port and local officials. Belgian Federal Police (2022), Corruption, a difficult to prove crime (Statement for International Anti-Corruption Day), information received from the CDBC-OCRC in the context of the country visit to Belgium and written contribution from the CDBC-OCRC received in the context of the country visit to Belgium. See also 2022 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 9.

⁸¹ Information received from the CDBC-OCRC in the context of the country visit to Belgium, written contribution from the CDBC-OCRC received in the context of the country visit to Belgium and Federal House of Representatives (2022), The situation in the federal judicial police, report of an exchange of views, 55K2822001, pp. 7, 13, 37, 40.

⁸² Information received from the Ministry of Justice in the context of the country visit to Belgium, written contribution from the Ministry of Justice received in the context of the country visit to Belgium, and Prime Minister's Office (2023), National Drugs Commissioner and more police in Port of Antwerp to tackle drugs mafia.

⁸³ Information received from the Federal Police Integrity Department and the Committee P in the context of the country visit to Belgium. See also 2022 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, pp. 10-11.

⁸⁴ I.e. the use of corruption by organised criminal groups to gain access to certain public institutions.

⁸⁵ Information received from the Federal Police Integrity Department and the Committee P in the context of the country visit to Belgium.

the entire integrated police, as it was recommended by GRECO⁸⁶ and the Federal Police's integrity cell remains understaffed and underfunded⁸⁷. However, the results of an evaluation of the entire police resulted in a number of concrete policy proposals on the importance of integrity⁸⁸. Other measures to improve integrity include an increased screening of staff working in the major ports⁸⁹, the use of multidisciplinary investigation teams in five major cities to better fight infiltration⁹⁰ and a proposal to better assist local governments in their public procurement procedures⁹¹.

Shortcomings remain with regard to the investigation and prosecution of foreign bribery cases. As indicated in previous Rule of Law Reports, the implementation of some OECD recommendations, in particular on investigations and prosecution of foreign bribery cases has not been finalised, including as regards the limitation period of investigations⁹². Investigations and prosecutions of foreign bribery cases continue to be difficult given the complex operations in third countries and the resource situation, and overall difficulties in gathering evidence in these cases⁹³. The prosecution has reported eight cases of foreign bribery registered from 2019 to 2022⁹⁴.

Out-of-court settlements and plea deals continue to be positively regarded by law enforcement and are regularly used to obtain results in high profile corruption cases, despite criticism. Out-of-court settlements⁹⁵ continue to be used for deals between the prosecution and accused persons in order to drop proceedings without an admission of guilt. According to the prosecution, 16 such settlements were registered in cases of corruption over

⁸⁶ See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 10 and GRECO, Fifth Evaluation Round – Compliance Report, Belgium, recommendation xvi, paras 75-81.

⁸⁷ Information received from the Federal Police Integrity Department and the Committee P in the context of the country visit to Belgium.

⁸⁸ Options include setting up a centre of expertise, a legislative approach, a network of integrity coordinators, or a focus on whistleblowing. Existing initiatives remain ongoing. A working group continues to examine ways to introduce integrity screening during the entire career of a police officer and not just at the start, while a legislative proposal introducing integrity checks at the moment of promotion of a police officer remains pending in the Parliament since September 2020. Minister of Interior (2023), [Police hands vision of the future to Minister Annelies Verlinden and General Assembly of the Police \(2023\), A blueprint for the police of the future, pp. 489-511](#), information received from the Ministry of Justice, Federal Police Integrity Department and the Committee P in the context of the country visit to Belgium; written contribution from the Ministry of Justice received in the context of the country visit to Belgium and Federal House of Representatives (2020), Legislative proposal 55-1497/001 on the review of some elements of the statute of police services to introduce an institutionalised integrity check at the moment of promotion.

⁸⁹ Prime Minister's Office (2023), National Drugs Commissioner and more police in Port of Antwerp to tackle drugs mafia.

⁹⁰ Information received from the CDBC-OCRC in the context of the country visit to Belgium, written contribution from the CDBC-OCRC received in the context of the country visit to Belgium and Government meeting (2022), draft law on various fiscal issues and the fight against fraud.

⁹¹ The proposal, made by the Flemish Government, is scheduled to be discussed by the Interfederal Conciliation Committee, which discusses affairs between the regional and Federal governments. Information received from the Ministry of Justice in the context of the country visit to Belgium.

⁹² OECD (2018), Phase 3 evaluation of Belgium: additional written report; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p.7.

⁹³ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 9.

⁹⁴ Two in 2019; two in 2020; three in 2021, one in 2022. Written contribution from the Prosecution Service in the context of the country visit.

⁹⁵ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, pp. 9-10.

the past four years⁹⁶. An audit by the High Council for Justice of the current framework is ongoing, while the College of Prosecutors-General sent an evaluation of the law to the Ministry of Justice in May 2022⁹⁷. A legal possibility for suspects to conclude plea deals was notable for its first-time use in two high-level corruption cases, leading to additional investigatory acts and suspects pursued⁹⁸. This includes the recent high-profile corruption case involving members of the European Parliament⁹⁹. While the tools are appreciated by law enforcement as a way to reach results more efficiently, in particular when a case is procedurally stalled or close to the statute of limitations¹⁰⁰, concerns remain over the secrecy of the settlements and fairness of treatment¹⁰¹.

Significant progress has been made as regards the Code of Conduct for federal public office holders, which is to be extended to all members of ministerial private offices, although integrity policy for Ministers, their private offices as well as members of Parliament continues to have gaps. The 2022 Rule of Law Report recommended to Belgium to “[s]trengthen the integrity framework, including by adopting a Code of Conduct covering all members of ministerial private offices [...]”. On 16 June 2023, the Government adopted a bill that would extend the application of the existing code of conduct for federal public office holders to all staff to members of the Federal Government (i.e., including the ministerial private offices), whereas previously only heads and deputy heads of these private offices were covered¹⁰². This proposal still has to be voted in Parliament. This follows opinions on the proposal by the Federal Deontological Commission, which gave a positive opinion in February

⁹⁶ Zero in 2019, seven in 2020, nine in 2021 and zero in 2022. See written contribution from the Prosecution Service in the context of the country visit.

⁹⁷ Information received from the High Council of Justice and the College of Public Prosecutors in the context of the country visit to Belgium and written contribution from the College of Public Prosecutors in the context of the country visit to Belgium. See also 2022 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, pp. 9-10. In the meantime, an advice by the Human Rights Institute (FIRM-IFDH) stressed once again the importance of judicial control of such settlements. FIRM-IFDH, Evaluation of the mechanisms of penal transaction (art. 216 bis of the Criminal Procedure Code).

⁹⁸ The possibility to become an informer and conclude a plea deal in certain criminal cases (“spijtoptantregeling” / “regime des repentis”) exists in Belgian law since 2018 (Law of 22 July 2018). Nonetheless, the regime has only been applied twice so far, both times in major corruption cases – once in a major sports corruption case concerning professional football (2021), and once in the ongoing corruption case involving Members and staff of the European Parliament (2023). The main suspects in the cases gave details about their *modus operandi* in return for a plea deal, which allowed investigators to identify and prosecute further persons of interest.

⁹⁹ Media articles from January 2023 quote a statement by the Prosecution Office given to the media: “One of the main protagonists in this case [...] has signed a memorandum with the Federal Prosecutor pursuant to Articles 216/1 to 216/8 of the Code of Criminal Procedure. [...] With this memorandum, he undertakes to inform the investigators and Justice in particular about the *modus operandi*, the financial arrangements with other countries involved, the financial constructions set up, the stakeholders of the structures set up and the benefits offered, the involvement of known and unknown persons within the investigation, including the identities of those he admits to bribing.” De Standaard (2023), Qatargate – “Informer” Panzeri names amounts and Knack (2023), #CorruptionEurope – Panzeri becomes informer.

¹⁰⁰ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, pp. 9-10 and Information received from the CDBC-OCRC in the context of the country visit to Belgium.

¹⁰¹ Knack (2022), Johan Delmulle on the out-of-court settlements (Johan Delmulle over afkoopwet) and VRTNWS (2022), More than 1500 Belgians bought off conviction in full secrecy, raising 1 billion Euro. See also 2022 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, pp. 9-10

¹⁰² Government Meeting (2023), Extension of deontological code for federal public office holders to all members of ministerial staff and House of Representatives, Draft Bill on Amendment of the Law of 6 January 2014 concerning the foundation of the Federal Deontological Commission and the related Deontological Code of federal public office holders, Draft Bill 55K3421

2023, although asked to increase the scope to also cover parliamentary assistants¹⁰³ and the Council of State¹⁰⁴. Significant progress was therefore made on this part of the Recommendation from the 2022 Rule of Law report. On 16 June 2023, the Government also adopted and published a specific Code of Conduct for Ministers, containing integrity rules, as Ministers are currently not covered by the aforementioned Code of Conduct for federal public office holders¹⁰⁵. This guidance on integrity for ministers was previously only dealt with in internal, non-public letters sent by the Prime Minister¹⁰⁶. It includes rules of conduct on integrity, responsibility, procedures in case of conflicts of interest, acceptance and exercise of other roles and functions, gifts, independence, respect for privacy, transparency, confidentiality and discretion and the obligations after the end of the mandate¹⁰⁷. However, gaps remain in the integrity policy, particularly due to the absence of any monitoring and enforcement mechanism¹⁰⁸. The Federal Government adopted a prohibition on secondments from publicly traded publicly owned companies, following revelations that private offices of several ministers included seconded employees that were still being paid by such a company which raised allegations of conflicts of interest¹⁰⁹. At local level, a number of allegations of conflict of interest involving mayors were detected¹¹⁰. Overall, these cases raise concerns about a low awareness of the concept of conflict of interest at all levels of government. As regards public procurement, the Flash Eurobarometer on Businesses' attitudes towards corruption in the EU shows that 28% of companies in Belgium (EU average 26%) think that corruption has

¹⁰³ Federal Deontological Commission (2023), General Advice nr. 2023/2 of 24 February 2023 on the preliminary draft of amendment of the law of 6 January 2014 concerning the creation of the Federal Deontological Commission and the Code of Conduct of Federal Office Holders.

¹⁰⁴ Government Meeting (2023), Extension of deontological code for federal public office holders to all members of ministerial staff. In addition, the adoption of this reform would appear to partially fulfill a recommendation made by GRECO. GRECO, Fifth Evaluation Round – Evaluation Report (2020), Belgium, recommendation iii, para 45 states that “(i) an ethical code be adopted for ministers and steps be taken to ensure that members of strategy units/private offices are subject to a clear and harmonised ethical framework, and that (ii) the code or codes is/are accompanied by supervisory arrangements and appropriate sanctions.” The current reform does not foresee any supervision or sanctions. See also GRECO, Fifth Evaluation Round – Compliance Report (2022), Belgium, recommendation iii, paras. 18-24.

¹⁰⁵ [Government Meeting \(2023\), Circular on deontological code for government members](#)

¹⁰⁶ Information received from the Prime Minister's Office in the context of the country visit to Belgium and written contribution from the Ministry of Justice received in the context of the country visit to Belgium.

¹⁰⁷ Prime Minister's Office (2023), Code of Conduct for Ministers

¹⁰⁸ As recommended multiple times by GRECO – a number of GRECO recommendations remain unimplemented. GRECO, Fifth Evaluation Round – Compliance Report (2022), Belgium, recommendation iii and paras. 115-120 and GRECO, Fourth Evaluation Round – 3rd Interim Compliance Report (2022), paras. 60-62.

¹⁰⁹ In one case, the private office was responsible for the procurement of certain government contracts that were eventually won by that same publicly owned company that paid the employees in questions. Members of Parliament from an opposition political party submitted allegations of criminal misconduct to the prosecution, while the minister in question disputes any criminal allegations, although the cabinet members were dismissed. It is unclear if this complaint will be taken forward by the prosecution. VRTNWS (2023), N-VA goes to prosecution with documents on potential Bpost-cheating and VRTNWS (2023), Detached cabinet members on cabinet Minister De Sutter return to bpost.

¹¹⁰ Separate allegations of conflicts of interest were detected in at least four municipalities in Belgium, all involving possible conflicts of interest of mayors in relation to real estate transactions. See Apache (2023), Audit shows collusion between mayor and project developers in Boechout; De Standaard (2022), Moorslede and Staden under supervision after audit: possible conflicts of interest of mayors; De Morgen (2022), Possible scandal around new mayor in St Truiden; and De Standaard (2022), “I am a politician that earned some money on top of my mandate”.

prevented them from winning a public tender or a public procurement contract in practice in the last three years¹¹¹.

Integrity policy for civil servants is undergoing reform. The non-binding Code of Ethics for federal civil servants was updated on 5 July 2022, focusing on five pillars. The Code contains concrete examples to aid in its implementation¹¹². Through a royal decree on integrity policy and integrity management in different federal public sector organizations, the Unit for Integrity and Culture within the Federal Public Service Policy and Support will be transformed into a “Integrity Bureau” with the overall responsibility for the integrity management of federal civil servants¹¹³. As a result, each Federal Public Service will also have their own integrity coordinator, who will be the single internal point of contact for integrity. Integrity coordinators will meet in a federal network under the aegis of the Bureau¹¹⁴. The decree also foresees a yearly public report on the integrity management of federal public sector organizations¹¹⁵.

Shortcomings concerning the verification and transparency of asset and interest declarations remain, despite some steps forward. Asset declaration laws were revised in 2022 to include “liabilities” as a category that needs to be declared¹¹⁶. This aims to fulfil one specific recommendation by GRECO¹¹⁷. The system of asset declarations does not ensure adequate verification and transparency, as the Court of Audit receives the declarations in sealed envelopes and declarations are only accessible by investigating judges in the context of criminal investigations¹¹⁸. This shortcoming was not addressed through the recent legislative revision. While consultations on improving the system of asset declarations are ongoing, no political agreement has been found so far¹¹⁹. In relation to declaration of additional mandates, 9 573 persons out of the 9 609 required by law to submit a declaration of their mandates in 2022 complied with this requirement, although due to a lack of adequate verification, the

¹¹¹ Flash Eurobarometer 524 on Businesses’ attitudes towards corruption in the EU (2023). This is 2 percentage points above the EU average.

¹¹² Input from Belgium for the 2023 Rule of Law Report, p. 7 and information received from the Unit for Integrity and Culture in the context of the country visit to Belgium. For the full version of the Code of Conduct, see https://etaamb.openjustice.be/nl/omzendbrief_n2022031697.html.

¹¹³ Royal Decree on integrity policy of 18 April 2023.

¹¹⁴ Information received from the Unit for Integrity and Culture in the context of the country visit to Belgium.

¹¹⁵ Royal Decree on integrity policy of 18 April 2023.

¹¹⁶ Input from Belgium for the 2023 Rule of Law Report, pp. 7-8.

¹¹⁷ Additional changes included in the law include practical issues signalled by the Court of Audit. GRECO, Fourth Evaluation Round – 3rd Interim Compliance Report (2022), recommendation iii, par. 20; Information received from the Ministry of Justice in the context of the country visit to Belgium and written contribution from the Ministry of Justice and Parliament Legal Service received in the context of the country visit to Belgium.

¹¹⁸ As noted in the 2022, 2021 and 2020 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p.12, p. 8 and p.8 respectively. GRECO repeated the previous remarks (as mentioned in the 2022 Rule of Law report) from the Fifth Round Evaluation Report in its new compliance report. See GRECO, Fifth Evaluation Round – Compliance Report (2022), Belgium, recommendations xii and xiii, paras 63-66.

¹¹⁹ GRECO, Fourth Evaluation Round – 3rd Interim Compliance Report (2022), recommendation iii, par. 20 and information received from the Ministry of Justice in the context of the country visit to Belgium. While GRECO reports that “a special bill has been drawn up by an interparliamentary working group, providing that parliamentarians’ declarations of assets should be submitted annually”, the government stated no political agreement on the issue between the various assemblies and parliaments has been found. As reported last year, a number of other legislative initiatives on this topic remain pending in Parliament, and it remains unclear whether they would be able to collect a sufficient majority. 2022 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 12.

complete correctness of declarations remains solely the individual responsibility of the person declaring them¹²⁰. The Federal Deontological Commission published an own-initiative opinion concerning the accumulation of functions in the public sector in early 2023, where it calls for the establishment of a list of public mandates and an obligatory declaration of multiple public mandates¹²¹.

There has been some progress in relation to rules on gifts and benefits, as ministers now have some provisions in place while Parliament remains without clear rules. The 2022 Rule of Law Report recommended to Belgium to “Strengthen the integrity framework, including by adopting [...] rules on gifts and benefits for members of Parliament and Government [...]”. Shortcomings identified in previous Rule of Law Reports¹²² have not been fully addressed so far. Parliament remains without clear and consistent rules on gifts and benefits. The Ministerial Code of Conduct, adopted on 16 June, does include rules on gifts. In particular, each individual member of the government is asked to set up a register of gifts received¹²³. Given that the bill to extend the code of conduct for public mandate holders to all members of the ministerial private offices also contains general rules on gifts and benefits, members of ministerial private offices would now also be covered by rules on gifts and benefits upon adoption of this bill by Parliament¹²⁴. An assessment on the risks and policy measures related to post-employment conflicts of interest in the federal public service and ministerial private offices is also forthcoming in 2023¹²⁵. While consultations within the Parliament itself on possible changes to the rules on gifts and benefits are reportedly ongoing, no progress could be identified¹²⁶. Opinions requested by Parliament and provided during 2021 by the Federal Deontological Commission were not taken forward¹²⁷. The Federal Deontological Commission continues to offer individual advice to Members of Parliament on potential issues of conflict of interest, but this function remains sparsely used¹²⁸. As changes were made to rules on gifts

¹²⁰ Court of Audit (2023), Press Release – Nearly all lists of mandates and asset declarations were submitted.

¹²¹ Federal Deontological Commission, Opinion 2022/1 of 20 December 2022 – Own initiative opinion on conflicts of interest related to the cumulation of public mandates and functions, pp. 1-4. See also information received from the Federal Deontological Commission in the context of the country visit to Belgium. Neither government, the public administration nor parliament have so far responded to the opinion.

¹²² 2020 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 8; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 8 and 2022 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, pp. 12-13.

¹²³ Prime Minister’s Office (2023), Code of Conduct for Ministers

¹²⁴ House of Representatives, Draft Bill on Amendment of the Law of 6 January 2014 concerning the foundation of the Federal Deontological Commission and the related Deontological Code of federal public office holders, Draft Bill 55K3421

¹²⁵ Information received from the Unit for Integrity and Culture in the context of the country visit to Belgium.

¹²⁶ GRECO, Fourth Evaluation Round – 3rd Interim Compliance Report (2022), recommendation I, pars. 10-12; GRECO, Fifth Evaluation Round – Compliance Report (2022), Belgium, recommendation x, pars 54-58 and written contribution from the Ministry of Justice in the context of the country visit to Belgium.

¹²⁷ Information received from the Federal Deontological Commission in the context of the country visit to Belgium and Federal Deontological Commission (2021), Advice nr. 2021/3 on prevention of corruption for parliamentarians (gifts) and Federal Deontological Commission (2021), Interpretative Advice 2021/5 on prevention of corruption for parliamentarians (gifts).

¹²⁸ One opinion to an MP in relation to travel paid by third countries was published in full, in which the Federal Deontological Commission concluded that sponsored travel can only be accepted by MPs if strict transparency requirements are taken into account (such as publishing these travels online). In addition, in the first quarter of 2023, two individual confidential opinions regarding conflicts of interests were issued at the request of Members of Parliament. Federal Deontological Commission, Individual advice of 9 February 2023 on three invitations received to travel to Qatar and the compliance with rules on deontology, ethics and conflicts of

and benefits for Ministers, some progress was made on this part of the Recommendation from the 2022 Rule of Law report.

Some progress was made on rules on “revolving doors” although gaps remain. The 2022 Rule of Law report recommended Belgium to “Strengthen the integrity framework, including by adopting [...] rules on revolving doors for Government and their private offices”. There remain some rules in place on ‘revolving doors’ for members of Parliament and public officials, including in the existing Code of Conduct for public office holders¹²⁹. As the Government is expanding the application of the Code of Conduct for public office holders to Cabinet members, this would also expand the application of rules on revolving doors. In addition, similar provisions were included in the recently adopted Code of Conduct for Ministers. However, the existing rules on revolving doors continue to have important gaps. There are no clear or binding rules regarding cooling-off periods or transitory restrictions for either ministers, their staff, or members of Parliament, limiting their effectiveness¹³⁰. This was confirmed in an own initiative opinion by the Federal Deontological Commission on the topic, published on 15 May 2023. It recommends introducing legally binding general rules on revolving doors, including a cooling-off period for particular high-level functions (ministers, heads of private offices, high-level civil servants), among other measures such as lobbying bans for former ministers and better preventative action on conflicts of interest¹³¹. As such, there has been some progress on this part of the Recommendation as regards the issue of revolving doors.

So far, there has been no further progress on completing the reform of lobbying legislation. The 2022 Rule of Law Report recommended to Belgium to “[c]omplete the legislative reform on lobbying, establishing a framework including a transparency register and a legislative footprint, covering both members of Parliament and Government”. Work on a lobbying reform is proceeding slowly, with no concrete steps registered in the reporting period¹³². The Government remains committed to lobbying reform¹³³, although previously reported plans to extend the existing transparency register of the Parliament to the Government remain under discussion¹³⁴. The Government has chosen to proceed with its own lobbying regulation in the form of a royal decree, although a timeline for adoption remains unclear¹³⁵.

interest and Information received from the Federal Deontological Commission in the context of the country visit to Belgium.

¹²⁹ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, pp. 8-9; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 8 and 2022 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 13-14.

¹³⁰ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 13-14.

¹³¹ Federal Deontological Commission (2023), General own initiative advice nr. 2023/3 of 15 May 2023 on mobility between the public and private sectors, to avoid conflicts of interest (‘revolving doors’)

¹³² See input from Belgium for the 2023 Rule of Law Report, p. 7. Question 19 on progress in relation to the recommendations in the fight against corruption from the 2022 Rule of Law report was not answered by the Belgian authorities, making it difficult to evaluate progress. The Ministers responsible have answered oral questions in the Parliamentary Commission on the Constitution on the topic on 31 May.

¹³³ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 13 and information received from the Prime Minister’s Office in the context of the country visit to Belgium.

¹³⁴ The plans appear legally difficult, as it is complex to transpose or take as a basis the existing rules on the transparency register for Parliament also to Government members due to different legal statuses of the positions. Information received from the Ministry of Justice and the Prime Minister’s Office in the context of the country visit to Belgium and written contribution from the Ministry of Justice received in the context of the country visit to Belgium.

¹³⁵ Information received from the Ministry of Justice and the Prime Minister’s Office in the context of the country visit to Belgium.

Parliament also continues the discussion on improving its lobbying legislation.¹³⁶ Nonetheless, at this point in time, no concrete steps forward on the lobbying reform for either Government or Parliament have been taken, and therefore so far, no further progress has been made as regards the recommendation from the 2022 Rule of Law Report.

Preliminary discussions on a broader reform of the political party financing framework continue. The current Government had committed to political party financing reform, as the system which includes a large amount of government subsidies for political parties, is seen as outdated¹³⁷. In October 2022, an academic study commissioned by Parliament, proposed a radical overhaul of political party financing rules in Belgium¹³⁸. Following its publication, additional expert advice from academia and civil society¹³⁹ and a public consultation through citizens panels was requested by Parliament¹⁴⁰, with some civil society organisations criticising this as a delaying tactic pointing that political agreement on any sort of reform remains lacking¹⁴¹. The citizens panel, concluded in May 2023, called for more checks on the expenses of political parties and their expenditure on social media, among others¹⁴²; although it is unclear if any of these proposals will be taken forward by the authorities. A public debate over pension bonuses of retired Members of Parliament (at both federal and regional level) raised questions on the ethics of Members of Parliament managing their own pensions¹⁴³. In a minor revision, both chambers of parliament voted to temporary lower subsidies to political parties by 5.32% for the years 2023 and 2024. This would represent savings of 1.98 million euro¹⁴⁴.

Two laws were passed to strengthen whistleblower protection. They were adopted by Parliament at the end of 2022, one for the private sector coordinated by the Ministry of Economy and one for the public sector, led by the Federal Public Service Policy and Support¹⁴⁵.

¹³⁶ Information received from the Ministry of Justice and the Prime Minister's Office in the context of the country visit to Belgium and 2022 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 13. The legislative proposal pending in Parliament (55-2394) would expand the Transparency Register and introduce a legislative footprint for each piece of legislation.

¹³⁷ Government Coalition Agreement (2020), p. 83.

¹³⁸ This study includes recommendations such as a maximum ceiling of funds a political party can receive from the government, *matching funds* where political parties need to raise on their own some means before government financing kicks in, limits on donations and clearly separating the financial means of parliament groups from political parties. House of Representatives (2023), Comparative legal study on the financing of political parties in Europe, as drafted by the experts of the commission of control on campaign and political party finances, p. 9.

¹³⁹ Information received from the Ministry of Justice in the context of the country visit to Belgium. According to the government, the initial report consists of a comparative analysis and brief recommendations. These recommendations are a first step but more hearings on different topics were deemed necessary.

¹⁴⁰ For more information on the citizens panels, see <https://weneedtotalk.be/nl/nieuws>.

¹⁴¹ Information received from Transparency International in the context of the country visit to Belgium.

¹⁴² De Standaard (2023), Citizens panel wants checks on expenses of political parties.

¹⁴³ In early 2023, a number of special legal regimes were publicised. These regimes allegedly allowed a number of retired MPs (and, in certain cases, high level civil servants) to avoid the legal pension limit as determined by the pension law (the "plafond-Wijninckx") and receive additional pension. This led to a public debate. See De Standaard (2023), Parliament chokes again on own pensions and RTL INFO (2023), Pensions of deputies should not have exceeded plafond-Wijninckx.

¹⁴⁴ Wetsontwerp tot wijziging van de wet van 4 juli 1989 betreffende de beperking en de controle van de verkiezingsuitgaven voor de verkiezingen van de Kamer van volksvertegenwoordigers, de financiering en de open boekhouding van de politieke partijen 55-3025 and VRT, House of Representatives lowers party subsidies by 5.3%.

¹⁴⁵ Input from Belgium for the 2023 Rule of Law Report, p. 8. The adopted laws are "The Law of November 28th 2022 on the protection of whistleblowers in the private sector", published in the Official Journal on 15

Stakeholders signal some differences between the protection regime foreseen in both laws. The law on the public sector provides a broad scope of protection for whistleblowers¹⁴⁶ (anything reported “in the public interest”), although the foreseen procedure could prove to be somewhat cumbersome¹⁴⁷. However, civil society considers that the law on the private sector, which follows the strict minimum level of protection¹⁴⁸, could lead to a hesitation to report given that some topics would be covered by the protection whereas others would not¹⁴⁹. The law on the public sector will apply to members of ministerial private offices and their staff, which was a recommendation of GRECO¹⁵⁰.

III. MEDIA PLURALISM AND MEDIA FREEDOM

In Belgium, a legal framework based on a set of constitutional safeguards, such as for the press and freedom of expression, aim to ensure media pluralism. The competences for safeguarding and promoting media pluralism lie with the three linguistic Communities (Flemish, French and German-speaking Community). Each Community has its own media regulatory authority¹⁵¹ and public service media provider¹⁵². There is room for improvement regarding public access to information, particularly in terms of the response time in practice¹⁵³.

Audiovisual media regulators continue to work independently and effectively while the press remains subject to effective self-regulatory supervision. The regulatory framework for media regulators, ensuring their independence and effectiveness, has remained stable¹⁵⁴. While the current resources are at this stage adequate¹⁵⁵, new tasks following from EU legislation, such as the Digital Services Act, comes with a need for additional staff; challenges in this respect are not only budgetary but also the need to find well-qualified personnel¹⁵⁶. There are two journalistic self-regulatory bodies¹⁵⁷ which effectively ensure political independence of print media¹⁵⁸.

December 2022 and entered into force on 15 February 2023 and “The Law of December 8th 2022 on the protection of whistleblowers in the federal public sector”, published in the Official Journal on 23 December 2022 and entered into force on 3 January 2023.

¹⁴⁶ In some ways going beyond the requirements put in place by the EU Directive.

¹⁴⁷ Minister of Public Affairs, Better protection for civil servants that blow the whistle and Information received from Transparency International in the context of the country visit to Belgium.

¹⁴⁸ The minimum as required by the EU Directive; member states are able to go further on certain aspects.

¹⁴⁹ Information received from Transparency International in the context of the country visit to Belgium.

¹⁵⁰ GRECO, Fifth Evaluation Round – Compliance Report (2022), Belgium, recommendation xiv, par. 128 and written contribution from the Ministry of Justice received in the context of the country visit to Belgium.

¹⁵¹ The *Vlaamse Regulator voor de Media* (VRM) for Flanders, the *Conseil Supérieur de l’Audiovisuel* (CSA) for the French-speaking Community and the *Medienrat* for the German-speaking Community.

¹⁵² This is *VRT* for Flanders, *RTBF* for the French-speaking Community and *BRF* for the German-speaking Community.

¹⁵³ Belgium ranks 31st in the 2023 Reporters without Borders World Press Freedom Index compared to rank 23 in the previous year.

¹⁵⁴ 2023 Media Pluralism Monitor, country report Belgium, p. 12.

¹⁵⁵ Information received in the context of the country visit to Belgium from the the media regulators.

¹⁵⁶ Information received in the context of the country visit to Belgium from the the media regulators.

¹⁵⁷ The Journalistic Ethics Council (*Conseil de déontologie journalistique*), the self-regulatory media body for the French and German-speaking communities, and the Council for Journalism (*Raad voor de Journalistiek*), the self-regulatory body for the press in the Flemish community.

¹⁵⁸ 2023 Media Pluralism Monitor, country report Belgium, pp. 9, 17.

There have been no new developments regarding media ownership transparency. The Flemish media regulator annually publishes a very detailed media concentration report regarding all sectors¹⁵⁹ and the three media regulators each provide websites with an overview of the available audiovisual media offers¹⁶⁰. However, information concerning beneficial ownership is only partly included¹⁶¹. Statutory safeguards exist against Government or political interference regarding the audiovisual sector¹⁶² and no instances of such interference have been reported for any sector¹⁶³. As regards the high level of media concentration reported in last year's Rule of Law report¹⁶⁴, all three media regulators stressed the importance of taking account of the fact that citizens in their communities also consult media from the Netherlands, France, and Germany, respectively¹⁶⁵. Even though concerns had been expressed by the media regulator for the French Community regarding the 2022 acquisition of RTL Belgium (a French-language provider) by DPG Media and Groupe Rossel, they were not ultimately reflected in the competition assessment of the merger¹⁶⁶.

Well-established safeguards continue to ensure the independence of public service media. The independent supervisory bodies for public service media were not charged with cases giving rise to concern¹⁶⁷. In all three public service media providers, the members of the supervisory boards are selected on the basis of the proportional representation of the political parties in the respective Parliament. Following the reform that was reported on last year¹⁶⁸, since July 2022, the 12-person board of directors of the Flemish public service media provider VRT has four members that are appointed by the Government on the grounds of their expertise and independence and on the basis of recommendations of an independent external consultancy firm¹⁶⁹.

Some progress has been made as regards public access to documents, insofar as initiatives are on their way to allow the Commission for access to administrative documents (CTB-CADA) to take binding decisions. The 2022 Rule of Law Report recommended to Belgium to “Strengthen the framework for access to official documents, in particular by improving

¹⁵⁹ VRM, 2022 report on media concentration in Flanders.

¹⁶⁰ 2021 Rule of Law Report, country chapter on the rule of law situation in Belgium, p. 10.

¹⁶¹ This lack of information was already addressed by the 2022 Media Pluralism Monitor, country report Belgium, p. 13, and has been reiterated by the 2023 edition of the Monitor, p. 14. The report of the Flemish regulator contains information about owner families in the case of some big media outlets.

¹⁶² Article 163, 174 of the Flemish decree on radio broadcasting and television; Article 3.1.1-2, 3.2.1-4 of the decree of the French-speaking Community on audiovisual media services and video-sharing services.

¹⁶³ See also 2023 Media Pluralism Monitor, country report Belgium, p. 17, which attributes a low risk to political independence also for the other sectors due to ‘informal mechanisms’.

¹⁶⁴ 2022 Rule of Law Report, country chapter on the rule of law situation in Belgium, p. 15.

¹⁶⁵ Information received in the context of the country visit to Belgium from the media regulators.

¹⁶⁶ Information received in the context of the country visit to Belgium from the media regulator CSA.

¹⁶⁷ See 2023 Media Pluralism Monitor, Country Chapter Belgium, p. 18; VRM, Decisions related to 2022; CSA, Decisions related to 2022. According to European Parliament's Flash Eurobarometer: News & Media Survey 2022, p. 37, 56% of respondents in Belgium stated that they trust public TV and radio stations, above the EU average of 49%. The Flemish public media service provider VRT faced criticism, though, regarding the broadcasting of a political programme produced on behalf of the Flemish government and moderated by two VRT journalists (DeMorgen (2022), Criticism for VRT role in promo show for Flemish government); the competent Minister stressed that no VRT resources were used for the production (Flemish Parliament, Report of the meeting of the Committee for Culture, Youth, Sport and the Media on 27 October 2022).

¹⁶⁸ See 2022 Rule of Law Report, country chapter on the rule of law situation in Belgium, p. 16.

¹⁶⁹ See VRT, Composition of the Board of Directors; Art. 12(1) of the Flemish decree on radio broadcasting and television.

request and appeal processes and by limiting the grounds for rejection of disclosure requests, taking into account European standards on access to official documents”. In principle, the right to public access to documents is anchored in the Belgian Constitution. At Federal level, the body competent to handle an appeal in matters not related to environmental information¹⁷⁰, the CTB-CADA¹⁷¹, remains only an advisory body so far¹⁷². This has been criticised not only by stakeholders¹⁷³ but also by the Federal Institute for Human Rights¹⁷⁴, an independent public institute. They also indicated that the procedures to obtain information take too long¹⁷⁵. Furthermore, the CTB-CADA was inoperative for nine months from September 2021 to June 2022 because the necessary royal decree for the re-appointment of its members had not been renewed in time¹⁷⁶. Several members of Parliament have brought forward a legislative initiative in 2021 addressing the issue of public access to documents; the Minister of the Interior considers an own initiative and for this purpose delivered questions to the Federal Institute for Human Rights¹⁷⁷. While these developments are still ongoing¹⁷⁸, they would address the transformation of the CTB-CADA into a body with the power to issue binding decisions¹⁷⁹. In Flanders and Wallonia, the appeal body issues binding decisions¹⁸⁰, but the lengthy application procedures in practice have been criticised by stakeholders in Flanders¹⁸¹ and Wallonia¹⁸². In Flanders, the introduction of an optional ground of refusal if the application concerns ‘internal communication’¹⁸³ triggered a constitutional complaint by, among others, the Flemish Association of Journalists (*Vlaamse Vereniging van Journalisten*, VVJ). On 9 March 2023, the Constitutional Court rejected the complaint considering that the authorities would have to always assess specifically whether disclosure adversely affects the internal decision-making process¹⁸⁴. Since initiatives are pending to transform the CTB-CADA into a body with the power to issue binding decisions, it is concluded that there has been some progress on the recommendation made in the 2022 Report.

¹⁷⁰ As far as environmental informations are concerned, the legal framework is different because it transposes the Directive 2003/4 on public access to environmental information. That framework notably includes an appeal body whose decisions are binding, in accordance with Art. 6(1) of the Directive.

¹⁷¹ (*Federale*) *Commissie voor de toegang tot bestuursdocumenten* – *Commission (fédérale) d'accès aux documents administratifs*.

¹⁷² Even though the CTB-CADA's opinions have been called 'authoritative' by the Flemish Association of Journalists in the context in the context of the country visit to Belgium.

¹⁷³ See 2022 Rule of Law Report, country chapter on the rule of law situation in Belgium, p. 16.

¹⁷⁴ FIRM-IFDH (2022), FIRM-IFDH advisory opinion 1/2022, p. 13.

¹⁷⁵ FIRM-IFDH opinion 1/2022, pp. 14-15 (proposing also the introduction of an urgent procedure); European Network of National Human Rights Institutions (ENNHRI), ENNHRI Rule of Law Reporting 2023, p. 24; Civil Liberties Union for Europe (2023), 2023 Liberties Rule of Law Report, country report Belgium, p. 20. This is not due to the statutory deadline which is 30 days from the receipt of the application (in line with the European standard which is identified by Article 3 of Directive 2003/4 on public access to environmental information that sets a deadline of one month), but due to the handling of applications in practice.

¹⁷⁶ See 2023 Liberties Rule of Law Report, country report Belgium, pp. 19-20.

¹⁷⁷ See FIRM-IFDH (2022), FIRM-IFDH advisory opinion 9/2022.

¹⁷⁸ ENNHRI Rule of Law Reporting 2023, p. 23; Information given by the CTB-CADA during the country visit.

¹⁷⁹ See FIRM-IFDH advisory opinion 1/2022, p. 13; FIRM-IFDH advisory opinion 9/2022, p. 10.

¹⁸⁰ For Flanders see Contribution from the Belgian government for the 2023 Rule of Law Report, p. 9; for Wallonia see Art. 8quinquies of the Decree on the publicity of the administration of 30 March 1995.

¹⁸¹ See VVJ (2021), Open letter to the Flemish legislator. There are no signs that the situation has changed since then.

¹⁸² See 2023 Liberties Rule of Law Report Belgium, p. 20; 2022 Liberties Rule of Law Report, p. 60.

¹⁸³ See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 16.

¹⁸⁴ Constitutional Court, judgment no. 39/2023 of 9 March 2023.

The safety of journalists remains an issue, in particular online, and measures are being taken to improve it. The Council of Europe Platform to promote the protection of journalism and safety of journalists¹⁸⁵, the Media Freedom Rapid Response¹⁸⁶ and the Report by the Flemish Association of Journalists¹⁸⁷ cite several cases of online harassment and intimidation in 2022, notably of female journalists. According to stakeholders, there are so many online attacks, it would be difficult for the law enforcement agencies to follow suit¹⁸⁸. Physical attacks diminished with the fading out of the protests against government measures addressing the pandemic, but in the context of riots following the Football World Cup games, several journalists were attacked by rioters; some were also arrested or allegedly threatened by the police, seemingly because they had filmed the scene or tried to do so¹⁸⁹. The federal police and the external Permanent Oversight Committee on the Police Services (*Comité P*) both made clear that police guidelines would prohibit preventing a journalist from filming¹⁹⁰. In October 2022, the Flemish Association of Journalists launched *PersVeilig.be*, inspired by a Dutch initiative. It offers safety trainings for journalists, ad-hoc legal and non-legal assistance, and a possibility to report attacks; it also involves a close (albeit not formalised) dialogue between journalists and the police¹⁹¹. The issue of strategic lawsuits against public participation (SLAPPs) also continues to give rise to concerns for journalists¹⁹². The Minister of Justice acknowledged the issue would deserve attention and a ‘thoughtful approach’¹⁹³. Additionally, the reform of the penal code that the Federal Government presented in November contains the introduction of aggravated sentences for certain crimes committed against journalists and the abolishment of the prison sentence for cases of defamation¹⁹⁴.

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

Belgium is a federal state with significant powers residing at the level of the Regions and Communities. At the federal level, Belgium has a bicameral parliamentary system. The Parliament is composed of the House of Representatives and the Senate. Legislative proposals can originate from the Government and from Members of both Houses of Parliament¹⁹⁵. The

¹⁸⁵ Council of Europe, Platform to promote the protection of journalism and safety of journalists – Belgium.

¹⁸⁶ Media Freedom Rapid Response – Belgium.

¹⁸⁷ VVJ (2022), Report on aggressions against journalists.

¹⁸⁸ Information received in the context of the country visit to Belgium from the VVJ.

¹⁸⁹ Council of Europe, Platform to promote the protection of journalism and safety of journalists – Belgium; Media Freedom Rapid Response – Belgium. The issue if journalists filming scenes involving police forces with the latter trying to prevent it, was reported already last year (see 2022 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 17).

¹⁹⁰ Information received from the federal police and the external Permanent Oversight Committee on the Police Services during the country visit. See also Police Locale Ouest Brabant Wallon (2023), Photographier/filmer des policiers.

¹⁹¹ Contribution from the Flemish Association of Journalists for the 2023 Rule of Law Report, p. 9.

¹⁹² VVJ (2022), Report on aggressions against journalists; Information received in the context of the country visit to Belgium from the VVJ and the RTBF.

¹⁹³ Voorhof (2022), SLAPPs: harassing, reckless or harassing legal proceedings, referring to a reply of the Minister to a parliamentary question.

¹⁹⁴ Contribution from the Belgian Government for the 2023 Rule of Law Report, p. 12; Team Justice (2022), A new penal code adapted to the 21st century; HLN (2022), Van Quickenborne explains new criminal code. On the other hand no advancement took place regarding the Minister’s suggestion to amend Article 150 of the Belgian Constitution to facilitate criminal trials for hate speech against journalists, that was reported on in last year’s Rule of Law Report, see 2022 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 17.

¹⁹⁵ The Senate can only propose legislation in certain fields.

advisory branch of the Council of State provides opinions on draft legislation. The Constitutional Court is competent to review legislative acts adopted by the Federal Parliament and by the Parliaments of the Regions and Communities. In addition to the justice system, independent authorities play an important role in checks and balances.

Although the Federal Parliament ended the state of epidemic emergency under the pandemic law in March 2022, judicial scrutiny of pandemic legislation continued. Throughout 2022 and 2023, the courts remained active in their scrutiny of COVID-19 pandemic related measures. In a judgment of 17 June 2022, the Council of State recognised that the limitation of participants in certain types of ceremonies was a disproportionate measure infringing the freedom of religion¹⁹⁶, which led the Government to revise its policy¹⁹⁷. Important Constitutional Court judgments¹⁹⁸ dealt with the legal basis of most of the restricting measures taken during the first period of the pandemic¹⁹⁹, legislation concerning contact tracing²⁰⁰, regional rules dealing with special quarantine and isolation requirement in the context of the pandemic²⁰¹ and the Federal pandemic law²⁰².

The Federal Human Rights Institute (FIRM/IFDH) has continued to play an active role²⁰³ and the establishment of a separate Flemish Human Rights Institute requires close cooperation between the federal and regional level. In particular, the FIRM/IFDH has issued numerous opinions and made recommendations on important topics subject to societal debate²⁰⁴. National legislation transposing Directive 2019/1937 (whistleblowers)²⁰⁵ has extended the mandate of FIRM/IFDH enabling it to provide support to whistleblowers of the private and public sectors. Furthermore, the Institute will act as an information centre and

¹⁹⁶ Council of State judgment nr. 254.041 of 17 June 2022.

¹⁹⁷ Other appeals related to the COVID-19 measures are pending, for instance linked to the sale of rapid antigenic tests online.

¹⁹⁸ Threelaws formed the basis for the adoption of the COVID-19 pandemic related measures: the Act of 31 December 1963 ‘on civil protection’, published on 16 January 1964 in the Belgian Official Gazette, the Act of 15 May 2007 on civil security, published on 31 July 2007 in the Belgian Official Gazette and the Law of 14 August 2021 on administrative police measures in an emergency pandemic situation (Federal pandemic law), published on 20 August 2021 in the Belgian Official Gazette.

¹⁹⁹ Constitutional Court judgment 109/2022 of 22 September 2022; Constitutional Court judgement 170/2022 of 22 December 2022.

²⁰⁰ Constitutional Court judgment 110/2022 of 22 September 2022.

²⁰¹ Constitutional Court judgment nr. 26/2023 of 16 February 2023.

²⁰² Constitutional Court judgment 33/2023 of 2 March 2023. The Court upheld the Federal pandemic law.

²⁰³ See also 2022 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 19 and p. 13 respectively.

²⁰⁴ In 2022 FIRM-IFDH issued 15 advisory opinions (of which 11 upon request of Parliament or the executive; and 4 at FIRM-IFDH’s own initiative. One example concerns its Advisory opinion on a legislative proposal modifying the law of 24 June 2013 on municipal administrative sanctions adopted on 29 November 2022. In this opinion FIRM-IFDH criticises the use of administrative sanctions to restrict freedom of speech, of assembly and of demonstration, or the right to strike, often based on a narrow understanding of public order. Contribution from the European Network of National Human Rights Institutions for the 2023 Rule of Law Report, pp. 14, 18.

²⁰⁵ Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, PE/78/2019/REV/1, OJ L 305, 26.11.2019, p. 17–56; Implemented by the Act of 28 November 2022 on the protection of persons reporting violations of Union or national law within a private sector legal entity, Belgian official Bulletin, 15 December 2022 and the Act of 8 December 2022 on reporting channels and the protection of whistleblowers in federal public sector bodies and the integrated police, Belgian official Bulletin, 23 December 2022.

promote whistleblowers' rights²⁰⁶. Finally, FIRM-IFDH will be a national 'focal point under Commission Recommendation 2022/758 of 27 April 2022 ('Strategic lawsuits against public participation')²⁰⁷. To ensure its effective functioning, FIRM/IFDH considers it important to receive the competence to handle individual complaints²⁰⁸. The strategic plan of the FIRM/IFDH mentions the intention to work towards a possible cooperation agreement extending its competence to non-federal levels, as laid down in its establishing law²⁰⁹. An extension of competences to non-federal levels no longer concerns Flanders as it has now established its own Human Rights Institute²¹⁰, which also assumes the role of equality body at regional level. In this regard, both the FIRM-IFDH and the Flemish government recognise the need to ensure close cooperation of human rights between the federal and regional level²¹¹. On 25 April 2023, FIRM-IFDH received a B-status accreditation as an NHRI, meaning a recognition as an NHRI partially conform to the Paris Principles²¹².

Despite improvements in 2022, some challenges remain as regards the human and financial resources available to independent institutions²¹³. The Council of State received additional funding in 2022 which enabled it to recruit additional staff and work towards reducing the length of judicial proceedings, though further staff increases might appear necessary in respect to heavier burden of work for the French speaking magistrates due to a partial regionalisation of administrative justice on the Flemish side²¹⁴. As mentioned, the Government links additional resources for the judiciary to the prioritisation of certain cases²¹⁵. The Council has raised attention to this legislation arguing that each litigant, whatever the importance of his dispute, has the right to a response from justice within a reasonable time²¹⁶.

²⁰⁶ Input from the European Network of National Human Rights Institutions for the 2023 Rule of Law Report, p. 11.

²⁰⁷ Commission Recommendation (EU) 2022/758 of 27 April 2022 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings ('Strategic lawsuits against public participation'), C/2022/2428, OJ L 138, 17.5.2022, p. 30 - 44.

²⁰⁸ Information received from the FIRM/IFDH in the context of the country visit to Belgium.

²⁰⁹ See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 13.

²¹⁰ Act of 28 October 2022 establishing a Flemish Human Rights Institute, Belgian official Bulletin, 9 November 2022.

²¹¹ Information received from the FIRM/IFDH in the context of the country visit to Belgium; cooperation between FIRM-IFDH and the Flemish Human Rights Institute is envisaged, as mentioned by the competent Minister in his policy declaration for 2023, see Flemish Government Policy and budget explanations, Equal opportunities, integration and integration, Budget 2023, p. 9; Concerns have been expressed that the establishment of the Flemish Human Rights Institute will possibly weaken the position of the victims of discrimination in Flanders; input received from the Belgian Human Rights leagues in the context of the country visit to Belgium; See also 2022 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 18 and p. 13 respectively; Council of State, Advice on the establishment of the Flemish Human Rights Institute, 7 June 2022.

²¹² Principles relating to the Status of National Institutions (The Paris Principles), Adopted by General Assembly resolution 48/134 of 20 December 1993.

²¹³ Information received in the context of the country visit to Belgium. See also Constitutional Court, Court of Cassation, and Council of State (2019), Joint Memorandum.

²¹⁴ A number of specialised administrative courts for Flanders have jurisdiction to rule on certain cases; Information provided by the Council of State in the context of the country visit to Belgium.

²¹⁵ The Council of State reports that thanks to the energy crisis and the Government's desire to move forward with its renewable energy policy it will benefit from an increase in staff. In return, it is asked to process these appeals more quickly without however taking into account the reality of the existing backlog; Information provided by the Council of State in the context of the country visit to Belgium.

²¹⁶ Information provided by the Council of State in the context of the country visit to Belgium; On the tying of resources to certain categories of cases see also footnote 43; The legislative proposal amending the laws of the

Due to the increase in its budget, the Constitutional Court was able to hire additional staff which should address the backlog in its cases by the end of 2023²¹⁷. A rationalisation exercise regarding the administrative functioning of institutions that receive an endowment from Parliament, including the Federal Ombudsman, the Federal Human Rights Institute, and the High Council for Justice is still ongoing²¹⁸.

On 1 January 2023, Belgium had 22 leading judgments of the European Court of Human Rights pending implementation, an increase of one compared to the previous year²¹⁹. At that time, Belgium's rate of leading judgments from the past 10 years that remained pending was at 48% (compared to 49% in 2022), and the average time that the judgments had been pending implementation was 3 years and 5 months (compared to 3 years and 3 months in 2022)²²⁰. The oldest leading judgment, pending implementation for almost 14 years, concerns the excessive length of civil proceedings at first instance level²²¹. On 15 June 2023, the number of leading judgments pending implementation has increased to 26²²².

Non-compliance by the Government with court judgments and orders imposing periodic penalty payments raises concerns. There have been a significant number of judgments issued by the Brussels Labour Tribunal finding the State responsible for not ensuring adequate reception of asylum seekers²²³. While the Government is taking steps to address the reception situation²²⁴, it still does not comply with a large number of judgments and court orders

Council of State, coordinated on January 12, 1973 was adopted by Parliament on 16 May 2023. The reform of the Council of State has as its primary objective the reduction of processing times for procedures before the Administrative Litigation section of the Council of State. The Council of State is committed to reducing the processing time for an ordinary annulment appeal, without procedural incident, to a maximum of 18 months.

²¹⁷ Information provided by the Constitutional Court in the context of the country visit to Belgium.

²¹⁸ Information provided by the Federal Human Rights Institute in the context of the country visit to Belgium.

²¹⁹ The adoption of necessary execution measures for a judgment by the European Court of Human Rights is supervised by the Committee of Ministers of the Council of Europe. It is the Committee's practice to group cases against a State requiring similar execution measures, particularly general measures, and examine them jointly. The first case in the group is designated as the leading case as regards the supervision of the general measures and repetitive cases within the group can be closed when it is assessed that all possible individual measures needed to provide redress to the applicant have been taken.

²²⁰ All figures are calculated by the European Implementation Network and are based on the number of cases that are considered pending at the annual cut-off date of 1 January 2023. See the Contribution from the European Implementation Network for the 2023 Rule of Law Report, p. 1.

²²¹ Judgment of the European Court of Human Rights of 4 November 2008, *Bell v. Belgium*, 44826/05, pending implementation since 2009.

²²² Data according to the online database of the Council of Europe (HUDOC).

²²³ Input from the European Network of National Human Rights Institutions for the 2023 Rule of Law Report, p. 27; Franet (2022), Country research - Legal environment and space of civil society organisations in supporting fundamental rights, Belgium, section 1.1.; At the end of December 2022, five human rights institutions published a joint statement in which they called on the Federal Government to put an end to the ongoing reception crisis and to respect national and international obligations in the field of asylum, see Federal Centre for Migration Myria, the Federal Institute of Human Rights, the Federal Ombudsman, the General Delegate for the Rights of the Child and the Child's Rights Commissioner, Recommendations to solve the reception crisis, 21 December 2022; Flemish Refugee Council, Dashboard Reception Crisis, 25 May 2023.

²²⁴ On March 9 the Government announced its intention to create additional capacity to receive asylum seekers, It also aims at increasing the outflows from the reception network, including through an additional large-scale recruitment of staff to handle asylum cases as well as addressing irregular and secondary flows to Belgium, together with other EU member states; Input received from Belgium for the 2023 Rule of law report; Flemish Refugee Council (2023), Dashboard Reception Crisis, 25 May 2023.

imposing periodic penalty payments²²⁵. This situation led the bar associations to set up a ‘rule of law observatory’²²⁶.

Some concerns have been raised regarding the civil society landscape. The CIVICUS rating for the civil society landscape remains narrowed²²⁷. A Flemish Government decree on socio-cultural work²²⁸ is criticised for including provisions making clear that organisations that ‘segregate’ based on ethnic cultural identity will not be subsidised²²⁹. Concerns have also been raised regarding the expansion of the scope of municipal administrative sanctions and their use against those organising and participating in demonstrations²³⁰. Finally, civil society stakeholders criticise the current balancing of interests in the Penal Code between the right to demonstrate and public order²³¹. The Ministry of Justice is preparing a revision of the Code which would further clarify the need to respect fundamental rights. In particular, a clause would be introduced ensuring that persons who exercise their fundamental rights such as the right to strike, freedom of assembly, freedom of association, would only be prosecuted for traffic offences if there was an “intent to harm”²³².

²²⁵ All cases are followed up on an individual level until the Belgian Government is in compliance. On 7 June 2023, the total amount of outstanding periodic penalty payments was EUR 50 million; Input received from Belgium for the 2023 Rule of law report; Other widely reported examples of non-implementation of national court judgments relate to extradition to third states and weapons exports. Input from the European Network of National Human Rights Institutions for the 2023 Rule of Law Report, p. 30; Input received from the Belgian Leagues for Human Rights in the context of the country visit to Belgium.

²²⁶ Information received from the Bar Associations in the context of the country visit to Belgium.

²²⁷ Rating given by CIVICUS; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

²²⁸ Decree on the subsidisation of adult social and cultural work, 10 March 2023.

²²⁹ Decree on the subsidisation of adult social and cultural work, Articles 2(15) and 3. The explanatory memorandum justifies this wording by pointing to the need for organisations to take on a bridging function between groups in society. These provisions have led to concerns that anti-discrimination and racism groups will be targeted by this wording. Concerns have also been raised as regards what was perceived as an intimidation campaign by the Flemish Government against Minorityforum (*Minderhedenforum*), an organisation aimed at ensuring the involvement of minority viewpoints. Input received from the Belgian Leagues for Human Rights in the context of the country visit to Belgium.

²³⁰ Input received from the Belgian Leagues for Human Rights in the context of the country visit to Belgium; FIRM-IFDH, Advisory opinion on a legislative proposal modifying the law of 24 June 2013 on municipal administrative sanctions, 29 November 2022.

²³¹ Input from the European Network of National Human Rights Institutions for the 2023 Rule of Law Report, p. 20; European Union Agency for Fundamental Rights, An update on developments regarding civic space in the EU and an overview of the possibilities for human rights defenders to enter EU territory, Belgium, section 1.2; In 2019 and 2021, two appeal courts have convicted trade unions members for the criminal offence of malicious traffic obstruction for roadblocks (“pickets”) in the context of trade union activities. On 23 March 2023, both convictions were upheld by the criminal chamber of the Court of Cassation; Judgment of the Court of Cassation of 23 March 2022, H. contra P., ECLI:BE:CASS:2022:ARR.20220323.2F.4.

²³² The new legislation would replace the word “maliciously” in the current article 406 of the Penal Code with the words “with intent to harm” (proposed Article 288 Penal Code) as regards the offences related to traffic obstruction. The rights to which this clause refers are not absolute but may be subject to restrictions justified in particular by the need to ensure respect for other competing fundamental rights, Input from Belgium received in the context of the country visit to Belgium; Ministry of Justice, A new Penal Code adapted to the 21st century, 6 November 2022; FIRM-IFDH, Advisory opinion 1/2023 on traffic obstruction, preliminary draft law to reform of Book II of the Penal Code 9 January 2023. FIRM-IFDH welcomes and the Government’s proposal to introduce a human rights protection clause on the crime of obstruction of traffic notably as ‘the peaceful exercise of the right to demonstrate and the right to collective action ideally does not give rise to criminal sanctions’.

Annex I: List of sources in alphabetical order*

* The list of contributions received in the context of the consultation for the 2023 Rule of Law report can be found at https://commission.europa.eu/publications/2023-rule-law-report-targeted-stakeholder-consultation_en.

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Annex II: Country visit to Belgium

The Commission services held virtual meetings in February 2023 with:

- Central Office for the Repression of Corruption
- College of Courts and Tribunals
- Committee P
- Constitutional Court
- Council of State
- Court of Cassation
- Federal Deontological Commission
- Federal Institute for Human Rights
- Federal Ombudsman
- Flemish Bar Association
- Flemish Media Regulator
- French- and German-speaking Order of the Belgian Bar
- High Council for Justice
- High Council for the Audiovisual
- Journalistic Ethics Council
- League for Human Rights (Liga voor Mensenrechten)
- League for Human Rights (Ligue des Droits Humains)
- Media Council for the German-speaking Community
- Ministry of the Interior
- Ministry of Justice
- Prosecution Service
- Public Service Media
- Transparency International Belgium
- Unit for Integrity and Culture

* The Commission also met the following organisations in a number of horizontal meetings:

- ALDA (European Association for Local Democracy)
- Amnesty International
- Civil Liberties Union for Europe
- Civil Society Europe
- Culture Action Europe
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Free Press Unlimited
- Front Line Defenders
- ILGA Europe
- International Commission of Jurists
- International Federation for Human Rights (FIDH)

- International Planned Parenthood Federation European Network
- International Press Institute
- JEF Europe
- Osservatorio Balcani e Caucaso Transeuropa
- Philea
- Reporters Without Borders
- SOLIDAR
- Transparency International EU