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COMMISSION STAFF WORKING DOCUMENT

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

Accompanying the document

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

2023 Rule of Law Report

The rule of law situation in the European Union

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ABSTRACT

The well-advanced digitalisation of the justice system in Estonia continued to be developed. A portal was created linking the public e-File and the business register to enhance cross-system document access. Amendments to the Courts Act will create specialised departments within each court. This would lead to the creation of new middle management positions for judges. The legal framework for transfers of judges contains adequate safeguards, while some concerns have been voiced that the new, permanent system of specialised departments could result in a *de facto* transfer without consent. The number of judges has been increased and additional rules are expected to allow for a better distribution of the workload. New legal aid rules have been adopted. The high level of digitalisation allows the justice system to continue working efficiently.

As regards the guidelines on the conflict of interests, new procedures were introduced, including the anti-corruption contact points and assistance to the ministers and their advisors in getting acquainted with the rules in place. Concerning guidelines on lobbying, the current rules continue to be promoted and are actively monitored by the authorities. The 2021-2025 Anti-Corruption Action Plan is being implemented efficiently. In addition, amendments to the Anti-Corruption Act are under preparation. The authorities efficiently deal with investigation and prosecution of corruption-related cases. While new rules were introduced in relation to revolving doors for members of Government, draft laws on Political Parties' Financing and whistleblowing have not yet been adopted.

As a result of new legislation, the national media regulator in Estonia has been granted additional staff and better technical tools to ensure the implementation of new EU rules. The resources of the public service media, which according to polls attracts a high level of trust among citizens, have been increased. Some progress has been made to improve the practical application of the right of access to information, which is protected by the Constitution. Nonetheless, the Parliament has procured a study to provide input for possible solutions to address diverging disclosure practices. In two recent judgments, the Supreme Court has upheld the confidentiality of journalistic sources and clarified freedom of the press regarding disclosure of information about pre-trial proceedings.

The new digital platform for further improving the process of enactment laws is being launched, with additional features for including stakeholders to be developed by the end of 2023. The Chancellor of Justice continued playing an active role in upholding the rule of law through proposals for constitutionality checks of legislation and memoranda addressed to state and local authorities for initiating legislation. The civic space remains open, but concerns have been raised as regards the modalities of funding of Civil Society Organisations through Parliament.

RECOMMENDATIONS

Overall, concerning the recommendations in the 2022 Rule of Law Report, Estonia has (made):

- Significant progress on ensuring that the guidelines on the conflict of interests are subject to an effective verification, monitoring and enforcement mechanism.
- Fully implemented the recommendation to continue the efforts in effective implementation of the guidelines on lobbying.
- Some progress on ensuring consistent and effective practical implementation of the right of access to information taking into account European standards on access to official documents.
- Significant progress on continuing to advance with the digital platform to make the legislative process even more visible and inclusive for public consultation.

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

- Ensure that the guidelines on the conflict of interests are subject to an enforcement mechanism.
- Advance with the efforts to ensure consistent and effective implementation of the right of access to information taking into account European standards on access to official documents.

I. JUSTICE SYSTEM

The Estonian court system consists of three levels: four County Courts (hearing all civil, criminal and misdemeanour matters) and two Administrative Courts at first instance, two Circuit Courts at second instance (reviewing decisions of County and Administrative Courts), and the Supreme Court at the highest instance, which reviews court judgments by way of cassation proceedings. The Supreme Court administers its own budget and operations, while the courts of first and second instance are administered in cooperation between the Council for Administration of Courts and the Ministry of Justice. Estonia does not have a Constitutional court but the Supreme Court's Constitutional Review Chamber can carry out *ex post* constitutional review, including, under certain conditions, based on a constitutional complaint¹. The Council for Administration of Courts is a non-permanent body², which has powers, among others, related to the judicial map, the resources of the judiciary and participates in the discussion on administration of the courts. Judges of first and second instance courts are appointed by the President of the Republic on the proposal of the Supreme Court (*en banc*)³. The Prosecutor's Office is a government agency under the Ministry of Justice, which is independent in the performance of its duties. It is managed by the Prosecutor General, particularly as regards the appointment and career of prosecutors⁴. The Estonian Bar Association is an independent, self-governing professional association⁵. Disciplinary proceedings against lawyers can be initiated before the Court of Honour⁶ by any interested person or by the board of the Bar Association⁷. Estonia participates in the European Public Prosecutor's Office (EPPO).

Independence

The level of perceived judicial independence in Estonia continues to be high among the general public and average among companies. Overall, 65% of the general population and 59% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2023⁸. According to data in the 2023 EU Justice Scoreboard, no clear trend can be identified in the evolution of the perceived level of independence since 2016. Nevertheless, the perceived judicial independence among the general public has increased in

¹ § 4 of the Constitutional Review Court Procedure Act - A complaint can be referred to the Supreme Court's Constitutional Review Chamber by the President of the Republic, the Chancellor of Justice, a local government council and the Parliament. § 9 of the Constitutional Review Court Procedure Act - Constitutional review on the basis of court judgment or court ruling is also possible.

² The Council does not function on a permanent basis and has four regular sessions, as well as extraordinary sessions whenever needed. See 2020 Rule of Law Report, Country Chapter on the rule of law situation in Estonia, p. 3.

³ The Supreme Court *en banc* is the highest body of the Supreme Court. It is comprised of all 19 justices of the Supreme Court. The Supreme Court *en banc* is convened and chaired by the Chief Justice of the Supreme Court.

⁴ The Prosecutor General exercises supervisory control in the prosecutor's office, and chief prosecutors exercise supervisory control in district prosecutor's offices.

⁵ § 2(1) of the Bar Association Act.

⁶ § 15(1) and § 15(3) of the Bar Association Act - The Court of Honour consists of four sworn lawyers elected by the general assembly of the Bar Association, two judges elected by the Court *en banc* and one jurist designated by the council of the Law Faculty of the University of Tartu.

⁷ § 16(1) of the Bar Association Act.

⁸ 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%).

comparison to 2022 (60%), as well as to 2016 (62%). The perceived judicial independence among companies has increased in comparison to 2022 (47%) although it remains lower than in 2016 (72%).

The amendments to the Courts Act will create specialised departments within each court. On 16 February 2023⁹, the Parliament adopted amendments to the Courts Act, which aim to create more effective management levels through which case-law would be harmonised and the workload would be lowered¹⁰. Through these amendments, the currently existing territorial divisions of courts at national level will be abolished and converted into specialised civil and criminal departments, with each department encompassing several court houses. Within a department, a narrower specialisation would be created¹¹. Judges have raised concerns regarding these amendments, noting that specialisation already exists through the distribution plans of the courts, and that there is no need for a “compulsory” specialisation through the creation of departments and middle level management structures¹². According to European standards, specialisation could present certain advantages¹³ but also certain disadvantages¹⁴, and both have to be duly taken into account, having in mind the realities in each individual Member State.

The new amendments to the Courts Act envisage judges as Heads of Departments to support the administration of justice. The Courts Act amendments of 16 February 2023 envisaged that each new specialised department would be headed by a judge, who will be appointed by the president of the court after having heard the opinion of the judges of the given department¹⁵. The Heads of Departments support the administration of justice and organise the work of the officials of the department¹⁶. They also perform the duties assigned to them by the president of the court and prescribed in the internal rules of the court¹⁷. The Heads of the Departments do not by default have disciplinary authority over the judges in

⁹ The amendments will enter into force in May 2023.

¹⁰ This would be achieved through spreading the workload and dealing with it more efficiently. Input from Estonia for the preparation of the 2023 Rule of Law Report, p. 4.

¹¹ E.g. within the criminal law department, there could be an anti-corruption specialisation. See also § 91 (2) of the Courts Act.

¹² Parliament’s Constitutional Committee, minutes No 142 of the sitting, 18 October 2022; written contribution from Estonian Judges Association in the context of the country visit to Estonia. The Judges’ Association stated that judges would have to either decide to stay in the court where they used to work and accept a new area of work, if the specialisation of that courthouse changed, or they would be assigned to a different court house where their field of specialisation exists, which would require travelling or moving.

¹³ For example, concentrating case-files in the hands of a select group of specialist judges can be conducive to consistency in judicial decisions and consequently can enhance legal certainty. Specialist judges who provide knowledge of a science other than law can foster a multidisciplinary approach to the problems under discussion. See Opinion (2012) No. 15 of the Consultative Council of European Judges on the Specialisation of Judges, paras. 8-13.

¹⁴ For example, specialisation, could lead to reproducing previous decisions when deciding on same issues, which can hamper the evolution of case-law in line with society’s needs. Furthermore, smaller courts may find it impossible to set up specialist chambers, or an adequate number of such chambers. This forces judges to be versatile, and thus to have the ability to address a range of specialist matters. Excessive individual specialisation of judges would hamper this necessary versatility. See Opinion (2012) No. 15 of the Consultative Council of European Judges on the specialisation of judges, paras. 14 to 23.

¹⁵ See § 12² of the Courts Act.

¹⁶ This would include the harmonisation of the case-law in a specific area of justice.

¹⁷ Written contribution from the Ministry of Justice, the Supreme Court, and Council for the Administration of Courts in the context of the country visit to Estonia, p. 1.

their department¹⁸. Moreover, the Heads of Departments do not have the power to give formal feedback to the judges, neither the competence to ask judges for the explanations regarding the application of the law in certain court cases¹⁹. The Government considers that open discussions and sharing practices within the department would be desirable effects of the new law. Initially, a feedback system was envisaged to be set up for first instance judges who would be assessed by second instance judges. However, this part was eventually left out from the adopted amendments, as the Association of Judges considered the system too premature and not sufficiently regulated²⁰. The Association of Judges has raised concerns that the concrete implementation of these new powers could affect judicial independence, as the concrete application is specified in the internal rules of each court and the framework provided by the amendments leaves room for different interpretations²¹. It is relevant to recall that according to European standards²², individual judges should be free from directives or pressure from the president of the court (in this case, the head of department) when adjudicating cases²³, and these standards should be taken duly into account.

The legal framework for transfers of judges contains adequate safeguards, while some concerns have been voiced that new amendments to the Courts Act could result in a *de facto* transfer without consent. The legal regime for transferring judges remains unchanged and is accompanied by adequate safeguards²⁴. According to the amendments to the Courts Act adopted on 16 February 2023, the conversion of currently existing territorial divisions of courts into specialised civil and criminal departments, where a department would encompass several courthouses, implies that certain judges would have to travel on daily basis between several courthouses to see different cases of the same area of law²⁵. Consequently, a judge could be forced by the circumstances to relocate to another city in order to continue fulfilling their duties in instances where distances are too big and time consuming to regularly cover. While the Government argues that the majority of cases can be resolved through a written

¹⁸ Oversight over the administration of justice, over the performance of duties by judges, and over the forwarding of the data of the court information system pursuant to the established procedure remains unchanged and is exercised by the president of the court. However, this could be an additional power granted to them by the president of the court. This has been done in the Court of Harju, the revised internal rules of the court give additional powers to the Heads of Departments to initiate disciplinary proceedings. (Information received from the Estonian Judges Association).

¹⁹ Written contribution from the Ministry of Justice, the Supreme Court, and Council for the Administration of Courts in the context of the country visit to Estonia, p. 1.

²⁰ Ibid.

²¹ Parliament's Constitutional Committee, minutes No 142 of the sitting, 18 October 2022; written contribution from Estonian Judges Association in the context of the country visit to Estonia.

²² See Opinion (2016) No. 19 of the Consultative Council of European Judges on the role of Court Presidents.

²³ See Opinion (2016) No. 19 of the Consultative Council of European Judges on the role of Court Presidents, para. 13.

²⁴ When it comes to the legal regime for transferring a judge from one department to another, the final decision lies with the president of the court. This is a voluntary process, and the decision is made following an application submitted by the judge and considering the opinion of the full court. It is important to note that the president of the court cannot transfer a judge to another department without the judge's consent. While there is a theoretical possibility that the full court could assign a judge to another department without consent, the judge can protect their rights by submitting an application to the president of the court. Nevertheless, these situations are different from the *de facto* transfer, which is raised as an issue by the stakeholders, where the circumstances created by the specialisation of courthouses could force judges to ask for transfer.

²⁵ Information received from the Ministry of Justice in the context of the country visit to Estonia. This is also linked to the fact that the case allocation system does not take into account the different locations and the geographical distances involved.

procedure²⁶, in practice these cases could also require hearings²⁷. Therefore, stakeholders voiced some concern that the new specialisation of departments could result in *de facto* transfers of judges without their consent²⁸.

The previous, temporary regime for the transfer of cases, intended to address excessive workload, was not further used. That regime for transfer of cases, mentioned in the previous two Rule of Law Reports²⁹, was introduced as a temporary measure to cope with the excessive workload of certain judges and the use of it had raised concerns in relation to the transfer of judges. Apart from the initially transferred 543 cases there have been no further cases transferred, and it appears that the regime for the transfer of cases as a temporary measure has not been further used³⁰.

Quality

Further improvements have been made in the digitalisation of justice to improve cross-system document access. As noted in the 2020 and 2021 Rule of Law Reports, Estonia is among the best performing Member States when it comes to digitalisation of justice³¹. Since October 2022, the Document Delivery Portal has been made operational³². This is a portal to which documents that must be served or delivered are transferred from other interfaced systems. As part of a pilot project, two systems, the public e-File and the business register, were interfaced into the new portal. The portal gathers all documents from interfaced systems and is already being used widely³³. The Government has received multiple requests for linking other existing systems to the new Document Delivery Portal³⁴. On 18 January 2023, the Parliament adopted a law on forensic examination, which establishes the legal grounds for fully digital criminal proceedings and prepares the field of forensic examination for the transition to fully digital court proceedings³⁵.

The number of judges has been increased and additional rules are expected to allow for a better distribution of their workload. As mentioned in the 2022 Rule of Law Report³⁶, challenges were identified as regards the workload of judges. To remedy the situation, in 2022, 12 additional positions for judges were created. Furthermore, additional funding was allocated for court staff³⁷. During the 121st Session of the Council for the Administration of

²⁶ Written contribution from the Ministry of Justice in the context of the country visit to Estonia, p. 2.

²⁷ Information received from the Estonian Judges Association in the context of the country visit to Estonia.

²⁸ Information received from the Estonian Judges Association in the context of the country visit to Estonia. This is similar to the separate situation described in the 2022 Rule of Law Report. Some judges might also have to consider permanent relocation due to the distances.

²⁹ See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Estonia, pp. 3-4.

³⁰ Information received from the Council for the administration of courts and the Estonian Judges Association in the context of the country visit to Estonia.

³¹ See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Estonia, p. 4. See also Figures 41 to 48 from the 2023 EU Justice Scoreboard.

³² Input from Estonia for the preparation of the 2023 Rule of Law Report, p. 2.

³³ Since October, 167 000 documents have been sent to DDP and 64% of them (107 135) have been delivered with an average delivery time of 1,5 days (as of January 2023). See input from Estonia for the preparation of the 2023 Rule of Law Report, p. 2.

³⁴ Information received from the Ministry of Justice in the context of the country visit to Estonia.

³⁵ Written contribution from the Ministry of Justice in the context of the country visit to Estonia.

³⁶ See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Estonia, pp. 4-5.

³⁷ Information received from the Ministry of Justice and the Council for the Administration of Courts in the context of the country visit to Estonia.

Courts, issues related to the workload of judges have been discussed, mostly related to budgetary matters and salaries. A resolution with key priorities in this respect was adopted and sent to the Government and Parliament³⁸. Finally, as part of the amendments to the Courts Act adopted on 16 January 2023, provisions that could help with the distribution of the workload have been introduced. For example, a judge who has been temporarily away from service can return to his/her position³⁹. Currently, returning to the office of judge is not guaranteed in such case. The amendments also provide that a judge who has been transferred to another court of the same instance or to a higher court will continue to review cases of the county, administrative or district court in ongoing proceedings that were not redistributed to other judges for the purpose of ensuring a reasonable time for proceedings⁴⁰.

New legal aid rules have been adopted to improve access to justice. The hourly fees for state legal aid had not been updated since 2016, which has led to a diminishing interest of lawyers to participate in the scheme. On 17 November 2022, the Chancellor of Justice proposed to the Minister of Justice to amend the regulation setting up the hourly fees for lawyers providing legal aid⁴¹. The Chancellor considered that the rules governing the system for legal aid were not sufficiently flexible to achieve a fair outcome in all cases⁴². Furthermore, the Supreme Court examined the constitutionality of the legal aid fee scheme in a decision of 7 November 2022⁴³. Although the Supreme Court held that, when assessed from the point of view of the lawyer, the fee cap in the particular case was not unconstitutional, it found that the provision of state legal aid may not be sustainable under the current rates⁴⁴. The Estonian Bar Association also informed about difficulties in finding lawyers who would voluntarily accept State legal aid⁴⁵. On 31 January 2023, the Minister of Justice amended the regulation to increase the legal aid fees for lawyers⁴⁶. Nevertheless, stakeholders noted that despite these improvements, there is still little interest of lawyers to participate in the legal aid scheme, and that a more comprehensive reform of the system would be needed⁴⁷.

The increased court fees are being implemented without any challenges before the Supreme Court. As mentioned in the 2022 Rule of Law Report⁴⁸, the court fees were increased by 40% on average. The 2023 EU Justice Scoreboard also reflected this increase

³⁸ Information received from the Council for the Administration of Courts in the context of the country visit to Estonia.

³⁹ This will enable the judge to work in another position in the civil service or as a faculty member at a university. Currently, returning to the office of judge is not guaranteed in such case.

⁴⁰ Input from Estonia for the preparation of the 2023 Rule of Law Report.

⁴¹ The Chancellor of Justice's proposal of 17 November 2022 to the Minister of Justice to amend regulation No. 16 on "The procedure for paying the state legal aid fee and compensation of expenses to an attorney".

⁴² The Chancellor of Justice's proposal of 17 November 2022 to the Minister of Justice to amend regulation No. 16 on "The procedure for paying the state legal aid fee and compensation of expenses to an attorney", p. 1.

⁴³ Supreme Court Decision 5-22-2/12, of 7 November 2022.

⁴⁴ The Chancellor of Justice's proposal of 17 November 2022 to the Minister of Justice to amend regulation No. 16 on "The procedure for paying the state legal aid fee and compensation of expenses to an attorney", p. 2.

⁴⁵ Opinion of the Estonian Bar Association of 10 November 2022, "Bar: justice hung in the balance already in September".

⁴⁶ Information received from the Office of the Chancellor of Justice in the context of the country visit to Estonia.

⁴⁷ Information received from the Estonian Bar Association and the Office of the Chancellor of Justice in the context of the country visit to Estonia.

⁴⁸ See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Estonia, p. 5.

and shows that the court fees in commercial cases are still among the higher ones in the EU⁴⁹. Nevertheless, the concerns raised in last year's report⁵⁰ that the increase could also be seen as a way to decrease the workload of the courts by disincentivising cases from being brought before the courts, did not materialise⁵¹. Furthermore, no challenges have been filed before the Constitutional Review Chamber of the Supreme Court against the increased court fees⁵².

Efficiency

The justice system remains efficient, with some delays observed in criminal and administrative cases. According to the 2023 EU Justice Scoreboard, the length of proceedings continues to be among the shortest in the EU⁵³. In 2022, civil cases were resolved with a similar efficiency as in previous years in county courts (in 102 days on average), the efficiency in criminal cases⁵⁴ remained stable. They were slightly shorter than in 2021⁵⁵ (on average, in 245 days in general criminal proceedings, 33 days in simplified proceedings, and 44 days in misdemeanour cases)⁵⁶. In the first instance courts, administrative cases were also longer than in 2020 (on average 149 days)⁵⁷. The average processing time for appeals was 196 days in civil cases, 81 days in criminal cases and 257 days in administrative cases. The length of court proceedings in civil, commercial and administrative cases is still shorter than the average in the EU (measured in disposition time) and the number of pending cases are amongst the lowest in the EU. Compared to 2021, the clearance rate decreased slightly from 101% to 99%. However, this still means that courts were generally able to cope with incoming cases⁵⁸. Overall, the advanced digitalisation of justice has allowed the courts to remain consistently efficient over the past several years.

II. ANTI-CORRUPTION FRAMEWORK

The anti-corruption institutional set-up remains the same in comparison to the 2022 Rule of Law Report. The Ministry of Justice is in charge of the preparation, oversight and coordination of the anti-corruption Action Plan 2021-2025. The Anti-Corruption Select Committee exercises parliamentary scrutiny over the implementation of anti-corruption

⁴⁹ Figures 25, 2023 EU Justice Scoreboard. The figure presents court fees in specific commercial case scenario. The data in the 2023 edition of the Scoreboard present the situation after the reform.

⁵⁰ See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Estonia, p. 5.

⁵¹ According to the Council for the administration of courts there has not been a significant change in the cases brought before the courts since the increase of the court fees. Information received in the context of the country visit.

⁵² Information received from the Constitutional Review Chamber of the Supreme Court.

⁵³ Figures 6-10 and 17-24, 2023 EU Justice Scoreboard.

⁵⁴ It should be noted that about 90% of the criminal cases are resolved in simplified proceedings. Furthermore, on 1 May 2023 the amendments in the Code of Criminal Procedure, that were adopted were adopted in February 2023, entered into force. These amendments are aimed at to simplifying the general criminal proceedings and therefore further enhance the efficiency in criminal cases.

⁵⁵ The correct number for the average time of resolving a criminal case in general proceedings in 2021 was 246 days instead of 192, which was mentioned in the 2022 Rule of Law Report. Factual correction provided by the Ministry of Justice.

⁵⁶ See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Estonia, p. 6 - In 2021, civil cases were resolved in 101 days on average, criminal cases were resolved on average in 192 days in general criminal proceedings, 24 days in simplified proceedings and 44 days in misdemeanour cases. In the first instance courts, administrative cases were resolved in an average of 127 days.

⁵⁷ Input from Estonia for the preparation of the 2023 Rule of Law Report, p. 3.

⁵⁸ Figures 11-16, 2023 EU Justice Scoreboard.

measures. The Political Parties' Financing Surveillance Committee oversees political parties' funding. The Corruption Crimes' Office of the National Criminal Police is a specialised unit responsible for carrying out investigations on corruption cases, and the Internal Security Service is responsible for investigating corruption offences committed by higher state officials and higher local government officials in six larger municipalities. The Prosecutor's Office supervises and directs pre-trial criminal investigation proceedings on corruption offences and represents the public prosecution in courts.

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, Estonia scores 74/100 and ranks 8th in the European Union and 14th globally⁵⁹. This perception has been relatively stable over the past five years⁶⁰. The 2023 Special Eurobarometer on Corruption shows that 48% of respondents consider corruption widespread in their country (EU average 70%) and 18% of respondents feel personally affected by corruption in their daily lives (EU average 24%)⁶¹. As regards businesses, 27% of companies consider that corruption is widespread (EU average 65%) and 7% consider that corruption is a problem when doing business (EU average 35%)⁶². Furthermore, 38% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 32%)⁶³, while 49% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 30%)⁶⁴.

The 2021-2025 Anti-Corruption Action Plan is being implemented efficiently. The implementation is being carried out according to the schedule and the main focus in 2022 was on issues regarding lobbying and the conflicts of interest⁶⁵. As a result concrete steps were taken in view of ensuring the efficient implementation of soft law in this regard, in particular ensuring advice on individual situations, trainings as well as extensive guidance. The anti-corruption network continues to efficiently support the implementation process and provide a useful forum for discussion and exchange of opinions among both governmental and other stakeholders⁶⁶. It met four times in 2022 and its composition remains unchanged gathering both governmental and civil society representatives.

Amendments to the Anti-Corruption Act are under preparation. In 2022, the Ministry of Justice announced the intention to prepare draft amendments to the Anti-Corruption Act,

⁵⁹ Transparency International, 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).

⁶⁰ In 2018 the score was 73, while, in 2022, the score is 74. 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.

⁶¹ 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).

⁶² 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).

⁶³ Special Eurobarometer 534 on Corruption (2023).

⁶⁴ Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023).

⁶⁵ Information received in the context of the country visit to Estonia from the Ministry of Justice.

⁶⁶ Information received in the context of the country visit to Estonia from the Ministry of Justice, Border Guard Board and Transparency International.

which are expected to clarify the current rules set in the law⁶⁷. This regards for example the procedure for notification of exceptions to procedural restrictions and the disclosure of non-application of restrictions, which is expected to be specified. Declaration of investments in virtual currencies and crowdfunding are expected to be made mandatory. While the rules stemming from the Anti-Corruption Act are considered useful in terms of ensuring the submission of the declarations of interest⁶⁸, the Anti-Corruption Select Committee of the Parliament is of the opinion that the registration system should be refined in order to process successfully the verification process without recourse to manual procedures⁶⁹. Based on the feedback of the ministries and other stakeholders, the Ministry of Justice prepared a draft law, which is expected to be approved by the Government still in 2023.

The authorities deal efficiently with the investigation and prosecution of corruption-related cases. In 2022, 42 corruption-related offences were investigated, six were sent to court and five cases terminated on expediency⁷⁰. The authorities report that the number of cases has been decreasing while their complexity has increased⁷¹. The Prosecutor's Office reported on 22 cases currently being handled, including seven high-level corruption cases⁷². The Prosecutor's Office is composed of 40 prosecutors responsible for prosecuting white-collar crimes (corruption, economic crimes and cybercrime). The Office received additional funds in order to investigate white collar crimes⁷³ and generally reports to have sufficient resources and training in view of fighting corruption⁷⁴. As regards the prosecution of foreign bribery, there are some who consider the enforcement to be 'limited', due to statutes of limitations that could create barriers to enforcement such as premature termination of proceedings⁷⁵. As regards cooperation with the EPPO, Estonia is expecting to recruit additional 1-2 EPPO delegated prosecutors in 2023. Overall, cooperation between the authorities and EPPO is constructive⁷⁶. The primary sectors with a high corruption risk remain the healthcare sector⁷⁷, the local government and political party financing⁷⁸.

⁶⁷ Information received in the context of the country visit to Estonia from the Ministry of Justice.

⁶⁸ Information received in the context of the country visit to Estonia from the Anti-Corruption Select Committee.

⁶⁹ Information received in the context of the country visit to Estonia from the Anti-Corruption Select Committee.

⁷⁰ Input from Estonia for the 2023 Rule of Law Report.

⁷¹ Information received in the context of the country visit to Estonia from the Police and Border Guard.

⁷² This includes also the case involving the Porto Franco development project in Tallinn that led to the resignation of the previous Government in January 2021. Information received in the context of the country visit to Estonia from the Prosecutor's Office.

⁷³ Input from Estonia for the 2023 Rule of Law Report.

⁷⁴ Information received in the context of the country visit to Estonia from the Police and Border Guard. The Ministry of Justice together with universities prepared and made available e-learning materials on business ethics, corruption and economic crimes. The purpose of the materials is to increase the knowledge of business students about business corruption and economic crimes.

⁷⁵ Transparency International, 2022, *Exporting Corruption*; covering period 2018-2021. The study offers a classification in four categories, where "limited enforcement" is the third out of the four.

⁷⁶ Input from EPPO for the 2023 Rule of Law Report. Ministry of Justice, Ministry of Interior, Police and Border Guard, Internal Security Service, Tax and Customs Board carried out a study trip to EPPO in the 1st half of 2023 – Input from Estonia for the 2023 Rule of Law Report.

⁷⁷ With regard to health care, in 2023 the Ministry of Justice intends to map challenges relating to healthcare-specific corruption prevention and gain through specific studies in-depth knowledge about corruption in procurement related to medical equipment. The idea is to conduct a comparative study between Estonia and other EU members on procurement management in hospitals, comparing procurement prices and procurement systems and to map the scope of contractual partners' subsidies to hospitals and their

Efforts were made on effective implementation of the Guidelines on Conflicts of Interest. The 2022 Rule of Law Report recommended to Estonia to “ensure that the guidelines on the conflict of interests are subject to an effective verification, monitoring and enforcement mechanism”⁷⁹. In 2022, in the context of the implementation of the Guidelines for ministers and their advisers to avoid conflicts of interest⁸⁰, it was decided by the anti-corruption network that each ministry would appoint individuals responsible for *ad hoc* consultations for matters related to conflicts of interest, gifts and other related topics for ministers and their advisers⁸¹. Moreover, on 2 November 2022, the anti-corruption network agreed on a proactive procedure for enforcement of the existing rules, namely on introductory sessions to incoming ministers carried out by each ministry. Besides this, the State Chancellery has included guidelines on prevention of conflict of interest to the handbook received by each minister at the beginning of their term. For this purpose, changes to the Rules of Procedure of the Government of the Republic are currently being consulted with the ministries. Those changes are expected to give more focused guidance to the ministers and their advisers⁸². As a follow-up, the relevant guidance on the responsibilities together with recommendations are expected to be provided as well as assistance in completion of the e-training programme⁸³, which also includes a self-check test. The minister and the political advisers are expected to give feedback to the relevant service about the completion of the training. While it is too early to assess the impact of these procedures, some are confident that they are useful and potentially sufficient⁸⁴. The new procedures aim at raising awareness of rules in place as well as ensuring the necessary monitoring on how those rules are applied. However, they do not provide the enforcement mechanism, which would allow addressing possible breaches. Furthermore, a number of other entities (municipalities, institutes, state departments) made the e-learning course mandatory for their employees⁸⁵. To further strengthen the guidelines for conflict of interest, new procedures have been introduced, including setting up the anti-corruption contact points and assistance to the ministers and their advisors in getting acquainted with the rules in place. Therefore, significant progress has been made in view of the 2022 Rule of Law Report recommendation to ensure that the guidelines on the conflict of interests are subject to an effective verification, monitoring and enforcement mechanism.

employees (e.g. through travel subsidies, etc). – Input from Estonia for the 2023 Rule of Law Report. The Flash Eurobarometer on Businesses’ attitudes towards corruption in the EU shows that 15% of companies in Estonia (EU average 26%) think that corruption has prevented them from winning a public tender or a public procurement contract in practice in the last three years.

⁷⁸ Input from Estonia for the 2023 Rule of Law Report.

⁷⁹ See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Estonia, p. 2

⁸⁰ Estonian Government (2021), Guidelines for Ministers and their advisers to avoid conflicts of interest, paras. 12-13.

⁸¹ Input from Estonia for the 2023 Rule of Law Report.

⁸² According to the wording of the draft: § 271. Advising a member of the Government of the Republic on corruption prevention issues Ministers shall be advised by the Ministries and the Prime Minister shall be advised by the State Chancellery on matters relating to reconciliation of the duties of a member of the Government of the Republic, restrictions related to leaving office, as well as requirements arising from the Anti-corruption Act and instructions given to avoid conflicts of interest, and good practice in communication with lobbyists. Input from Estonia for the 2023 Rule of Law Report.

⁸³ So far 2094 persons have registered to follow the course. Written contribution from the Ministry of Justice in the context of the country visit to Estonia.

⁸⁴ Information received in the context of the country visit to Estonia from the Ministry of Justice and Transparency International.

⁸⁵ Input from Estonia for the 2023 Rule of Law Report.

A new amendment was adopted concerning revolving doors for members of Government. New legislation was adopted on 1 August 2022 concerning post-employment rules for members of Government⁸⁶. It foresees a cooling off period after the term of office of the Government members has expired. On its basis the person in question may not act as a member of the management or control body in a private legal entity, falling under the jurisdiction of the ministry headed by him or her, during the six months following the end of their mandate⁸⁷. These amendments were introduced to follow-up on the GRECO recommendation⁸⁸. Civil society have expressed discontent that the non-profit organisations are not covered by the new rules as the movement between the private and public sector is much related also to them⁸⁹.

Efforts were made in relation to effective implementation of the Guidelines on Lobbying. The 2022 Rule of Law Report recommended to Estonia to “continue the efforts in effective implementation of the guidelines on lobbying”. In 2022, in relation to the Guidelines on lobbying⁹⁰ contact persons in each ministry were established in case of doubts regarding the functioning of the guidelines⁹¹. The lobby meetings are systematically declared by the officials and regularly updated in the central registers where lobbyists, public officials, topic of the meetings and dates of the meetings can be identified. In 2022, the Ministry of Justice and Transparency International Estonia analysed the data on disclosed lobbying meetings. As a result, the 10 best performing entities have received the title of transparent policy maker, which is placed on the website of the awarded entity⁹². From the second quarter of 2021 to the third quarter of 2022, almost 1200 lobby meetings were disclosed by state institutions. Based on the latest available data, over 60% of lobbyists represented the private sector⁹³. The analysis of information from the ministries, analysing the quality of conduct and updating the ranking of best performers⁹⁴ is expected to be carried out quarterly⁹⁵. According to the Ministry of Justice, this practice has an awareness-raising and encouraging value and, as a result, no other initiatives in this regard are planned⁹⁶. As a follow-up to a series of

⁸⁶ § 121. Limitation of activities of a member of the Government of the Republic after the end of the mandate
A member of the Government of the Republic may not act as a member of the management or control body in a private legal entity that falls under the jurisdiction of the ministry headed by him during the six months following the end of his mandate, if the minister has made decisions with significant impact on the activities of this legal entity during his term of office, or if the legal entity has contractual relations with the ministry headed by him. The restriction does not apply to a non-profit organisation. Amendment to the Government of the Republic Act (GRA) (Government of the Republic Act–Riigi Teataja) adopted in 01.08.2022 (entered into force on 19.08.2022).

⁸⁷ It concerns cases when then the minister made decisions with significant impact on the activities of this legal entity during his/her term of office, or if the legal entity has contractual relations with the ministry headed by him/her. The restriction does not apply to a non-profit organization.

⁸⁸ GRECO Fifth Evaluation Round – Compliance Report, recommendation iii, para. 18.

⁸⁹ Information received in the context of the country visit to Estonia from Transparency International.

⁹⁰ Estonian Government (2021), Good Practice in Communicating with Lobbyists for Officials. Summary of lobby meetings.

⁹¹ Input from Estonia for the 2023 Rule of Law Report.

⁹² Transparency International Estonia, Press release of 09.12.2022, Press release; Ranking: The ten most exemplary notifiers concerning lobbying meetings revealed.

⁹³ Transparency International Estonia, Summary of meetings between authorities and lobbyists in 2021, 30.05.2022

⁹⁴ The list of the best performers is regularly updated and available online.

⁹⁵ Information received in the context of the country visit to Estonia from the Ministry of Justice.

⁹⁶ Input from Estonia for the 2023 Rule of Law Report. According to the OECD accountability of public policy making indicators on lobbying safeguards in place, Estonia marks 6 out of 9.

roundtables on legislative transparency and integrity with regard to lobbying organised in 2022⁹⁷, the Anti-Corruption Select Committee of the Parliament proposed to introduce guidelines on lobbying also in the Parliament⁹⁸, but currently no decision has been taken in this regard. The rules regarding lobby activities continue to be promoted and actively monitored by the authorities. Therefore, the 2022 Rule of Law Report recommendation to continue the efforts in effective implementation of the guidelines on lobbying has been fully implemented.

The adoption of the draft law aiming at strengthening the powers of the Political Parties' Financing Surveillance Committee is still pending. The draft law discussed in the previous Rule of Law Reports⁹⁹ extending the investigating powers of the Committee through a legal basis for requesting documents, information and explanations from third parties has not progressed since summer 2022 when it was sent for public consultations¹⁰⁰. The intention of the Ministry of Justice is to have it considered by the new Government in the first half of 2023¹⁰¹.

Legislation on whistleblower protection has not yet been adopted¹⁰². The Anti-Corruption Action Plan 2021–2025 foresees the adoption of the whistleblower protection act and the establishment of a replicable electronic whistleblower reporting channel¹⁰³. The draft law¹⁰⁴ for a new comprehensive regulation¹⁰⁵ was sent to the consultation round¹⁰⁶. The Ministry of Justice expects to present it to the Government in the second half of 2023¹⁰⁷. Meanwhile, awareness-raising activities in this regard were carried out in 2022, including the development of the internal whistleblower hotline in the Ministry of Justice, the creation of a confidential e-mail address for reporting within the Police and Border Guard and making it possible to submit reports directly to the designated person¹⁰⁸. Whistleblower reports play an important role in uncovering corruption in the Corruption Crime Bureau of the Central Criminal Police and their number remains on the rise¹⁰⁹.

⁹⁷ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Estonia, p. 8

⁹⁸ Written contribution from the Anti-Corruption Select Committee in the context of the country visit to Estonia.

⁹⁹ See 2021 Rule of Law Report, Country Chapter on the rule of law situation in Estonia, p. 8 and the 2022 Rule of Law Report, Country Chapter on the rule of law situation in Estonia, p. 9.

¹⁰⁰ Estonian Public Broadcasting, 22 September 2022, The draft law that aimed to toughen the supervision of political funding has stalled.

¹⁰¹ Information received in the context of the country visit to Estonia from the Ministry of Justice.

¹⁰² On 14 April 2023, the European Commission referred Estonia to the Court of Justice of the European Union, pursuing the infringement proceedings launched against Estonia for failure to transpose EU Directive 2019/1937 on the protection of persons reporting breaches of Union law.

¹⁰³ Anti-Corruption Action Plan 2021 – 2025.

¹⁰⁴ Draft Whistleblower Protection Act 504 SE.

¹⁰⁵ This initiative has been proposed in view of aligning the national legislation with the 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; Information received from the Ministry of Justice in the context of the country visit to Estonia.

¹⁰⁶ Press release of 1 June 2023, Ministry of Justice, The draft protection of whistleblowers in the field of work went to the coordination round.

¹⁰⁷ Input from Estonia for the 2023 Rule of Law Report.

¹⁰⁸ Input from Estonia for the 2023 Rule of Law Report.

¹⁰⁹ Corruption Crime Bureau, Overview of Bureau's Activities 2018-2019.

III. MEDIA PLURALISM AND MEDIA FREEDOM

In Estonia, the freedom of expression finds legal and formal protection in the Constitution¹¹⁰. Secondary legislation expressly ensures the right of journalists to protect their sources, fosters media freedom in the radio and television sector¹¹¹ and provides safeguards for the independence of the public service broadcaster¹¹². The right to information, including access to documents, is explicitly recognised in the Constitution, in the Public Information Act¹¹³ and in the Personal Data Protection Act¹¹⁴.

The responsibilities and resources of the media regulator, the Consumer Protection and Technical Regulatory Authority, have been strengthened. As mentioned in the 2022 Rule of Law Report¹¹⁵, and as part of the transposition of the revised Audiovisual Media Services Directive¹¹⁶, the amended Media Services Act entrusted new functions and competences to the national media regulator. The new functions relate to, for example, the supervision of video-sharing platforms, as provided for in the revised AVMSD. The media regulator reports that it has gained powers also in new areas linked to the Regulation addressing the dissemination of terrorist content online¹¹⁷ and the Digital Services Act¹¹⁸, as a consequence of which it has been granted additional staff and better technical tools¹¹⁹. The MPM 2023 maintains a low risk score with regard to the independence and effectiveness of the media authority¹²⁰. Since the 2022 Rule of Law Report, no regulatory changes regarding transparency of media ownership or restrictions to media ownership and concentration have been reported. The MPM 2023 considers the transparency of media ownership and the plurality of media providers to carry high risks because the existing ownership transparency rules do not cover print and digital media and the media market is rather concentrated¹²¹. However, as regards the transparency of media ownership, despite the findings of the MPM 2023, information about the ownership of all types of media companies is in practice widely accessible in the electronic business register free of charge¹²².

Public service media receives a high level of trust and increased resources. Citizens tend to trust public service broadcasting more than commercial broadcasting and the level of trust

¹¹⁰ Constitution of the Republic of Estonia, § 44-46. Estonia ranks 8th in the 2023 Reporters without Borders World Press Freedom Index compared to 4th in the previous year.

¹¹¹ Media Services Act, §15 and 13.

¹¹² Estonian Public Broadcasting Act; According to European Parliament's Flash Eurobarometer: News & Media Survey 2022, Estonia is among top 3 Member States where citizens demonstrate the highest trust in public TV and radio stations (incl. online).

¹¹³ Public Information Act.

¹¹⁴ Personal Data Protection Act.

¹¹⁵ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Estonia, p. 10 - 11.

¹¹⁶ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU.

¹¹⁷ Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021.

¹¹⁸ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC.

¹¹⁹ Information received from the Consumer Protection and Technical Regulatory Authority in the context of the country visit to Estonia.

¹²⁰ 2023 Media Pluralism Monitor, country report for Estonia, p. 14.

¹²¹ 2023 Media Pluralism Monitor, country report for Estonia, p. 16.

¹²² Based on information received from the Government and confirmed by the Estonian Press Council and the Estonian Association of Journalists in the context of the country visit to Estonia. The business register is available at: <https://rik.ee/en/e-business-register>.

has been continuously high¹²³. Public service media reports an increase in its resources compared to the period covered by the 2022 Rule of Law report¹²⁴ but expressed concerns about its long-term sustainability to produce public service content¹²⁵. Since the 2022 Rule of Law report¹²⁶, a new Management Board of the public service media has been appointed for a five-year mandate and its members have partly changed. While no regulatory changes are envisaged to affect the existing safeguards against government or political interference of the public service media, MPM 2023 considers this to be an area presenting low risk score¹²⁷.

Some progress has yet been made on the recommendation to improve the right of access to information. The 2022 Rule of Law Report recommended Estonia to “ensure consistent and effective practical implementation of the right of access to information taking into account European standards on access to official documents”¹²⁸. So far, only initial research has been conducted on the implementation of the constitutionally protected right of access to information in view of possible further action. Notably, the Parliament has procured an independent study¹²⁹, which identified key problems related to access to public information, including a controversial role of the Data Protection Inspectorate which carries out both the supervision of granting access to information and the monitoring of compliance with personal data protection. Additionally, the study considered that the current legislation, which encourages restrictions to access to information and puts the accent on the protection of personal data, does not give adequate protection to the right to freedom of information. The research confirmed that the rules and practices for the release of information vary amongst authorities, as reported in the previous Rule of Law reports¹³⁰ and still flagged by stakeholders particularly as regards local governments¹³¹. The study is aimed at providing input for the future analysis of possible solutions and whether there is a need for amendments of the Public Information Act¹³². The MPM maintains a medium risk with regard to the protection of right to information, albeit slightly lower compared to the previous year¹³³. For these reasons, it is considered that some progress has been made to address the 2022 recommendation.

The Supreme Court has upheld the confidentiality of journalistic sources and freedom of the press. The Supreme Court established that a journalist or a publication can refuse to reveal the identity of a source in civil court even if the latter has provided false

¹²³ Turu-Uuringute AS, Trust in Institutions: Estonian Public Broadcasting 2017-2022; European Parliament’s Flash Eurobarometer: News & Media Survey 2022; Jõesaar, A., Jastramskis, D., Rožukalne, A. (2022), Trust in Public Service Media in the Baltic States. *Journal of Baltic Studies*, 53:4, p. 587-611; Information received from the Ministry of Culture in the context of the country visit to Estonia.

¹²⁴ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Estonia, p. 12.

¹²⁵ Information received from the public service media in the context of the country visit to Estonia.

¹²⁶ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Estonia, p. 11–12.

¹²⁷ 2023 Media Pluralism Monitor, country report for Estonia, p. 22.

¹²⁸ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Estonia, p. 2.

¹²⁹ Foresight Centre: Pild, M., Turk, K., Kose, K., Lehemets, M. (2022), Trends in access to public sector information: Summary – The future of Data Freedom research team.

¹³⁰ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Estonia, p. 8; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Estonia, p. 10; 2022 Rule of Law Report, Country Chapter on the rule of law situation in Estonia, p. 12.

¹³¹ Information received from the Estonian Press Council and the Estonian Association of Journalists in the context of the country visit to Estonia.

¹³² Input from Estonia for the 2023 Rule of Law Report, p. 11.

¹³³ 2023 Media Pluralism Monitor, country report for Estonia, p. 12-13.

information¹³⁴, clarifying the law on the protection of journalistic sources. This clarification was welcomed by stakeholders¹³⁵. In another case concerning potential state interference, the Supreme Court has upheld the judgment of the appeal court mentioned in the 2022 Rule of Law report¹³⁶. It annulled fines imposed on two journalists and a news outlet after they published information about pre-trial criminal proceedings without seeking permission or informing the Prosecutor's office, which is required under the law¹³⁷. The Court found that interference with the freedom of the press would have to be thoroughly considered and justified. The judgment has been welcomed by stakeholders¹³⁸ although some have warned against risks of self-censorship if journalists reporting about criminal proceedings are afraid of receiving large fines¹³⁹. Following the judgment, the Prosecutor General expressed hope that journalists will treat information with care and the prosecution and journalists would be able to agree on whether to disclose pre-trial proceedings in specific cases¹⁴⁰. Since the 2022 Rule of Law report, no new alerts for Estonia have been published on the Council of Europe's Platform to promote the protection of journalism and safety of journalists¹⁴¹. The MPM 2023 notes that attacks against journalists in Estonia are extremely rare but journalists have been exposed to a growing number of online threats by private individuals¹⁴².

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

Estonia is a parliamentary republic with a single-chamber Parliament. Estonia does not have a Constitutional court but the Supreme Court's Constitutional Review Chamber can carry out *ex post* constitutional review, including, under certain conditions, based on a constitutional complaint¹⁴³. In addition to the justice system, the Office of the Chancellor for Justice (the ombudsperson) plays a role¹⁴⁴ in the system of checks and balances. Involvement of the public and stakeholders in public affairs is supported by advanced Information and Communication Technology tools.

Significant progress has been achieved on the 2022 recommendation regarding the new digital platform for further improving the law-making process. The 2022 Rule of Law Report recommended to Estonia to “continue advancing with the digital platform to make the

¹³⁴ Supreme Court, order of 12 December 2022, 2-21-17817.

¹³⁵ Information received from the Estonian Press Council and the Estonian Association of Journalists in the context of the country visit to Estonia.

¹³⁶ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Estonia, p. 13.

¹³⁷ Supreme Court, order of 31 January 2023, 1-22-1949.

¹³⁸ Information received from the Estonian Press Council and the Estonian Association of Journalists in the context of the country visit to Estonia.

¹³⁹ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Estonia, p.13; Estonian Media Association (2023), The Media Association welcomes the Supreme Court's decision to refuse to fine journalists; ERR news (2023), Delfi chief satisfied with court decision but self-censorship a concern.

¹⁴⁰ ERR news (2023), Prosecutor general: I hope journalists will treat information with care.

¹⁴¹ Council of Europe, Platform to promote the protection of journalism and safety of journalists, Estonia.

¹⁴² 2023 Media Pluralism Monitor, country report for Estonia, p. 13.

¹⁴³ § 4 of the Constitutional Review Court Procedure Act – A complaint can be referred to the Supreme Court's Constitutional Review Chamber by the President of the Republic, the Chancellor of Justice, a local government council and the Parliament. § 9 of the Constitutional Review Court Procedure Act – Constitutional review on the basis of court judgment or court ruling is also possible.

¹⁴⁴ The Chancellor of Justice has a broad mandate, including acting as the National Preventive Mechanism under the UN Convention Against Torture and the National Monitoring Mechanism under the UN Convention on the Rights of Persons with Disabilities. The Chancellor of Justice also performs the functions of the Ombudsperson for Children.

legislative process even more visible and inclusive for public consultation”. The Ministry of Justice continues working on the ‘Co-creation workspace project’, which aims to create a new digital platform to improve the law-making process and improve stakeholders’ involvement¹⁴⁵. The project has been launched and pilots are under way or about to be started in different ministries. As of now, the text editor for co-drafting is made available for the ministries, with the possibility to involve stakeholders in the process at a later stage¹⁴⁶. The developers of the project are receiving feedback daily from the current users of the platform. Conclusions on the implementation and usability of the platform would be available by mid-2023¹⁴⁷. Considering these developments, while noting that some features of the new digital platform still are being developed and rolled out to the public, including giving stakeholders access to the platform¹⁴⁸, significant progress was achieved in fulfilling the recommendation from the 2022 Rule of Law Report.

The Chancellor of Justice continues to play an active role in upholding the rule of law.

In the fall of 2022, the Chancellor of Justice, which has an A-status accreditation from GANHRI¹⁴⁹, published its annual report covering the period of 1 September 2021 to 31 August 2022¹⁵⁰. In 2022, the Chancellor of Justice made eight proposals to bring legislation in conformity with the Constitution. The Chancellor also issued a total of 14 memoranda to Parliament, ministries, and local governments on the need to initiate legislation. Some of the issues raised have been resolved, but others are still being worked on. The Chancellor of Justice further submitted two requests to the Supreme Court to declare legislation or a norm unconstitutional¹⁵¹. Under the Courts Act, alongside the chairs of the courts and the Supreme Court sitting in full court, the Chancellor of Justice is the only institution outside the court system that may initiate disciplinary proceedings in respect of a judge¹⁵². The final decision in these proceedings is made by the disciplinary chamber operating under the Supreme Court. The Chancellor can only assess whether a judge has failed to fulfil his/ her official duties or has behaved disreputably, but not substantive issues concerning the administration of justice or the merits of judicial decisions¹⁵³. During the reporting period, on fifteen occasions the Chancellor had to check whether a court had fulfilled all its official duties or whether a complaint about disreputable conduct by a judge was justified. The Chancellor did not find a reason to initiate disciplinary proceedings in respect of a judge in any of the cases¹⁵⁴.

On 1 January 2023, Estonia had three leading judgment of the European Court of Human Rights pending implementation, an increase of two compared to the previous

¹⁴⁵ See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Estonia, pp. 13-14 – Even though the current public consultation process in Estonia already takes place via an online platform, the new project, which would replace the current online platform for public consultation, is meant to improve the visibility of the ongoing procedures and encourage wider public participation.

¹⁴⁶ Information received from the Minister of Justice in the context of the country visit to Estonia.

¹⁴⁷ Ibid.

¹⁴⁸ E.g. Improving the internal cooperation between state authorities; improving the text editor for drafting laws; giving general public access to the platform and launching the feature for public consultations.

¹⁴⁹ Global Alliance of National Human Rights Institutions.

¹⁵⁰ Overview of the Chancellor of Justice of Estonia Activities.

¹⁵¹ See Written contribution from ENNHRI on Estonia for the preparation of the 2023 Rule of Law Report, p. 7. See also Input from Estonia for the preparation of the 2023 Rule of Law Report, p. 13.

¹⁵² §91 of the Courts Act.

¹⁵³ Overview of the Chancellor of Justice of Estonia Activities, p. 44.

¹⁵⁴ See previous footnote.

year¹⁵⁵. At that time, Estonia's rate of leading judgments from the past 10 years that remained pending was at 14% (compared to 5% in 2022) and the average time that the judgment had been pending implementation was 11 months (compared to 3 months in 2022)¹⁵⁶. The change in the data is influenced by two new cases delivered against Estonia.¹⁵⁷ On 15 June 2023, the number of leading judgments pending implementation remains three¹⁵⁸.

The civic space remains open, but concerns have been raised as regards the absence of clear criteria for the allocation of funding to Civil Society Organisations through Parliament. The civic space in Estonia is considered to be open¹⁵⁹, which has been furthered by the election of a Gender Equality and Equal Treatment Commissioner¹⁶⁰. The Government renewed the procedure to increase transparency in the election process, by ensuring a more structured approach in including representatives of strategic partners in civil society in the decision-making process. For the candidate's assessment, the Government cooperated with Civil Society Organisations (CSOs)¹⁶¹, which led to the proposal of a final candidate to the Minister of Social Affairs¹⁶². Nevertheless, stakeholders have raised concerns¹⁶³ as regards the modalities of funding of CSOs through Parliament. As described in a petition submitted to Parliament¹⁶⁴, there is a state budget line which is usually decided between the second and third readings of the state budget, where members of Parliament can distribute about EUR 3-4 million to CSOs, without clear criteria or evaluation procedures. For the 2023 budget, 478 entities were awarded a grant. Individual grants varied between EUR 2 000 and EUR 39 000. The total amount of money spent was EUR 3 390 000¹⁶⁵. It would be important to take into

¹⁵⁵ 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.

¹⁵⁶ 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. 3.

¹⁵⁷ Judgment of the European Court of Human Rights of 16 November 2022, *Särgava v. Estonia*, 698/19; Judgment of the European Court of Human Rights of 24 January 2023, *Abuladze v. Estonia*, 12928/20. The Judgment of the European Court of Human Rights of 29 March 2022, *Vool and Toomik v. Estonia*, 7613/18, which was under enhanced supervision, was closed on 13 April 2023, see Council of Europe's Committee of Ministers resolution CM/ResDH(2023)77.

¹⁵⁸ Data according to the online database of the Council of Europe (HUDOC-EXEC).

¹⁵⁹ See rating given by Civicus, Estonia. Ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

¹⁶⁰ Franet (2023), Country research - Legal environment and space of civil society organisations in supporting fundamental rights – Estonia, p. 10.

¹⁶¹ Top Civil Service Excellence Centre and six representatives of strategic partners from the civil society as expert committee members. See written contribution from the Ministry of Justice in the context of the country visit to Estonia, p. 2.

¹⁶² The Minister appointed the new Commissioner in November 2022. See written contribution from the Ministry of Justice in the context of the country visit to Estonia, p. 2.

¹⁶³ Information received from Open Society Estonia in the context of the country visit to Estonia. See also petition submitted by Network of Estonian Nonprofit Organisations (NENO) to the Parliament in the next footnote.

¹⁶⁴ Parliament Petition "Stop distributing roofing money in the Riigikogu" - <https://rahvaalgatus.ee/initiatives/8a31585f-d7c6-4009-8833-fb5bf80a02d1>.

¹⁶⁵ See State budget Act for 2023.

account the European standards in the area of CSO funding, in particular that any form of state support for associations should be governed by clear and objective criteria¹⁶⁶.

¹⁶⁶ See Guidelines on freedom of association by the OSCE/ODIHR, paras. 205-217.

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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Civicus, Monitor tracking civic space – Estonia <https://monitor.civicus.org/country/estonia/>.

Corruption Crime Bureau (2020), *Overview of Bureau's Activities 2018-2019* [kokkuvote-2018-2019.pdf](https://www.politsei.ee/kokkuvote-2018-2019.pdf) (politsei.ee).

Council of Europe, Consultative Council of European Judges (2012), *Opinion No. 15 on the specialisation of judges.*

Council of Europe, Consultative Council of European Judges (2016), *Opinion No. 16 on the role of court presidents.*

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Annex II: Country visit to Estonia

The Commission services held virtual meetings in February 2023 with:

- Anti-corruption Select Committee
- Consumer protection and Technical Regulatory Authority
- Estonian Association of Journalists
- Estonian Association of Judges
- Estonian Bar Association
- Estonian Institute of Human Rights
- Estonian Internal Security Service
- Estonian Public Broadcasting
- Estonian Press Council
- Ministry of Culture
- Ministry of Foreign Affairs
- Ministry of Interior
- Ministry of Justice
- Office of the Chancellor of Justice
- Open Estonia Foundation
- Political Party Financing Surveillance Committee
- Police and Border Guard Board
- National Audit Office
- The Prosecutor's Office
- The Supreme Court and Council for the Administration of Courts

Transparency International Estonia

* 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