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Country Chapter on the rule of law situation in Slovenia

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2020 Rule of Law Report
The rule of law situation in the European Union

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ABSTRACT

The Slovenian justice system is characterised by an important role for the Judicial Council and the Supreme Court in the appointment, career, and governance of the judiciary, and by an advanced level of Information and Communication Technology tools for case management. Providing adequate resources for the Judicial Council, as well as the State Prosecutorial Council, is an important condition for the independent and effective functioning of these self-governance bodies. The Constitutional Court's upcoming decision on the merit regarding the constitutionality of the Parliamentary Inquires Act may give guidance as regards protecting the independence and autonomy of judges and prosecutors. While the State Prosecution increased its efficiency, challenges remain in effectively prosecuting economic and financial crime. Although the backlogs continued to decrease and do not present a systemic issue, the length of court proceedings in money laundering cases continue to present a challenge.

Slovenia has the legal and institutional framework for preventing and fighting corruption broadly in place. Comprehensive policies on access to public information, public consultation and transparency of the legislative process are well observed in practice. Slovenia also has an autonomous and independent specialised anti-corruption body, the Commission for the Prevention of Corruption, which oversees the prevention of corruption and the strengthening of integrity of public office. Its human and financial resources are limited and raise concerns. Furthermore, concerns remain over its capacity and the gap between legislation and practice, especially as regards implementation of the Integrity and Prevention of Corruption Act, Slovenia's foremost anti-corruption legislation.

While the independence of the media regulator – the Agency for Communication Networks and Services – is ensured by law, the Agency operates with low resources considering its competences, which affects its effectiveness. The current system of media ownership declaration makes certain information publicly available and thus ensures partial ownership transparency, but it does not extend to the ultimate owners. The lack of media-specific rules to prevent conflicts of interest in the sector affects negatively media pluralism in Slovenia, at national and regional level. Obtaining access to public information can be a lengthy process for the general public and journalists. Besides lawsuits with an intimidating effect, online harassment of and threats against journalists is an issue of concern, and the response of the criminal justice system is lacking.

The system of checks and balances is supported, among others, through well-developed online tools for consultation of the public and other stakeholders, assisted by a Human Rights Ombudsperson and an independent Advocate of the Principle of Equality. However, the consultation period is often short and the position of the independent bodies is not always taken into account. The Constitutional Court can carry out *ex-post* constitutional review. However, due to an increase in incoming constitutional complaints and rising backlogs, proceedings before the Constitutional Court are becoming lengthier, which could influence its effective functioning. A national strategy has been presented for improving support to non-governmental organisations by 2023.

I. JUSTICE SYSTEM

The Slovenian justice system has three levels, with Local and District Courts (dealing with civil and commercial cases) and Labour Courts (one also dealing with social security cases) and an Administrative Court (with the status of a higher court) at first instance (altogether sixty), four Higher Courts at second instance (dealing with appeals to first instance courts' decisions) and the Supreme Court at third instance (dealing with appeals to certain judgments of Higher Courts and the Administrative Court). The Constitution provides for a Judicial Council, a *sui generis* body outside of the three branches of Government, which is tasked with protecting the independence as well as promoting and ensuring the accountability, efficiency and quality of work of the judiciary.[1] Candidate judges are selected by the Judicial Council and then proposed for appointment by the National Assembly (*Državni zbor* - the first chamber of Parliament).[2] If the Judicial Council selects a candidate who has already been elected to judicial office, the candidate is promoted to the new judicial position by the Council itself. The State Prosecution is an independent authority, but also part of the executive power, whereas the main powers regarding the career of state prosecutors and its functioning rest with the State Prosecutorial Council and the Prosecutor General. The State Prosecutorial Council is an independent state body that performs the tasks of self-governance of the State Prosecution and participates in ensuring the uniformity of prosecution and safeguarding the independence of state prosecutors. The Slovene Bar Association is part of the judiciary, and an autonomous and independent body.

Independence

An investigation opened in the beginning of 2019 by a Parliamentary Inquiry Committee envisaged looking into actions of prosecutors and judges in concrete criminal cases. However, the Constitutional Court later suspended the application of the Parliamentary Inquiries Law due to a risk to the independence of judges and prosecutors from such a parliamentary inquiry into concrete cases. The Inquiry Committee was established by the National Assembly on request of the National Council (*Državni svet*, the second chamber of Parliament).[3] The Constitutional Court, to which the case was referred by the Judicial Council and the State Prosecution, suspended the application of the Parliamentary Inquiries Law both with regard to judges and State Prosecutors, pending its review of the law's constitutionality.[4] The Constitutional Court also suspended the application of the parliamentary Act, establishing the Inquiry Committee. The Judicial Council stated that the scope of the parliamentary inquiry, as defined in the parliamentary act establishing it, would not cover the functioning of the judiciary as a whole, but rather aimed at focussing on

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1 The primary responsibility of the Judicial Council is the selection of candidate for judicial offices. As guaranteed by the Constitution, the majority of members of the Judicial Council are judges, elected by their peers. The remaining five members are representatives of other legal professions, elected by the National Assembly based on the nomination of the President of the Republic. The Judicial Council manages its own budget.

2 Since the initial re-election of judges after the independence of Slovenia in 1990s, the Parliament has rejected a candidate judges for first appointment only once. It should be noted a candidate judge, who is not appointed, cannot request judicial review against the decision of the Parliament.

3 For more details on the Parliament's structure, see pillar IV. Other institutional issues related to checks and balances.

4 Judicial Council (2019), Request for constitutional review and partial suspension of application of the Parliamentary Inquiries Act; Supreme State Prosecutor's Office and Prosecutor General (2019), Initiative for constitutional review of the parliamentary inquiries act; Constitutional Court (2019), Decision on temporary suspension of the Parliamentary Inquiries Act as far as it concerns judges; Constitutional Court (2019), Decision on temporary suspension of the Parliamentary Inquiries Act as far as it concerns State Prosecutors.

specific final judgments and individual judges. The Constitutional Court, in its decision on interim measures, highlighted the lack of adequate mechanisms in the Act to protect judges and state prosecutors from parliamentary inquiries into their "political responsibility". It also stressed that there was a risk of the parliamentary inquiry encroaching upon the independence of judges and prosecutors, which "could irreparably affect" both the independence of the judiciary and the independence and autonomy of the State Prosecution. The Constitutional Court has yet to deliver its final decision on the merits.

The level of perceived judicial independence has continuously improved in recent years but remains low to average. The level of perceived judicial independence among the general public is average (42% fairly and very good), and among companies it remains low (36%), whilst having continuously increased in both surveys showing a positive trend.[5] The main reason for the perceived lack of independence of courts and judges cited by the companies is the perception of interference or pressure from the Government and politicians, closely followed by the perception of interference or pressure from economic or other specific interests, which both remain among the highest in the EU in comparative terms.[6] The Supreme Court commissioned a study into the reasons behind the low perception of the independence of judges and courts and low trust in the justice system, which could help identify avenues for improvement. Among the reasons for such low trust identified through focussed surveys and stakeholders' workshops involving court users, legal professionals, court staff and the general public, was a the lack of knowledge and information about the justice system, organisational and communication issues, and issues with navigating court buildings. These findings led to a number of measures, implemented by the Supreme Court and other bodies, from training to better information tools for court users once they reach the court, which aim at improving the trust into judiciary and the level of perceived judicial independence.[7]

Quality

The digitalisation of the justice system for case management is well advanced and further developments are ongoing to improve electronic communication between courts and parties. Information and Communication Technologies for case management are advanced.[8] Data coming from all judicial management systems are standardised, integrated (using data-warehouse tools) and centralised, and used for management and statistical purposes. The IT policies and strategies are defined, coordinated, and governed by the Supreme Court. However, the electronic communication between courts and parties remains less developed. For example, it is not always possible to submit a case electronically, to receive summons electronically, or to monitor the stages of proceedings online.[9] Electronic communication is already advanced in certain areas, such as undisputed debt recovery, managed by a special organisational unit at the Local Court in Ljubljana (COVL), where case files only exist in electronic form, as well as in insolvency, and land registry. Improving electronic communication tools in other areas, particularly in civil, criminal and misdemeanour procedures has been a priority area for the Supreme Court since 2019. A

[5] Figures 44 and 46, 2020 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%).

[6] Figures 45 and 47, 2020 EU Justice Scoreboard.

[7] Slovenian Government (2018), The Supreme Court presented new activities for the long-term improvement of the quality and reputation of the Slovenian judiciary.

[8] Figure 40, 2020 EU Justice Scoreboard.

[9] Figure 27, 2020 EU Justice Scoreboard.

project to develop e-files, e-submissions, digital serving of judicial documents, online payment of court fees and other digital tools has been launched.[10]

Results of the Supreme Court's survey of court users are being used to further improve the quality of justice. The Supreme Court commissioned a study (see above), which included surveys with court users and other stakeholders. With the aim of increasing the quality of judicial activity and the trust in justice, the Supreme Court set up a special project group. Among others, the group organised surveys among judges and court staff, workshops with key players, interviews and in-house observations. On this basis, the Supreme Court developed manuals for new judges, procedural manuals in various fields of law, training for court staff, and information materials for the public, such as brochures, videos and a website, including on court procedures.[11] The project was internationally awarded.[12]

The Supreme Court plays an important role in allocating resources to courts. Advanced ICT tools for case management are following granular data at level of particular courts. This allows the Court Presidents, court managerial staff and the Supreme Court to allocate human and financial resources based on comparative data on courts' efficiency.[13] Every year, Court Presidents submit their proposals on resources to the Supreme Court. The Supreme Court then analyses the efficiency data, compares the workload at each court and presents the analysis to the Court Presidents in the discussion on resources. Subsequently, a compromise is found on the allocation of resources taking into account the comparative court data.

The Judicial Council and the State Prosecutorial Council are facing challenges in terms of resources, despite some improvements. The Judicial Council is becoming more active in its efforts to improve the quality of justice, particularly through its role in the evaluation of judges, disciplinary proceedings, and the improvement in the remuneration of judges.[14] Despite having been granted additional resources in recent years, the Judicial Council still operates with a comparatively low number of staff in light of the wide range of powers and non-professional members of the Council.[15] According to stakeholders, these efforts require additional resources to increase the Judicial Council's administrative capacity, including for improving the process of selecting judges, particularly the reasoning of decisions. The State Prosecutorial Council still lacks human and financial resources,[16] which means that it is unable to work on improving the general quality of the State Prosecution. Its role in improving the process of selecting prosecutors is also inhibited by a lack of staff.

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[10] Supreme Court (2019), Annual report of 2019, pp. 124-125.

[11] Website can be visited at http://www.sodisce.si/vsrs/objave/2018102509355191/.

[12] In 2019, the Supreme Court's project Improving the quality of justice" (IQ Justice) received the CEPEJ Crystal Scales of Justice Prize. In 2019, the project to improve procedural justice, particularly the communication with court users, received the UX Design Award 2019 for a high level of user friendliness.

[13] The Supreme Court allocates the budget to particular courts while the Judicial Council has a predominant role in the selection and career of judges.

[14] The primary responsibility of the Judicial Council is the selection of candidate for judicial offices. As guaranteed by the Constitution, the majority of members of the Judicial Council are judges, elected by their peers. The remaining five members are representatives of other legal professions, elected by the National Assembly based on the nomination of the President of the Republic.

[15] The Judicial Council has only 15 employees. For a comparative perspective of resources of Councils for the Judiciary, Contribution from the European Networks of Council for the Judiciary for the 2020 Rule of Law Report, p. 9. For a comparative perspective on powers of the Councils for the Judiciary, see Figure 50, 2016 EU Justice Scoreboard.

[16] The State Prosecutorial Council has only four employees.

Consultations are ongoing to finalise the judicial map reform. Over the last decades, the judicial map (defining the location and jurisdiction of courts) swayed between a single court and multiple courts of first instance (district and local). Currently, the court system has 55 first instance courts, with 44 Local Courts dealing with low (financial) value civil litigious and civil non-litigious cases, and 11 District Courts dealing with high-value civil cases and commercial cases among legal persons. The split between the first instance civil and commercial courts has long been identified as affecting the efficiency of the courts. As a partial remedy, the 2009 and 2015 reforms brought Local Courts under the stronger control of District Courts in order to even out the caseload and reduce jurisdictional conflicts.[17] Well-advanced ICT systems for case management and Supreme Court's experience in resource management would allow for creating bigger courts in city areas.[18] Consultations by the Ministry of Justice with the judiciary on a new revised judicial map have continued in 2019, but the legislative draft has yet to be finalised by the Government.

Publication of first instance court judgments remains limited, particularly in civil and commercial cases. While most judgments of the Supreme Court and Higher Courts are published online, the publication of first instance judgments remains low.[19] In addition, the machine readability of published judgments, which would allow developing services and products for court users based on artificial intelligence solutions, is relatively low.[20] The project for improving online accessibility of first instance court judgments led by the Ministry of Justice has been stalled, due to challenges related to automatic anonymization of judgments. A new method is being explored together with researchers.

Efficiency

Improved efficiency of the justice system has led to a further reduction of backlogs, and the length of court proceedings mostly remained stable. Despite having one of the highest numbers of incoming civil cases in the EU, the Slovenian justice system has seen a continued improvement of efficiency in nearly all categories of cases.[21] In 2019, the total backlog of cases further decreased by more than 7%, compared to 2018.[22] The courts again resolved more cases than they received, despite resolving fewer cases than in the past.[23] The average length of proceedings rose to around 13 months in litigious civil cases and stagnated at 11 months in litigious commercial cases, as older cases were prioritised. However, it still takes more than 12 months until the first hearing in a commercial case trial. On appeal, these cases are resolved quickly, usually in around 3 months. Nearly one quarter of litigious civil and commercial cases are resolved through a court settlement. However, it still takes between 14 and 17 months until a written judgment is delivered in those types of cases.

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[17] For example, according to the amendments, the President of the District court can, in agreement with the President of the Local Court, in the annual distribution of work assign judges to work within the district, including at the District Court. In addition, the President of the Ljubljana District Court can assign that certain cases will be dealt with before specific Local Courts in that district. See Articles 71 and 105.a of the Courts Act.

[18] Slovenia received support from the European Commission Structural Reform Support Programme to improve the quality of its justice system, namely to share national practices on judicial map reforms: workshop on judicial map reform with experts from FI and NL, 28-29 Sept. 2016, Ljubljana.

[19] Figure 28, 2020 EU Justice Scoreboard.

[20] Figure 29, 2020 EU Justice Scoreboard.

[21] Figures 2, 5 – 19, 2020 EU Justice Scoreboard.

[22] Data on the efficiency of courts for 2019, Supreme Court.

[23] Total clearance rate of 101%. Altogether, the courts resolved about 70 000 per month in 2019, compared to nearly 100 000 per month in 2012.

Efficiency challenges remain particularly regarding economic and financial crime cases. Court proceedings, particularly in money laundering, and prosecution proceedings are often lengthy. Criminal courts continued to resolve more cases than they received (clearance rate of 102%). However, the length of criminal cases decreased in local courts to about 9.5 months and increased in district courts (to more than 14 months).[24] When dealing with more complex money laundering offences, the length of trials in first instance courts continues to rise and reached 1132 days, on average.[25] In 2019, the State Prosecution resolved more complaints (criminal notifications) than it received in that year, mostly taking between one to two months to either reject a notification, request additional police investigation or submit an indictment to court.[26] However, the Specialised State Prosecutor's Office, dealing with economic and financial crimes, needed about four months on average for these steps. As regards the cases brought by the State Prosecution to the criminal courts, the number has been steadily decreasing.[27] Despite some improvements, investigations by the police and the prosecutors into financial and economic crime can sometimes take several years, partly due to a lack of resources. These efficiency and quality challenges are being addressed through focused training (including on anti-money laundering), exchange of good practices and analyses of prosecutors' efficiency using an upgraded Information and Communication Technology system.

II. ANTI-CORRUPTION FRAMEWORK

The institutional and legislative framework to prevent and fight corruptionconsists of the Integrity and Prevention of Corruption Act. Laws are in place which regulate conflicts of interest and assets declaration for members of the public administration, ministries and the Parliament, on lobbying and 'revolving doors'. The institutional framework to fight corruption comprises an autonomous state body, the Commission for the Prevention of Corruption, which cooperates with other bodies engaged in the fight of corruption, the police and the special prosecutor's office.

Slovenia scored 60/100 in the 2020 Corruption Perception Index of Transparency International, ranking 11th in the European Union and 35th globally. Recent Eurobarometer figures show that 87% of respondents consider corruption to be widespread in Slovenia (EU average 71%) and 36% of people feel personally affected by corruption in their daily lives (EU average 26%).[28] According to the surveys, 90% of companies consider corruption to be widespread (EU average 63%) and 41% of companies consider that corruption is a problem when doing business (EU average 37%). 23% of people find that there are enough successful prosecutions to deter people from corrupt practices (EU average 36%) while 10% of companies consider that people and businesses caught for bribing a senior official are appropriately punished (EU average 31%).[29]

The basic legal framework for strengthening the integrity in the public sector, ensuring transparency and avoiding conflicts of interests, is the Integrity and Prevention of Corruption Act. However, the adoption of amendments to the Integrity and Prevention of

[24] Data on efficiency of courts in 2019, Supreme Court.
[25] Figure 21, 2020 EU Justice Scoreboard, presenting data for 2014, 2015, 2016 and 2018.
[26] In 2019, clearance rate was above 106%. State Prosecution data.
[27] The number of cases that the State Prosecution brought to the criminal courts, decreased from about 620 cases in 2014 to about 458 in 2018 (per 100.000 inhabitants), Eurostat data, https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=crim_crt_case&lang=en.
[28] Special Eurobarometer 502 (2020).
[29] Special Eurobarometer 502 (2020).

Corruption Act to address deficiencies of the anti-corruption framework have been postponed**.** It is the main legal act to combat corruption in Slovenia and also regulates the responsibilities of the Commission for the Prevention of Corruption (CPC). Amendments to the Integrity and Prevention of Corruption Act (IPCA) to address some of the key deficiencies in the existing framework, including those highlighted by the Council of Europe's Group of States against Corruption (GRECO), were passed by the Government in January 2018 and scheduled for approval in the Parliament in June 2020.[30] However, their adoption was postponed, leaving key anti-corruption reforms still pending. No major developments are evident in rules of conduct, conflicts of interest, whistleblowing, or 'revolving doors', which are all only partly addressed by the IPCA.[31]

The Commission for the Prevention of Corruption (CPC) operates within a good legal framework, but with limited resources. The CPC is an autonomous state body whose independence is ensured by its leadership selection procedure, where a special selection board composed of members from each of the three branches of power and civil society issues an appointment recommendation to the President. The CPC cooperates regularly with the police and special prosecutor's office, but retains supervisory and administrative investigative powers. Furthermore, it oversees the prevention of corruption and the strengthening of public office integrity. The CPC conducts administrative investigations and holds broad legal powers to access or instruct other law enforcement bodies and institutions to gather evidence. It is responsible for overseeing the implementation of provisions on conflicts of interest, integrity plans, asset declarations, gifts and restrictions from the Integrity and Prevention of Corruption Act. However, GRECO has noted that insufficient resources and procedural shortcomings appear to hamper CPC actions.[32] The IPCA amendments are also expected to address legal issues surrounding the CPC's *sui generis* procedure for dealing with corruption cases. The process, whereby the CPC undertakes administrative investigations and issues public decisions has seen cases challenged in the courts, as the rights of defence of suspects were considered not sufficiently guaranteed during the procedure.[33]

Alongside the specialised Commission for Prevention of Corruption, several public bodies are involved in the prevention and repression of corruption. The Specialised State Prosecutor's Office and Police, and other state authorities fulfil important roles in the fight against corruption. The Ministry of Justice is responsible for most of legal framework for prevention and prosecution of corruption, including the Integrity and Prevention of Corruption Act and the Penal Code. The Ministry of Public Administration is competent for regulating the status, rights and obligations of officials and has a role in promoting integrity. The Court of Audit is the highest body for supervising state accounts, budget and public spending. It exercises its powers of audit entirely independently and these cannot be challenged before the courts or other state bodies. The National Review Commission for public procurement award procedures is an independent specialised tribunal that provides legal protection to tenderers. A Programme of Government Measures for Integrity and Transparency 2017-2019 focussed on raising awareness of integrity and transparency

[30] GRECO Fifth Evaluation Round – Evaluation Report.
[31] European Semester Country Report 2020.
[32] GRECO Fifth Evaluation Round – Evaluation Report, recommendation i.
[33] The process involves fact-finding, sending the concerned person a draft of the findings, followed by adoption of the findings and their presentation to the public, together with the response of the concerned person. According to the Supreme Court, procedures before the CPC must include the same safeguards as under general administrative law procedures. This includes informing the concerned person about the verification, allowing him/her to submit clarifications and to be represented during the verifications.

amongst public officials and offering management and control mechanisms for public finances. It also aimed to increase transparency in drafting regulations and managing procedures.[34]

Rules of conduct are in place. Relevant provisions are contained in the Public Administration Act, the Civil Servants Act and the Integrity and Prevention of Corruption Act. Whilst Ministers and state secretaries are subject to the 2015 Code of Ethics for Government and Ministerial Officials, the Integrity and Prevention of Corruption Act is the basic legal act governing conflicts of interest for public sector officials. It governs officials' duties regarding conflicts of interest, asset declarations and their supervision, restrictions on the performance of other activities and prohibitions relating to gifts. It applies to the Prime Minister, ministers, state secretaries, cabinet members and the secretary general of the government. Certain provisions, for example on asset declaration and post-employment restrictions, also apply to former officials.[35] On 12 June 2020, the National Assembly adopted a code of ethics. The latter lists ethical principles which deputies must adhere to and sets reprimands for violations. However, shortcomings in the Code of Conduct of the National Council in respect of conflicts of interest, supervision and sanctions, have been underlined.[36]

Provisions on preventing and managing conflicts of interest are in place. Rules on the avoidance of conflicts of interest, and asset declarations are defined in the Integrity and Prevention of Corruption Act. Avoiding conflicts of interest is primarily the obligation of each public official, who must immediately inform in writing his or her superiors or the Commission for the Prevention of Corruption (CPC) if a conflict arises. Additional rules on incompatibility of functions and restricting business activities also aim to prevent conflicts of interest in the public sector. In addition, the Public Employees Act prohibits civil servants from performing activities that would entail a conflict of interest. It also provides for certain restrictions and duties of civil servants (and members of their family) related to accepting gifts. Planned amendments will extend the scope of obliged individuals for reporting conflict of interests. The Act also sets the scope and determines which officials are obligated to file declarations with the CPC.[37] Declarations are to be submitted to the CPC upon taking office, a year after ceasing functions and upon every change in office, activities, ownership or assets that exceeds EUR 10.000. The CPC uses *ad hoc* checks and keeps records on persons subject to asset declaration duties. The asset declarations are open to the public during each official's tenure and up to one year after. However, top executive functions' asset declarations are neither published, nor subject to substantial scrutiny.[38] In this regard, widening the scope of asset declarations to family members of ministers and state secretaries, without necessarily making these public, has been recommended.[39] To respond to these recommendations, the Slovenian authorities plan to amend the scope of asset declaration and oversight. The CPC remains however understaffed and lacks both financial and human resources in performing its

[34] GRECO Fifth Evaluation Round – Evaluation Report, para. 54.
[35] GRECO Fifth Evaluation Round – Evaluation Report, para. 40.
[36] GRECO Fourth Evaluation Round – Interim report, conclusions on the National Council.
[37] These include high-level, local, elected and appointed officials such as: professional high-level officials, non-professional mayors and deputy mayors, high-ranking civil servants, managers, persons responsible for public procurement, civil servants of the National Review Commission for Reviewing Public Procurement Procedures.
[38] GRECO has recommended ensuring timely publication of ministers and state secretaries' asset declarations and that substantive checks be carried out by the CPC. GRECO Fifth Evaluation Round – Evaluation Report, recommendation viii.
[39] GRECO Fifth Evaluation Round – Evaluation Report, recommendation vii.

tasks. In this respect, GRECO recommended that the CPC should be provided with adequate resources to effectively perform its tasks.[40]

Lobbying and 'revolving doors' are regulated.[41] The IPCA provides that it is prohibited to lobby on issues subject to judicial and administrative proceedings, and lobbying activities may only be performed by a natural person entered in the registry of lobbyists, set up by the CPC. Public officials may agree to lobbying only if the lobbyist is entered in the register and must decline contact if there are conflicts of interest. However, it has been recommended that the implementation of rules on contacts with lobbyists by members of the National Assembly and the National Council be subjected to a thorough assessment.[42] This remains unimplemented, despite 76% of businesses in Slovenia considering that the only way to succeed in business is to have political connections (EU average is 54 %).[43] In addition, for top executive functions, the rules on lobbying contain some loopholes and are poorly complied with. Not all contacts with third parties who seek to influence government decision-making are duly reported, including those from legal and authorised representatives of companies and interest groups.[44] In addition, the IPCA also provides a "cooling – off" period for high-level officials. During this period, the latter are prohibited from lobbying or acting as a representative of a business entity that had business contacts with the body in which they held office for two years after their departure from office. A public body may also not do business with an entity in which a former official has an interest, for a period one year from his departure from office.[45]

Slovenia has developed further measures to prevent corruption and increase transparency in public procurement. Slovenia ranks among the most developed OECD members in terms of transparency and has introduced several measures to prevent corruption in public procurement. For instance, integrity plans are tools for verifying the integrity of an organisation. They constitute a documented process for assessing levels of vulnerability and exposure to unethical or corrupt practices. All public institutions are obliged to send their integrity plans to the CPC, with the primary goal of identifying risks and implementing measures to strengthen integrity. The Public Procurement Act includes a system for the mandatory electronic submission and publishing of tenders of a certain value alongside the contracting authority's final decisions and reasoning. These measures are accompanied by required asset declarations of the persons responsible for public procurement as detailed in the IPCA. Available since January 2016, the IT solution STATIST ensures the publication of information on public contracts awarded in Slovenia since 2013. The CPC has also developed an online application (ERAR) which provides the public with user-friendly access to information on business transactions of all public sector bodies. It continues to be an important driver for public sector transparency, enabling the visualisation of public spending. However, whilst the CPC states that only 10% of all corruption reports are connected to public procurement, Eurobarometer surveys show that businesses remain sceptical about public procurement practices in Slovenia.

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40 GRECO Fifth Evaluation Round – Evaluation Report, p. 4.

41 1) non-public contact; 2) goal of influencing discussion and adoption of regulations and other general documents; 3) carried out in the interest, name or on behalf of a certain interest group/lobbying client.

42 GRECO Fourth Evaluation Round – Evaluation Report, recommendation ii.

43 Special Eurobarometer 502 (2020), p. 71.

44 GRECO Fifth Evaluation Round – Evaluation Report, recommendation v.

45 Such as a 5% participation in the founders' rights, management or capital, either by direct participation or through the participation of other legal persons.

The Corruption section, located within the Economic Crime Division of the General Police Directorate (GPD), is responsible for handling corruption crime at a national level. It monitors, manages and directs the work of all police directorates, and investigates suspected acts of corruption reported through e-notifications. The GPD annual budget for 2019 (EUR 369,400) is a 7.3% increase compared to 2018. GRECO has welcomed steps taken by the police to prevent corruption within its ranks, as police officers have no immunity or procedural privileges. The police is consistently among the most trusted of state authorities in Slovenia.[46] Established in November 2009, the National Bureau of Investigation (NBI) is a unit within the Criminal Police Directorate of the General Police Directorate. It is specialised in serious and complex criminal offences, including financial crime, organised crime and corruption. While the Bureau has autonomy in selecting cases, this practice has been criticised by the Specialised State Prosecutor's Office, as on some occasions, the local police is facing difficulties with complex cases which the bureau has not decided to pursue .[47]

Several high-profile corruption cases are ongoing, but specific challenges exist in ensuring successful prosecutions. The Specialised State Prosecutor's Office (SSPO) prosecutes the most serious criminal offences, including corruption, which has been considered a policy priority since 2017.[48] However, several high-level cases are enduring or reached statutes of limitation, and the finalisation of cases is reportedly affected by police inefficiency in prioritising cases and transmitting of case-related information. In addition, Slovenia registers the highest percentage of respondents who consider that there are not enough successful prosecutions to deter people from corrupt practices (72%) and disagree with the statement that government efforts to combat corruption are effective (77%).[49] Slovenia introduced civil assets forfeiture into its national law in 2011, when the Confiscation of Proceeds of Crime Act was adopted. However, the Constitutional Court in 2018 ruled that the targeting of assets, obtained by an indicted person before 2011, represents 'inadmissible retroactivity'.[50] This ruling has practical implications on the operation of the civil confiscation regime and its effectiveness, as the authorities can now only deploy the civil confiscation instrument in relation to assets obtained by a person indicted after 2011. Nonetheless, in 2019, the State Prosecution filed 147 corruption-related indictments, 22% less than in 2018 (188). In 2019, the courts issued 21 convictions, 30% less than in 2018 (30), as well as nine acquittals (three in 2018) and one dismissal (two in 2018). There are another 225 open corruption cases in the courts at various stages of criminal proceedings, and the courts have yet to issue first-instance judgments.[51] Authorities have noted that a reduced number of indictments and convictions can be attributed to difficulties in following up on evidence provided by whistle-blowers who are only partly protected under the IPCA.[52]

[46] Special Eurobarometer 502 (2020).
[47] Information received in the context of the country visit.
[48] SPPO Annual report, *Vrhovno Državno tožilstvo*. *Letno poročilo za leto* 2019.
[49] Special Eurobarometer 502 (2020).
[50] Decision of the Constitutional Court of 5 July 2018, U-I-6/15-23, Up-33/15-32 and Up-1003/15-27.
[51] SPPO Annual report, *Vrhovno Državno tožilstvo*. *Letno poročilo za leto* 2019.
[52] Information received in the context of the country visit.

III. MEDIA PLURALISM

In Slovenia, the freedom of expression and information are enshrined in the Constitution, while media plurality is ensured through specific sectorial legislation. The media regulator, the Agency for Communication Networks and Services, is an independent authority, which is legally and functionally distinct from the Government. The rules on transparency of media ownership require companies to declare to the competition authorities the ownership or management influence above a certain threshold. A considerable change in ownership requires also the agreement of the competent ministry. The protection of journalists is not specifically regulated and the mechanisms available to all citizens apply.[53]

The independence of the Agency for Communication Networks and Services is stipulated by law, however, its effectiveness is constrained by the lack of human resources and the lack of safeguards against political interference. Besides being the media regulator, the Agency for Communication Networks and Services of the Republic of Slovenia (AKOS) is also the regulatory body for the telecommunications, post and rail transport sectors. The status of AKOS is guaranteed by the Electronic Communications Act.[54] It draws its enforcement powers in the audiovisual media field from the Mass Media Act[55] and Audiovisual Media Services Act.[56] Both acts are currently being revised and are to transpose the revised Audiovisual Media Services Directive (AVMSD): a public consultation was launched in July 2020 with a duration of only five days. Following widespread criticism, among others from national and international media associations, the consultation period has been extended until the beginning of August and September, respectively.[57] AKOS is managed by the Director and the Agency's Council, consisting of five council members. The decision-making power lies with the Director, while the Council supervises the realisation of the work programme and approves the financial planning. Both are appointed by the Government based on a previous selection procedure, with the Director being proposed to the Government by the responsible minister. Suspension and dismissal can only take place due to unsuitability for the position fulfilled or incompetence, or due to other compelling reasons related to the person concerned. Although rules regarding conflicts of interest with industry are defined in the Electronic Communications Act, there are no specific provisions in place addressing the possibility of the Director having a conflict of interest with respect to a political party.[58] The financial and human resources are at the discretion of the regulator. The budget is drawn from the income gained from the Agency's activity, which reinforces its independence from the Government. However, considering the wide range of powers, it appears that the Agency lacks human resources, which may in turn influence its effectiveness. The Agency has the power to issue sanctions, which may be challenged in court. The Agency presents its annual report to the Government and Parliament, and publishes all relevant documents on its website, ensuring a good level of transparency.[59] The

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[53] After dropping two places between 2018 and 2019, Slovenia regained its previous position in the Reporters Without Borders World Press Freedom Index, now registering again at 32nd position worldwide. Reporters without borders, Slovenia.

[54] *Zakon o elektronskih komunikacijah* (ZEKon-1).

[55] *Zakon o medijih* (ZMed).

[56] *Zakon o avdiovizualnih medijskih storitvah* (ZAvMS).

[57] Draft Mass Media Act, https://e-uprava.gov.si/drzava-in-druzba/e-demokracija/predlogi-predpisov/predlog-predpisa.html?id=10493, Draft Audiovisual Media Services Act, https://e-uprava.gov.si/drzava-in-druzba/e-demokracija/predlogi-predpisov/predlog-predpisa.html?id=11475. Draft changes to the media law that have an impact on the review of media mergers have been opposed by the country's competition authority.

[58] 2020 Media Pluralism Monitor, Art. 182 of *Zakon o elektronskih komunikacijah* (ZEKon-1).

[59] In this context, it should be recalled that the revised AVMSD sets out specific guarantees for the independence and effectiveness of national media regulators.

Media Pluralism Monitor (MPM 2020) assesses the independence and effectiveness of the media authority at medium risk, mainly due to the absence of safeguards against political interference.[60]

The transparency of media ownership requires declaration of ownership or management stakes. According to the Mass Media Act, a publisher or broadcaster needs to declare whenever individual ownership or management stakes in the company reach 5% or more. Certain information is made publicly available on the website of the Ministry of Culture.[61] Particularly in the case of multiple cascading owners, the current legislation may make it difficult to identify if decision-making is being concentrated in the background.[62] The MPM 2020 therefore assessed media ownership transparency in Slovenia at medium risk.[63] The draft proposal for a revision of the law presented in July 2020, extends the scope of the Mass Media Act to digital media and removes the minimum threshold of 5%, except for companies organised as joint stock companies.[64] The draft proposal also makes all information related to ownership publicly available, including the previously non-disclosed financial sources and the newly introduced sources deriving from public funds.[65]

Allocation of state advertising is not specifically regulated. In the absence of collection of data on the revenues of media companies, it is difficult to obtain reliable information on the advertising expenditure, including the identity of the contractor. During elections, only the Public Service Media are required to give enough airtime to ensure a fair political representation in relevant programmes.

The Integrity and Prevention of Corruption Act provides general rules on conflicts of interest for public officials, including in the media sector. [66] Apart from these, there are no specific rules, which would regulate conflict of interest in the media sector, for example between political parties and media owners. In practice, this has a negative effect on media pluralism in Slovenia. A high level of political influence over media companies, which can trickle down to the press and broadcasters at regional and local levels, is reported. Particularly large media in Slovenia are often perceived by the population as politically biased. For example, at least two TV stations and further also print and online media are considered as politically controlled by a political party.[67] In this context, the MPM 2020 addressed the political independence of media at high risk. Concerns have been raised by stakeholders about possible changes related to the funding of the national public broadcaster and the governance of the national press agency, which were considered as politically motivated.

The implementation of the right to information leads to lengthy procedures, but not many cases of violation have been recorded.[68] The right is enshrined in the Constitution and regulated in the Access to Public Information Act. Appeal mechanisms are in place and

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60 2020 Media Pluralism Monitor.
61 Arts. 12 and 14, Mass Media Act.
62 Information received in the context of the country visit for the 2020 Rule of Law Report.
63 It should be recalled in this regard that the revised AVMSD encourages Member States to adopt legislative measures providing that media service providers under their jurisdiction make accessible information concerning their ownership structure, including the beneficial owners.
64 Amended Art. 12, Draft Mass Media Act.
65 See previous note.
66 Integrity And Prevention Of Corruption Act.
67 2020 Media Pluralism Monitor.
68 See previous note.

managed by the Information Commissioner. The MPM 2020 attributed the protection of right to information a low risk.

While physical attacks against journalists are rare, online harassment or threats against journalists are frequent and rarely sanctioned by the justice system. With regard to the framework for journalists' protection**,** the freedom of expression and information are enshrined in the Constitution and relevant laws (e.g. the Criminal Code), and judicial mechanisms are in place. While Reporters Without Borders noticed that in 2019, there were no recorded physical attacks against journalists,[69] lawsuits with an intimidating effect were reported.[70] There were also reports on the prosecution of journalists disclosing information of public interest.[71] The "right to correction",[72] weakened media pluralism and self-censorship of journalists were highlighted as problematic by the World Press Freedom Index 2019.[73] In Slovenia, imprisonment is among the envisaged sanctions for defamation. MPM 2020 assessed the protection of freedom of expression at medium risk for the years 2018 and 2019. However, the situation appears to have worsened. The Council of Europe's Platform to promote the protection of journalism and safety of journalists published four alerts concerning Slovenia in 2020, mainly related to the harassment of journalists.[74] Three of the four alerts have been addressed through a reply from the Slovene authorities, as indicated on the platform. Online attacks and threats, including from politicians, are numerous but many perpetrators remain anonymous.[75] Several organisations have raised concerns about the safety of an investigative journalist in the light of a worrying recent case.[76] A narrow application of criminal law causes that online harassment or threats against journalists are rarely sanctioned. This relies on the legal interpretation by the State Prosecution, whereby public incitement to hatred needs to be 'concrete', amounting to a 'concrete danger for public order and peace' to be prosecuted as a crime.[77] This interpretation may have a negative effect on the protection of journalists by the criminal justice system. In addition, various sources reported that judicial procedures involving journalists can be lengthy, which leads to a chilling effect on the freedom of expression and causes victims to often refrain from reporting such acts.[78]

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69 Reporters Without Borders, Slovenia.

70 See previous note.

71 MPM 2020, Council of Europe, Platform to promote the protection of journalism and safety of journalists.

72 Mass Media Act: Art. 26, offering the possibility to demand the correction of a statement if the affected person's rights and interests were not respected.

73 Reporters Without Borders, Slovenia.

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

75 2020 Media Pluralism Monitor.

76 Council of Europe, Platform to promote the protection of journalism and safety of journalists, alert n° 28/2020 about investigative journalist Blaž Zgaga; https://rsf.org/en/news/seven-organisations-call-slovenian-government-stop-harassing-investigative-journalist.

77 ECRI – Fifth Report, Legal opinion of the Supreme State Prosecutor's Office regarding the prosecution of Art. 297 of the Criminal Code. It should be noted, however, that in 2019, the Supreme Court clarified that there are two ways of committing the crime from Art. 297 of the Criminal Code, either (a) by inciting or inflaming hatred and violence or intolerance in a manner that can endanger or disturb public order and peace, or (b) with threats, insults or verbal abuse. It stated that in the case that the conduct is carried out with threats, insults or verbal abuse, there is no requirement that there be any potential endangerment of public order and peace. It also clarified, however, that when the conduct is carried out in a way that can endanger or disturb public order and peace, there is no requirement that this endangerment is already immediate, but that it has only the potential to result in concrete endangerment. http://www.sodisce.si/vsrs/objave/2019080810051183/.

78 In this context, it should be recalled that, in line with European standards, and as indicated by the Council of Europe Recommendation 2016/4, "Member States should put in place a comprehensive legislative framework that enables journalists and other media actors to contribute to public debate effectively and without fear".

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

Slovenia has a parliamentary system of government with an imperfect bicameral structure, where only the National Assembly (the first chamber of the Parliament), and not the National Council (the second chamber of the Parliament), adopts laws.[79] Draft legislation can be tabled by the Government, any member of the Parliament or at least 5000 'voters'. The Constitutional Court carries out ex-post constitutional review, including in concrete cases on the basis of a constitutional complaint. In addition to the justice system, a number of other institutions, notably the Ombudsperson and the Advocate of the Principle of Equality play a role in the system of checks and balances.

Consultation with the public on draft laws is organised through a dedicated online tool. A parliamentary resolution recommends that public consultations last between 30 to 60 days and that the process be summarised in a report.[80] The draft laws are published on a dedicated website "*e-Demokracija*",[81] through which the public can send their contributions. In practice, the public does not always have sufficient opportunity to participate in the legislative process. The recommended consultation period is often not followed, as the public is given a shorter time to submit their comments. In some instances, comments are not being duly taken into consideration.[82] Laws may be adopted in a shortened or an emergency procedure under conditions stipulated by the Rules of Procedure of the National Assembly.[83] The Collegium of the President of the National Assembly then decides whether the law will be discussed in this manner.[84] During the shortened and emergency procedure, general debate does not take place and the second and third readings are held during the same session of Parliament. In the parliamentary term 2014-2018, 39% of all laws were adopted according to the regular procedure, 19.1% of laws were adopted according to the emergency procedure, and 23% of laws according to the shortened legislative procedure.[85]

Due to an increase in constitutional complaints, the Constitutional Court's backlog and length of proceedings continued to rise. According to the Constitution, the Constitutional Court has the power to review the conformity of laws, regulations, general acts issued in the exercise of public authority, international treaties and constitutional complains. The proceedings can be initiated, amongst others, by the National Assembly, one third of its deputies, the Government, the Ombudsperson,[86] the Judicial Council or the Prosecutor

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79 Constitutional Court of Slovenia, Judgment of 22 October 2008, U-I-295/07.

80 Resolution on Legislative Regulation. Public consultations are not conducted during special legislative procedures, such as emergency procedures, or over certain matters, such as the state budget.

81 Website can be visited at https://e-uprava.gov.si/drzava-in-druzba/e-demokracija.

82 European Network of National Human Right Institutions (2020), The rule of law in the European Union: Reports from National Human Rights Institutions. Information received in the context of the consultation process for the preparation of the 2020 Rule of Law Report.

83 Legislation may be adopted in a shortened procedure in the following cases: minor amendments to the law, expiration of law or some of its provisions, minor harmonisation with EU or other national legislation, or amendments to laws that were subjects to decisions of the Constitutional Court (Rules of Procedure of the National Assembly, Art. 142); in case of national security, natural disasters, or to prevent serious consequences to the functioning of the State, the Government may propose to the National Assembly that the act be adopted under an urgent procedure (Rules of Procedure of the National Assembly, Art. 143).

84 Rules of Procedure of the National Assembly, Art. 143.

85 National Assembly of the Republic of Slovenia (2018), Report on National Assembly's work in the Parliamentary term 2014-2018.

86 Over the years, the Ombudsman has also filed 31 requests for a review of the constitutionality or legality of a regulation or a general act issued to exercise public powers, European Network of National Human Right Institutions (2020), The rule of law in the European Union: Reports from National Human Rights Institutions.

General. The Constitutional Court may abrogate laws that are not in conformity with the Constitution, and abrogate or annul regulations or general acts issued for the exercise of public authority that are unconstitutional or unlawful. If the Constitutional Court deems a regulation unconstitutional or unlawful, it issues a declaratory decision. In 2019, the Constitutional Court resolved 1804 cases.[87] While the requests for constitutional review further decreased (to 165 cases), due to a continued increase in constitutional complaints, the Constitutional Court is not able to cope with the caseload. It is currently handling more than 2500 cases, among which more than four fifths are constitutional complaints. Since 2016, the backlog increased by approximately 25% each year. Consequently, the average length of proceedings increased from 250 days in 2012 to 425 days and almost 500 days in 2019 for constitutional complaint cases and constitutional review cases, respectively. The Constitutional Court has also been seized to review certain measures adopted in response to the COVID-19 pandemic.[88]

The Human Rights Ombudsperson and the Advocate of the Principle of Equality are also in charge of the protection of the rights of individuals. The Human Rights Ombudsperson is in charge of protection of human rights and fundamental freedoms vis-à-vis state authorities, local self-government, and persons who hold public authority. The Ombudsperson is accredited as the national human rights institution with "B" status by Global Alliance of National Human Rights Institutions. Since the accreditation, the Ombudsperson's powers were extended in order to achieve "A" status.[89] The Office of the Ombudsperson also acts as the children's rights advocate. The Ombudsperson prepares annual reports, which are discussed in the National Assembly.[90] The Government then prepares a response to the findings and recommendations contained in the report. Another independent institution tasked with the protection of human rights is the Advocate of the Principle of Equality, an independent body whose tasks include the protection against discrimination and promotion of equality at a systemic level, counselling, legal support and court representation to victims of discrimination, and issuing legally binding decisions based on complaints against discrimination. However, the Advocate of the Principle of Equality does not have the power to issue sanctions.[91] Despite an increase in financial resources, it operates with relatively few employees.[92] To be noted that other independent bodies are also facing challenges.[93]

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87 Work Report of the Constitutional Court for 2019.

88 In order to address the COVID-19 pandemic, Slovenia did not declare a state of emergency and most of the measures were adopted by the Government in accordance with the Communicable Diseases Act, which was also amended in April 2020. In line with this law, the Government must inform the Parliament about any measures taken. See e.g. Constitutional Court decision regarding the restriction on movement between municipalities, U-I-83/20-10, 16.4.2020.

89 The re-accreditation scheduled for March 2020 was postponed due to COVID-19 pandemic.

90 Reports can be accessed at http://www.varuh-rs.si/sl/promocija-publikacije-projekti/publikacije-gradiva/letna-porocila-priporocila-dz-odzivna-porocila-vlade/.

91 To be noted that the Commission Recommendation states that where equality bodies have the legal capacity to take binding decisions , the Member State should also grant them the capacity to issue adequate, effective and proportionate sanctions. See Commission Recommendation of 22 June 2018 on standards for equality bodies C(2018) 3850 final, 1.1.2(5).

92 In its first year of operation, the Advocate was allocated a total of EUR 200,000, which hindered its ability to develop, and to fulfil its broad mandate. However, in the beginning of 2019 the national budget was rebalanced and the Advocate was allocated EUR 1,100,000. See Slovenian input to the 2020 Rule of Law Report. At end of 2019, the Advocate had 19 employees.

93 In May 2020, the Government/general director of the police replaced the heads of several independent bodies: the director of the specialised anti-corruption police department; the director of the Statistical Office (SURS); the Director of the Financial Intelligence Unit. It was the first time that such dismissals happened

The National Strategy for the Development of the Non-Governmental Sector and Volunteering aims at improving support to non-governmental organisations by 2023. The Strategy lays down measures to support these organisation in contributing to the principles of pluralism and democracy in the society.[94] The Strategy also promotes transparency, integrity and accountability of NGOs. The state finances NGO projects and programmes, in areas where it considers that NGOs could implement public policies and provide services to citizens. Financing flows mostly through public tenders, public calls, or direct financing. Slovenia is considered as having an open and extensive civil society, with relatively high levels of volunteering.[95]

without stating a cause. To be noted that in June 2020, the Commission sent a letter asking for clarification regarding dismissal of the director of Statistical Office, in view of the EU rules on the independence of national statistical authorities. The director of the specialised anti-corruption police department and the director of the Statistical Office have initiated judicial review of their dismissal. Ministry of the Interior: Police (2020), Slovenian Government (2020), 47th correspondence session of the Government of the Republic of Slovenia.

[94] The strategy can be accessed at https://www.gov.si/en/topics/non-governmental-organisations/.

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

Annex: List of sources in alphabetical order*

** The list of contributions received in the context of the consultation for the 2020 Rule of Law report can be found at (COM website).*

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Virtual country visit to Slovenia in the context of the 2020 Rule of Law Report.

Annex II: Country visit to Slovenia

The Commission services held virtual meetings in June 2020 with:

- Agency for Communication Networks and Services (AKOS)
- Association of Journalists
- Association of Journalists and Publicists
- Commission for the Prevention of Corruption
- General Police Directorate - Corruption Section
- Judicial Council
- Ministry of Justice
- Ministry of Public Administration
- Specialised Prosecution Office
- State Prosecutorial Council
- Supreme Court
- Supreme State Prosecutor's Office
- Transparency International Slovenia

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

- Amnesty International
- Civil Liberties Union for Europe
- Civil Society Europe
- Conference of European Churches
- EuroCommerce
- European Center for Not-for-Profit Law
- European Centre for Press and Media Freedom
- European Civic Forum
- Free Press Unlimited
- Front Line Defenders
- ILGA-Europe
- International Commission of Jurists
- International Federation for Human Rights
- International Press Institute
- Lifelong learning Platform
- Open Society Justice Initiative/Open Society European Policy Institute
- Reporters without Borders
- Transparency International EU