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COMMISSION STAFF WORKING DOCUMENT

**2020 Rule of Law Report
Country Chapter on the rule of law situation in Belgium**

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**

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

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ABSTRACT

The Belgian justice system has been undergoing reforms relating to digitalisation and the management of resources by the judiciary for several years, but full implementation remains outstanding. Various initiatives to foster the quality and independence of justice have been implemented, notably relating to court fees, the system of substitute judges, and the investigative powers of the High Council for Justice. A reform of the complaint procedure regarding the functioning of justice is ongoing, as well as an initiative to foster the use of clear language in judicial decisions. The availability of sufficient human and financial resources poses a challenge for the justice system, and there remains a need to improve the level of digitalisation. In this context, a long-standing shortcoming is the lack of reliable and consistent data on efficiency.

Belgium has the legal and institutional framework for combatting corruption broadly in place. While there is no strategy or institution that coordinates the fight against corruption at all levels of government, a dedicated anti-corruption body oversees the investigations of corruption and a Federal Ethics Committee advises public officials on integrity issues. An array of legislative measures to prevent corruption exist, including declarations systems and codes of conducts for public officials, but these have resulted in a fragmented framework across different levels of government. Whilst certain rules are in place for members of Parliament and top executive functions, shortcomings remain. There is currently no general whistle-blower protection regulation in Belgium.

Belgium has a strong legal and institutional framework regarding media pluralism. The independent Audiovisual Media Regulators play an important role in ensuring transparency of media ownership, and the Media Councils are very active in their respective Communities. The independence of the media is respected and the journalistic profession is adequately protected, in particular by the law on the protection of journalistic sources. Cases of intimidation, threats or attacks against journalists are relatively rare. There is room to improve access to information held by public authorities. Also, the adequacy of the resources available to the regulatory authorities of the French and German-speaking Communities is a source of concern.

The process for enacting laws includes a well-established practice of conducting impact assessments and consulting stakeholders at multiple levels of government. The Constitutional Court and other independent institutions, including Ombudsmen offices at different levels of government, play an important role in upholding fundamental rights. A new Federal Human Rights Institution is in the process of being established and is expected to further enhance fundamental rights protection. The Council of State contributes to safeguarding the quality of legislation, although it faces some challenges in its work. Following the adoption of a 2019 law, civil society organisations have increased possibilities to litigate on the interests they defend.

I. JUSTICE SYSTEM

The justice system consists of 13 first-instance courts of general jurisdiction,¹ a number of specialised first instance courts,² five appeal courts and a Supreme Court. The judicial branch of the Council of State³ acts as the highest administrative court.⁴ The Constitutional Court is competent to scrutinise the constitutionality of legislation. Most competences related to justice remain at the federal level. The independence of the judiciary and of the prosecution service is enshrined in the constitution.⁵ An independent High Council of Justice⁶ is tasked with recruitment for the judiciary and with fostering the quality of justice through control mechanisms such as audits, as well as by giving advice. Candidate judges are selected by the High Council, and are appointed for life by the Government⁷ on the proposal of the Minister of Justice.⁸ The College of Courts and Tribunals, which consists of court presidents elected by their peers, is responsible for the general functioning of the courts. The Flemish bar association and the French- and German-speaking bar association represent lawyers from different parts of the country.

Independence

The perceived level of independence of the judiciary is above average and efforts to further foster independence continue. The level of perceived independence of courts and judges is above the EU average among the general population (63% consider it to be fairly or very good) and among companies (59% fairly or very good).⁹ A recent reform may further strengthen judicial independence by reinforcing the quality of the selection process and the integrity framework of substitute judges. The court system allows for the nomination of substitute judges to ensure the full composition of a court bench.¹⁰ The conditions for their appointment have been revised, following certain concerns voiced by the Council of Europe relating to the appointment procedure and integrity framework for substitute judges, and possible consequences for the image and the integrity of the justice system.¹¹ Whereas substitute judges were previously only required to fulfil conditions relating to education and

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

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

³ The Council of State also has an advisory branch, which renders opinions on draft legislation.

⁴ A non-permanent court of assizes composed of three judges and a jury of twelve citizens treats the most serious criminal cases.

⁵ Art. 151 of the Constitution.

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

⁷ Formally by the King.

⁸ The executive can only refuse to appoint the candidate nominated by the High Council for Justice on explicit grounds (for example an irregularity or illegitimacy) and cannot decide to appoint a different candidate. Instead, the executive must refer the appointment file back to the High Council and ask for a new proposal. The decision of the executive not to appoint a candidate judge can be challenged before the Council of State. The unlawfulness of the proposal of the High Council can also be invoked in the context of such legal action.

⁹ While 9% of the general population and 12% of companies indicate that they perceive the level of judicial independence to be 'very good' and 54% of the general population and 47% of companies perceive it as 'fairly good', 26% of the general population and 24% of companies perceive the level of judicial independence to be 'fairly or very bad'. Figures 44 & 46, 2020 EU Justice Scoreboard 2020; Eurobarometer survey. 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%).

¹⁰ Judicial Code, Book I, Title VI, Chapter Vter, Section 1.

¹¹ GRECO Fourth Evaluation Round – Evaluation Report, p. 32.

experience,¹² a law of March 2019 introduces the requirement that candidates must also pass an exam in order to become a substitute judge.¹³ Furthermore, the law introduces compulsory training for substitute judges including a module on ethics, and abolishes the possibility of appointing substitute prosecutors. The law appears to address to a large extent the concerns raised as regards substitute judges,¹⁴ including by making the selection procedure more objective and by strengthening the applicable integrity framework. Additionally, the law reinforces the investigative powers of the High Council of Justice. The High Council of Justice is taking an active role, for example, by launching on 3 September 2020 a special investigation into the (on-going) judicial investigation on the circumstances surrounding the death of Jozef Chovanec, a Slovak national, following a police intervention at Charleroi Airport in February 2018. The law provides that the High Council can obtain any document and information from the judicial authorities that it considers necessary for the fulfilment of its tasks, which include conducting audits of courts.

The power of the Minister of Justice to instruct the prosecution service to prosecute a specific case is accompanied by safeguards and is not used in practice. The Minister of Justice may lay down general guidelines for the prosecution service as well as order it to prosecute an individual case, but may not give an instruction to refrain from prosecution.¹⁵ If the Minister orders the prosecution of a specific case, that instruction must be added to the case file, and the Belgian authorities report that the power to issue specific instructions is not used in practice. This practice, combined with the legal safeguards in place, appears to mitigate the risk to the autonomy of the prosecution service.¹⁶

Quality

Developments are ongoing as regards digitalisation of the justice system. There remains a need to improve digitalisation of the justice system, in particular as regards the online accessibility of court judgments, and the possibilities to submit a case, to transmit summons and to monitor the stages of a proceeding online.¹⁷ As regards the online access to judicial decisions, a law of May 2019 provides for the publication of all judgments online from September 2021 onward.¹⁸ The process of creating a database for this purpose has commenced, but has been delayed due to the COVID-19 pandemic. As regards the digitalisation of business processes in the justice system, the implementation of a unified case

¹² Certain nominations include age requirements as well.

¹³ Law of 23 March 2019 modifying the Judicial Code in order to improve the functioning of the judicial order and of the High Council of Justice. Candidates have the possibility to complete a judicial traineeship instead.

¹⁴ See also in that regard: GRECO Fourth Evaluation Round –Second Interim Compliance Report, p. 12.

¹⁵ Art. 151 of the Constitution.

¹⁶ See also: Committee of Ministers Recommendation Rec(2000)19, 13(d). “where the government has the power to give instructions to prosecute a specific case, such instructions must carry with them adequate guarantees that transparency and equity are respected in accordance with national law”. As regards the safeguards, see para. 13 (points d and e); see also Judgment of the Court of Justice of 12 December 2019, *Openbaar Ministerie (Procureur du Roi de Bruxelles)*, C-627/19 PPU, in which the Court held, in relation to a European Arrest Warrant for the purpose of executing a custodial sentence, issued by a Belgian public prosecutor’s office, that national legislation conferring the power to issue such a warrant on an authority which is not itself a judicial authority is not precluded. See also the Report by the European Commission on the implementation of Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States.

¹⁷ Figure 27, 2020 EU Justice Scoreboard.

¹⁸ Law of 5 May 2019 modifying the Code of Criminal Procedure and the Judicial Code. The law originally provided for the publication of all judgments online from September 2020 onward but was recently amended by the Law of 31 July 2020 containing diverse urgent provisions in the field of justice.

management system for courts has been underway since 2007. The system called MaCH¹⁹ is currently deployed for a large number of courts, although *inter alia* the first instance courts of general jurisdiction and appeal courts still need to follow. Addressing the lack of digitalisation of the justice system would be beneficial for the quality of justice as well as for the effective gathering of consistent and reliable court data.

New measures relating to the justice system have recently been adopted in light of the COVID-19 pandemic. Legislation recently adopted by Parliament introduces wider use of written procedures and videoconferences in court proceedings. It introduces temporary provisions in light of the COVID-19 pandemic, as well as permanent changes to the functioning of court procedures.²⁰ This new legislation has been criticised for its potential impact on the right to a fair trial.²¹ The Council of State and the High Council for Justice further criticised the urgency with which the proposals were introduced, emphasising the need for thorough reflections on permanent changes to judicial procedures.²²

A process is under way to achieve autonomous management of resources by the judiciary. In 2014, a process was set in motion to establish the autonomous management of resources by the judiciary. This process has been stagnating in part due to a lack of a reliable workload measurement tool, which is necessary for the optimal allocation of resources between courts.²³ Stakeholders emphasise the importance of completing the process of transferring the management of resources to the judiciary itself.²⁴ The lack of sufficient resources also poses a challenge for the justice system, as highlighted in a joint memorandum of the three highest courts.²⁵ Moreover, a recent judgment condemned the State for not providing to the judiciary the amount of human resources foreseen in the law.²⁶ As noted by the Consultative Council of European Judges, the shortage in human resources may also have a negative impact on the efficiency of the justice system.²⁷ An ongoing initiative of the High Council of Justice on making a career in the judiciary more attractive could prove beneficial for increasing the number of candidate-judges.²⁸

Several other reforms relating to the quality of the justice system are also ongoing. A reform of the complaint procedure regarding the functioning of justice has started, with the aim of rendering it more efficient and more accessible for citizens. The reform would modernise the procedure and improve the overview of the quantity and nature of complaints.

¹⁹ Mammouth @ Central Hosting.

²⁰ Law introducing Urgent Provisions in the Field of Justice in the Context of the Coronavirus Pandemic (COVID-19).

²¹ See for example: President of the High Council for Justice (2020), Letter to the President of the House of Representatives on the law containing various provisions on justice in the context of the fight against the spread of the coronavirus.

²² Advisory Opinion 67.516/1-2 of the Council of State of 22 June 2020; President of the High Council for Justice (2020), Letter to the President of the House of Representatives on the law containing various provisions on justice in the context of the fight against the spread of the coronavirus.

²³ High Council for Justice (2019), Memorandum for a better functioning of justice, pp. 3-4.

²⁴ Associations of lawyers and judges (2020), I believe in the rule of law!; High Council for Justice (2019), Memorandum for a better functioning of justice; Information received in the context of the country visit.

²⁵ Constitutional Court, Court of Cassation and the Council of State (2019), Joint memorandum of the Constitutional Court, the Court of Cassation and the Council of State; High Council for Justice (2019), Memorandum for a better functioning of justice.

²⁶ Brussels French-speaking First Instance Court, judgment of 13 March 2020.

²⁷ CCJE-BU (2020), *Rapport sur l'indépendance et l'impartialité du pouvoir judiciaire dans les Etats membres du Conseil de l'Europe* (édition 2019).

²⁸ This initiative is receiving support through the European Commission's Structural Reform Support Programme.

Furthermore, an initiative to foster the use of clear language in judicial decisions is ongoing.²⁹ As regards the cost of court proceedings, a legislative reform increased the fees for bringing a case to court whilst amending the payment modalities; court fees are now only due at the end of proceedings by the succumbing party.³⁰ The reform aims to make it less burdensome to bring a case to court, although the increased amounts of fees may limit this effect. The income thresholds for full and partial legal aid remain low, which may have an adverse impact on citizens' access to justice. In that regard, the recent raising of the income thresholds is a positive development and further gradual raises are planned over the coming years.

Efficiency

No full overview of the efficiency of the justice system is available due to a lack of data. While certain data are available, gaps in the dataset make it impossible to obtain a full overview of the efficiency of the justice system.³¹ The clearance rate for civil and commercial cases has increased over the past few years,³² but data gaps exist as regards the length of proceedings of cases. Belgium is subject to enhanced supervision by the Council of Europe's Committee of Ministers concerning the excessive length of proceedings of civil cases at first instance. As for administrative justice, the clearance rate has been above 100% in recent years although procedures remain lengthy on average.³³ Collecting and making available reliable data is crucial for fostering the efficiency of the justice system. Completing digitalisation processes can help to reach this objective.

II. ANTI-CORRUPTION FRAMEWORK

Legislative measures to prevent corruption, including declarations systems and codes of conducts for public officials, and certain ethics rules are in place for members of Parliament and top executive functions. The Central Office for the Repression of Corruption (CDBC-OCRC) is the specialised central service within the federal police with competences to investigate and support the investigation of corruption. Several national public bodies have key roles in fighting corruption and promoting ethics and integrity. The Court of Audit exercises external scrutiny of the budgetary, accounting and financial operations of the federal state, whilst the Interfederal Corps of the Inspectorate of Finance is a public service performing controls related to the legality, feasibility and appropriateness of public expenditure. The Financial Information Processing Unit processes suspicious financial transactions linked to money laundering and serious crime. The Bureau of Administrative Ethics and Deontology develops rules on integrity and assists federal administrations to put in place integrity measures.

Belgium scores 75/100 in the 2019 Transparency International Corruption Perception Index and is among the higher ranked EU Member States, ranking 7th in the European Union and 17th globally. The 2020 Special Eurobarometer on Corruption shows that 68% of respondents consider corruption widespread in their country (EU average 71%) and 19% of respondents feel personally affected by corruption in their daily lives (EU average 26%). As regards businesses, 48% of companies consider that corruption is widespread (EU average

²⁹ See previous note.

³⁰ The judge condemns the losing party to pay the costs, fully or partially depending on the outcome of the case.

³¹ Figures 5, 6, 13, 14, 18, 19 and 20, 2020 EU Justice Scoreboard.

³² 2020 EU Justice Scoreboard; CEPEJ (2018), Evaluation of the judicial systems (2016-2018 cycle): Belgium.

³³ See previous note.

63%) and 26% consider that that corruption is a problem when doing business (EU average 37%).³⁴ Furthermore, 40% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 36%),³⁵ while 40% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 31%).

The criminal legal framework to combat corruption is largely in place. The Criminal Code criminalises both public and private bribery, passive and active bribery, and bribery of national and foreign public officials.³⁶ Any civil servant who, in the exercise of his functions, becomes aware of a crime or an offence (in particular corruption), must inform the public prosecutor and transmit all related information. Courts have wide jurisdiction in corruption cases, including offences committed abroad by Belgian nationals and companies. The OECD has highlighted the need to prioritise the fight against foreign bribery, as well as to increase the level of sanctions applicable to natural persons and the amount of applicable fines for legal persons.³⁷ In order to facilitate the detection of foreign bribery, Belgium has a dedicated mechanism for officials and private companies to report suspected foreign bribery in place, which is transmitted to the Federal Prosecutor's Office. The latter decides whether to open an investigation, based on the principle of the expediency of prosecution.

The Central Office for the Repression of Corruption (CDBC-OCRC) is the specialised central service within the federal police. It investigates and supports the investigation of offences committed against the interests of the State and corruption offences sanctioned by the law of 10 February 1999 on the repression of corruption.³⁸ The CDBC-OCRC, which is monitored by the Federal Prosecutors' Office, coordinates operations at the national level, supports other police services with guidance or advice, and oversees the management of the National Security Plan priorities. There are two sections within the CDBC-OCRC: a public procurement section that investigates fraud cases concerning government contracts, and a financial fraud section that investigates fraud cases concerning subsidies, grants, or bribery of civil servants and politicians. Two special entities also exist within the CDBC-OCRC: the football fraud unit and a liaison office to the Gambling Commission, which coordinates joint investigations. Whilst there have previously been significant federal budget and staff cuts in law enforcement, which particularly affected the departments responsible for preventing and combating corruption, recent steps have been taken to reinforce the CDBC-OCRC.

A dedicated reporting system has also been set up within the police. The latter has its own ethics and integrity rules and regulations, a deontological code and commission and its own inspectorate services such as Comité P (external oversight) and the General Inspectorate (internal oversight).³⁹ However, stakeholders consider that a further increase in resources of the law enforcement agencies is needed to be able to actively combat corruption.⁴⁰ This was also highlighted by GRECO's recent evaluation of Belgian law enforcement, which

³⁴ Flash Eurobarometer 482 (2019).

³⁵ Special Eurobarometer 502 (2020).

³⁶ Art. 29 of the Criminal Code.

³⁷ OECD (2018), Phase 3 evaluation of Belgium: additional written report.

³⁸ UN Office on Drugs and Crime (2016), Country review report of Belgium: review by Mexico and the Netherlands of the implementation by Belgium of articles 15-42 of chapter III. "Criminalization and law enforcement" and articles 44-50 of chapter IV. "International cooperation" of the United Nations Convention against Corruption for the review cycle 2010-2015, pp. 129-136 (police and prosecutor's office).

³⁹ Art. 15, Royal decree of 24 September 2015 Concerning the Basic Training of Staff of the Base Level of the Police Services.

⁴⁰ Information received in the context of the country visit.

recommended that staffing levels be increased, that the internal control department is given more resources to actively combat corruption and that the authorities assess the need to introduce an obligation to declare assets/interests for top management and high risk positions.⁴¹ Nonetheless, the Federal Police is well regarded by the public at large and the CDDBC-OCRC is considered to be genuinely independent of the political authorities. The police also remains the institution most trusted by Belgian citizens to deal with corruption cases (56%), ahead of the justice system (26%) or the media (18%).⁴² Official figures show that 435 corruption cases were registered in 2019, compared to 435 in 2018 and 492 in 2017. For 2019, 126 involved cases of public corruption, 119 embezzlement by a public servant and 91 forgery committed by a public official.⁴³

Several national public bodies have key roles in fighting corruption and promoting ethics and integrity. The Court of Audit exercises external scrutiny of the budgetary, accounting and financial operations of the federal state whilst the Financial Information Processing Unit processes suspicious financial transactions linked to money laundering and serious crime. The Bureau of Administrative Ethics and Deontology (BAED-BEDA), created at federal level in June 2006, develops rules on integrity and assists federal administrations to put in place integrity measures. It has a preventive role in monitoring integrity in the federal public service and organises trainings for public officials. In its advisory function, it develops opinions and propositions to Ministers on federal integrity policy, and ensures the implementation of the ethics framework, and resolution of conflicts of interest, in the federal civil service. The Federal Ethics Committee, established in 2014, also fulfils a preventive role and serves primarily to advise public officials with regard to ethics or conflicts of interest. It issues general opinions at the request of a public representative, the House, Senate or Government.

Whilst Belgium does not have a dedicated national policy on preventing corruption, federal authorities have put in place various integrity measures.⁴⁴ The 'ethical framework for officials of the federal administrative public service'⁴⁵ contains a Code of Conduct for public office holders. The Code of Conduct for public office holders of 15 July 2018 is applicable to heads and deputy heads of strategic bodies of federal public services, as well as to directors, but not to other members of strategic bodies. Stakeholders raised the absence of an ethical code applicable to Ministers and members of strategy units as a shortcoming. This was also highlighted by GRECO, which has recommended that an ethical code with a broader scope be adopted, and that members of strategic bodies be subjected to a clear and harmonised ethical framework, accompanied by appropriate supervisory and sanctions arrangements.⁴⁶

Members of the Federal Parliament pledge to comply with a dedicated Code of Deontology, appended to the Rules of Procedure.⁴⁷ However, there is a need for consistent and effective regulation and supervision of members of Parliament in respect of gifts, donations and other benefits, as well as adequate sanctions of which the public is informed,

⁴¹ GRECO Fifth Evaluation Round – Evaluation Report, recommendations xiv-xxi.

⁴² Eurobarometer survey.

⁴³ Bureau Statistische Analyse (2020), *Informatievraag d.d. 25 mei 2020 door de Europese Commissie met betrekking tot omkoping*, p.3.

⁴⁴ As defined in the note on policy for federal preventive integrity approved by the Belgian Council of Ministers on 30 June, 2006.

⁴⁵ Rules are set out in Circular No 573 and the Act of 6 January 2014.

⁴⁶ GRECO Fifth Evaluation Round – Evaluation Report, recommendation ii, para. 45.

⁴⁷ The Rules of Procedure of the House of Representatives.

as underlined by GRECO. In addition, whilst the Court of Audit's sanctioning power regarding mandates was expanded in 2019, there are no applicable sanctions for the main breaches of the ethical rules governing parliamentarians.⁴⁸

Conflicts of interest are regulated by different legal acts, each foreseeing specific mechanisms dedicated to their field of action. For instance, the royal decree of 2 October 1937 covers the status of State employees to avoid placing themselves in a situation of conflict of interest, whereas the law of 17 June 2016 regulates public markets. While rules on conflicts of interest for members of Parliament are covered by the Codes of Deontology, clear rules governing the employment of members of strategy units are lacking. There are no procedures for checking the integrity of members of strategy units and no arrangements for avoiding possible conflicts of interest arising from their other activities, except for those already subject to the Code of Conduct for public office holders.⁴⁹ In addition, there is a lack of transparency in the composition of strategy units and the remuneration of their members, and their appointments are not made public. In this regard, GRECO has recommended that rules be laid down for setting out the conditions governing the direct recruitment and employment of members of strategy units that take account of the risks relating to integrity and conflicts of interest. Furthermore, the names and duties of all members of strategy units ought to be published online.⁵⁰ The potential benefits of an *ad hoc* reporting requirement for persons occupying top executive functions whenever situations of conflict between their private interests and their official duties arise, has also been underlined.⁵¹

Officials and strategic advisors are obliged to submit asset declarations and a list of mandates, functions and professions. Pursuant to the law of 2 May 1995, officials are required to file their declarations at the registry of the Court of Audit. A law issued on 14 October 2018 has considerably extended the scope of the obligation to submit a list of mandates, positions, professions and assets.⁵² As of January 2019, remunerated members of the boards of directors, the advisory councils and the management committees of the legal entities over which the Government exercises influence will also have to declare their mandates. Government commissioners and some cabinet employees are also covered by the new obligations, which have also been extended to Federal Government staff responsible for advising on policy⁵³ and Government representatives on the boards of companies.⁵⁴ The Court of Audit publishes the lists of mandates in the Official Gazette and its website and is responsible for sanctions where violations of the rules can result in an administrative fine or a criminal sanction. However, the declaration of assets is submitted to the Court of Audit in a sealed envelope and is neither published nor verified for accuracy by the Court. Consequently, GRECO recommended that the current declaration system be supplemented by information on income, be subject to public disclosure, and be made more easily accessible via an official website.

New lobbying provisions were introduced to the House of Representatives in July 2018. Persons representing certain organisations and carrying out activities aimed at directly or

⁴⁸ GRECO Fourth Evaluation Round – Interim Evaluation Report, recommendation vi.

⁴⁹ These are the heads and deputy heads of private offices and heads of management bodies of members of the Federal Government.

⁵⁰ GRECO Fifth Evaluation Round – Evaluation Report, recommendation i para. 36.

⁵¹ GRECO Fifth Evaluation Round – Evaluation Report, recommendation viii, para. 77.

⁵² Law modifying legislation relating to declarations of mandate and assets as regards transparency of remuneration, extension to public administrators, electronic filing and supervision.

⁵³ *Collaborateurs de fond*.

⁵⁴ GRECO Fifth Evaluation Round – Evaluation Report, para. 90.

indirectly influencing policies, the implementation of policies or decision-making of the House of Representatives are required to sign and undertake to comply with certain rules of conduct. This is a measure designed to increase transparency and reduce conflicts of interest. The lobbying register is published on the website of the House. However, rules for interactions by parliamentarians with lobbyists are yet to be adopted and there are no rules governing the relationship between some top executive functions and lobbyists and other third parties. GRECO has therefore recommended the introduction of rules and guidelines on how persons exercising top executive functions should manage such contacts. It also recommends that steps be taken to make the purpose of such contacts more transparent, by identifying the persons with whom, or on behalf of whom, the contact has taken place and the specific subject matter(s) of the discussions. The rules concerning public officials and members of Parliament adequately regulate ‘revolving door’-related issues. However, those laid down in the Code of Conduct for top executive positions have been considered inadequate as almost no rules apply to Ministers and none to ordinary members of strategy units.⁵⁵

There is no general whistleblower protection regulation in Belgium. While regulations exist at the federal and Flemish level, other levels of government still need to adopt adequate systems to protect whistleblowers. Regarding the private sector, protection is limited to the financial sector.

III. MEDIA PLURALISM

Belgium has three linguistic and cultural Communities, which are vested with competences relevant for media pluralism. The legal framework concerning media pluralism is based on a set of constitutional safeguards, such as for the press and freedom of expression, as well as on legislation. The independent audiovisual media regulatory authorities ensure transparency of media ownership.⁵⁶

Three audiovisual media regulatory authorities are responsible for the media falling under the jurisdiction of the respective linguistic Communities (Dutch, French and German). For the Flemish Community, the regulatory authority is the *Vlaamse Regulator voor de Media* (VRM), an independent agency with legal personality under public law. The mission of the Flemish Regulator is to enforce the media regulations in the Flemish Community, settle disputes related to the media regulations, issue broadcasting licences and licences for the exploitation of terrestrial broadcasting platforms, and authorise service providers to transmit broadcasting programmes in accordance with these regulations. In the French Community, the corresponding authority is the *Conseil supérieur de l’Audiovisuel* (CSA), also an independent agency with a legal personality, while the *Medienrat* is in charge of the German-speaking Community. The Media Pluralism Monitor (MPM 2020) reports a very low risk for the independence of media authorities. In particular, it reports that Belgium respects independence guarantees and that being a member in the media regulatory authorities is generally incompatible with a position in the Governments or with having interests in a media or advertising company. As regards the Flemish Community, the members of the Chambers of the Flemish Regulator for the Media are both appointed and replaced by the Flemish Government.⁵⁷ Their mandate of five years is renewable. The

⁵⁵ GRECO Fifth Evaluation Round – Evaluation Report, recommendation x, para. 89.

⁵⁶ In 2020, Belgium is at 12th position worldwide in the Reporters Without Borders World Press Freedom Index. See: <https://rsf.org/en/ranking>.

⁵⁷ Art. 216 Act on Radio and Television Broadcasting.

Medienrat of the German-speaking Community is composed of a decisional Chamber and an advisory one. In the French Community, the members of the regulator are appointed by the Government of the Wallonia-Brussels Federation (also called French Community). Their mandate of four years is also renewable. For the latter, the Belgian authorities indicate that appointment and dismissal procedures will be revised in the framework of the transposition of the Audiovisual Media Services Directive (AVMSD). This Directive reinforces guarantees for media regulators' independence in EU law by requiring that they be legally distinct and functionally independent from their Government and from any other public or private body. Some concerns were expressed during the country visit regarding the adequacy of resources of the regulatory authorities of the French and German-speaking Communities.

There are two very active press councils. The *Conseil de déontologie journalistique* (CdJ)⁵⁸, established in 2009, is the self-regulatory body for the French- and German-speaking media. It is composed of representatives from the publishers, journalists, editors in chief and members of the civil society. Similarly, the *Raad voor de Journalistiek*⁵⁹ is the self-regulatory body for the Dutch-speaking media, of which almost all media are either direct members, or participating via umbrella associations of newspapers and magazines. Both entities are independent and handle complaints from the public. They help setting deontology standards for journalists by issuing guidelines. Stakeholders indicate that there is a disagreement between the CSA and the CdJ over their respective jurisdiction as regards the respect of deontological standards in audiovisual media services.⁶⁰

Both the Dutch- and French-speaking media regulators make information regarding media ownership available to the general public. The VRM publishes an annual Media Concentration Report⁶¹, while the CSA maintains a website presenting the media offer in the Wallonia-Brussels Federation⁶². Both publications aim at ensuring media ownership transparency, and are considered as good practices, especially in view of the revised AVMSD⁶³.

Belgium provides constitutional protection for the press and freedom of expression and ensures protection of the journalistic profession. A law on the protection of journalistic sources is in force since 7 May 2005.⁶⁴ However, in 2019 a draft law was submitted that would have exposed anyone revealing classified information to criminal penalties.⁶⁵ Following criticism from the Council of State on the ground of protection of the freedom to information,⁶⁶ the Government has committed to changing the draft law.⁶⁷ Also imprisonment is among the possible sanctions for defamation. The MPM 2020 reports concerns about an increasing employment instability for journalists in the country. Cases of intimidations,

⁵⁸ Journalistic Ethics Council, Website Journalistic Ethics Council.

⁵⁹ Journalistic Council, Website Journalistic Council.

⁶⁰ Information received from the CSA in the context of the country visit.

⁶¹ Flemish Media Regulator (2019), Flemish report on media concentration.

⁶² Superior Council of Audiovisual, Guide for media, companies, groups and sectors.

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 Law of 7 April 2005 on the protection of journalistic sources.

⁶⁵ Draft law modifying the law of 11 December 1998.

⁶⁶ Advisory Opinion 66.143/2 of the Council of State of 20 June 2019.

⁶⁷ By the date of 8 September 2020, the draft law had not yet been passed.

threats or attacks to journalists are relatively rare.⁶⁸ In 2020, the Council of Europe's Platform to promote the protection of journalism and safety of journalists published five alerts concerning, in particular, online harassment of journalists by private detectives. As an example of a good practice, in 2019, the Flemish association of journalists set up a specific hotline for physical or verbal aggression against journalists.⁶⁹

The right of access to government-held information is enshrined in the Constitution.⁷⁰ It is reported, however, that the rules and procedures in place to obtain such access have shortcomings, e.g. as regards the possibility of appeal.⁷¹ The MPM 2020 also indicates that there are only a few mechanisms in place that report about e.g. the amount, qualification or procedural status of whistleblower cases, notwithstanding that these procedures do exist and certain protections are in place.

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

Belgium is a federal state with significant powers residing at the level of the Communities and of the Regions. At the federal level, Belgium has a bicameral parliamentary system of Government.⁷² The Parliament is composed of the House of Representatives and the Senate. Legislative proposals can originate from the Government and from members of both houses of Parliament.⁷³ The Constitutional Court is competent to review legislative acts adopted by the Federal Parliament and by the parliaments of the Communities and Regions. In addition to the justice system, independent authorities play an important role for checks and balances.

Conducting impact assessments and consulting stakeholders are well-established practices in the legislative process. Governments at different levels have a policy to conduct impact assessments and consult stakeholders in the legislative process, often through consultative bodies. For example, the Flemish public administration contains eight strategic advisory councils that include civil society organisations and other stakeholders, as well as representatives of local governments and experts. When preparing legislation, the Flemish Government is obliged to ask the advice of these advisory councils, which may also give advice on their own initiative. While stakeholders are often consulted in the legislative process, no statistics are available as to the number of consultations open to the general public.⁷⁴ The introduction of a central and public database of all ongoing stakeholder consultations could prove beneficial in this regard.⁷⁵

The caretaker Government was granted special powers in order to deal with the COVID-19 pandemic. On 13 March 2020, the Government proclaimed the Federal phase of the national emergency plan⁷⁶. The caretaker Government was subsequently granted the full

⁶⁸ In 2019, the Council of Europe Platform to promote the protection of journalism and safety of journalists and Reporters without Borders reported an alleged attempt of intimidation towards journalists of the regional daily "*L'Avenir*".

⁶⁹ *VVJ-Meldpunt*. Flemish Association of Journalists, Hotline for physical and verbal aggression against journalists.

⁷⁰ Art. 32 of the Constitution.

⁷¹ Access Info and Centre for Law and Democracy, Global right to information rating.

⁷² Composed of the Senate and the House of Representatives.

⁷³ The Senate can only propose legislation in certain fields.

⁷⁴ OECD (2019), *Better Regulation Practices across the European Union*, p. 128.

⁷⁵ See previous note.

⁷⁶ Ministerial Decree of 13 March 2020 proclaiming the Federal phase concerning the coordination and management of the crisis coronavirus COVID-19, based on the Royal Decree of 31 January 2003 for the national level and on the Royal Decree of 22 May 2019 for the provincial and municipal level.

powers of a regular Government, as well as special powers to deal with the crisis.⁷⁷ The special powers included the power to adopt measures to enforce public health and public order by Royal Decree.⁷⁸ The Council of State provided an ex ante opinion on the granting of special powers.⁷⁹ The conferral of special powers to the Government ended on 30 June 2020.

The Council of State advisory branch faces a significant workload. The Council of State plays an important role in scrutinising the quality of draft legislation. The combination of a sharp increase in its workload over the past decades and the growing complexity of the legal issues it deals with poses issues for the effective functioning of its advisory branch.⁸⁰ The frequent recourse to procedures with shortened deadlines and the shortage of resources under which the Council operates exacerbate these challenges.⁸¹

A new National Human Rights Institution is in the process of being established. Unia, the national equality body, is a National Human Rights Institution (NHRI) accredited with B-Status by GANHRI.⁸² It is currently competent in the field of anti-discrimination for all levels of government.⁸³ In April 2019, the Federal Parliament adopted an act establishing a new Federal Human Rights Institution whose mandate will extend to all fundamental rights. Although its mandate is currently foreseen to be limited to federal matters,⁸⁴ the law includes the possibility to set up a collaborative council if a cooperation agreement is agreed upon between the different levels of government to expand the institution's competence to the non-federal level. The selection procedure for the board of directors of this new institute is now complete, and the board will meet for the first time in September 2020. Additionally, a federal Ombudsman office is competent to investigate complaints on the functioning of the federal administration, as well as to give recommendations and report on its findings. Ombudsmen offices also exist at the regional levels and for specific subject matters.

A recently adopted law provides civil society organisations with increased possibilities to defend their statutory interests. Belgium has an open civil society landscape,⁸⁵ and stakeholders are regularly consulted in the legislative process. Following a Constitutional Court ruling of 2013, a December 2018 law makes it possible for legal entities to start litigation aimed at the protection of human rights or fundamental freedoms⁸⁶ that are part of their statutory interests. Furthermore, since May 2019, petitioners who gather the signatures of more than 25,000 natural persons domiciled in Belgium have the right to be heard by the House of Representatives.

⁷⁷ Law of 27 March 2020 authorising the King to take measures to combat the spread of the coronavirus COVID-19 (II).

⁷⁸ If such measures adopted by Royal Decree are not ratified by Parliament within one year after their entry into force, they are considered to have never had effect.

⁷⁹ Advisory Opinion 67.142/AV of the Council of State of 25 March 2020. The judicial branch of the Council of State has also ruled on the impact of a measure prohibiting certain religious gatherings, denying a suspension of the measure: Judgment of the Council of State of 28 May 2020, *Religious Gatherings*, 247.674.

⁸⁰ Memorandum by the Council of State, 4 July 2019.

⁸¹ See previous note.

⁸² The Global Alliance of National Human Rights Institutions.

⁸³ This excludes gender discrimination. The Institute for Equality between Women and Men and the Flemish GenderOmbuds have been designated as competent equality bodies for gender discrimination in Flanders.

⁸⁴ This would exclude the competence of the new institution for matters such as education and health.

⁸⁵ See the rating given by CIVICUS; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

⁸⁶ That are recognised in the Constitution or in international treaties to which Belgium is a party.

Annex I: 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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Royal Decree of 22 May 2019 concerning the emergency plan and emergency management at municipal and provincial level and regarding the role of mayors and provincial governors in case of crisis events and situations requiring coordination or management at national level.

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

Annex II: Country visit to Belgium

The Commission services held virtual meetings in May and June 2020 with:

- Academic expert
- Central Office for the Fight against Corruption
- College of Courts and Tribunals
- Council of State
- Flemish Media Regulator
- High Council for Justice
- High Council for the Audiovisual
- Journalistic Ethics Council
- Media Council of the German-speaking Community
- Ministry of Justice
- Prosecution Service
- Service of the Administrative Law Courts
- Transparency International Belgium

* 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