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COMMISSION STAFF WORKING DOCUMENT

2021 Rule of Law Report
Country Chapter on the rule of law situation in Belgium

Accompanying the

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

2021 Rule of Law Report
The rule of law situation in the European Union

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ABSTRACT

The Belgian justice system continues to undergo reforms relating to digitalisation and the autonomous management of resources by the judiciary, though little progress has been made in the past year. As regards digitalisation, comprehensive and ambitious initiatives are foreseen for the coming years. The transfer of autonomous resource management powers to the judiciary is planned to be completed by 2024, and a workload measurement tool will be established. The High Council for Justice has continued to take steps to improve the functioning of the justice system, in particular through recommendations on judicial investigations regarding law enforcement authorities, promoting the integrity framework for judges and adopting standard forms to improve annual reporting by judicial entities. The availability of sufficient human and financial resources remains a challenge, and initiatives are ongoing to improve the situation. A persistent lack of consistent, reliable, and uniform court data remains, which hampers progress on the efficiency of justice. Particularly lengthy delays in certain appeal courts raise concern.

Measures to prevent corruption are generally in place. However, shortcomings remain as regards the prevention of conflict of interest for Ministers and their advisors, the transparency of asset disclosure, as well as lobbying activities. The COVID-19 pandemic has had a negative impact on the investigation of corruption. Anti-corruption preventive measures are coordinated by several networks and cooperation platforms at the federal level. The agreement to increase the budget of the judiciary, of the federal police and of the security services is a positive element that is expected to strengthen the fight against corruption. Several reflections are ongoing to propose potential new rules to strengthen the anti-corruption framework. No comprehensive regulation on whistleblowers protection has been introduced.

The updated media laws further reinforced the independence of media regulatory authorities, notably by a new requirement of due justification of any decision to dismiss the head or members of the collegiate body of the regulator. The regulators have also received additional resources to carry out new tasks. The regional authorities have put in place media-specific measures to mitigate the impacts of the COVID-19 pandemic, including emergency support funds. Despite a robust framework for the protection of journalists, some, especially female journalists and journalists belonging to ethnic minorities, were targets of threats and attacks, especially online.

The advisory branch of the Council of State continues to face challenges for the effective exercise of its mandate to ensure the quality of legislation. The Court of Appeal found that COVID-19 measures were adopted on a correct legal basis, striking down a first-instance judgment. A pandemic law has been adopted to provide a new legal basis for pandemic emergency measures. The new Federal Human Rights Institution has been established and is now operational with a mandate to protect and promote human rights at the federal level. In the preparation of a future State reform, the Government has announced a wide citizen consultation process. Civil society is being involved in government initiatives, although certain concerns regarding funding have been reported.

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 State[3] acts as the highest administrative court. A non-permanent court of assises hears the most serious criminal cases[4]. The Constitutional Court is competent to scrutinise the constitutionality of legislation. Most competences related to justice are federal[5]. The independence of the judiciary and of the prosecution service is enshrined in the Constitution[6]. An independent High Council for Justice[7] is tasked with recruitment for the judiciary and with fostering the quality of justice through control mechanisms such as audits, as well as by giving advice on justice-related matters to the Government and to Parliament, both on request and on its own initiative. Candidate judges are selected by the High Council, and are appointed for life by the Government[8] on the proposal of the Minister of Justice[9]. The College of Courts and Tribunals, which consists of court presidents elected by their peers, is responsible for the general functioning of the courts. The Flemish bar association and the French- and German-speaking bar association represent lawyers from different parts of the country. Belgium participates in the European Public Prosecutor's Office (EPPO).

Independence

The level of perceived independence of the judiciary is high among the general population and average among companies. Overall, 66% of the general public and 58% of companies consider that the independence of courts and judges is either 'very good' or 'fairly good' in 2021[10]. This level of perceived judicial independence has been quite consistent since 2016, with this percentage rising from 2016 to 2019[11] and then dropping slightly afterwards for companies[12], and increasing slightly for the general population[13].

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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 legislative and regulatory proposals.

4 It is composed of three judges and a jury of twelve citizens.

5 There exists a number of specialised Flemish administrative courts.

6 Art. 151 of the Constitution.

7 The High Council for 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.

8 Formally by the King.

9 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.

10 Figures 47 and 49, 2021 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%).

11 From 54 to 64%.

12 From 64% in 2019 to 58% in 2021.

13 From 62% in 2016 to 66% in 2021.

The reform of the selection process for substitute judges has been completed[14] and the ethical framework for all members of the judiciary has been further improved. Following concerns expressed by the Council of Europe regarding the system for substitute judges[15], the Law of 23 March 2019 amended the Judicial Code in order to reinforce the quality of the selection process and applicable integrity framework[16]. The reform seeks to strengthen judicial independence by improving the selection process and strengthening the integrity framework of substitute judges[17]. Following the entry into force of the law in January 2020, two examination sessions of candidate substitute judges were held in 2020, with around one third of candidates succeeding[18]. Furthermore, the law also provides for the application of the general ethical principles to all categories of members of the judiciary, as well as for ethics training for both regular and lay judges[19].

Recent incidents triggered criticism on the respect for legal professional privilege. Following the information published in May 2021 that meetings between suspects and their lawyers had potentially been recorded on video in a police station, the Flemish bar association has filed an official complaint with the Committee P[20]. The French- and German-speaking bar association also reacted publicly, stressing the importance of legal professional privilege for the rule of law. A criminal investigation is underway to determine who was aware of this technical possibility and whether it was used to record confidential conversations between the suspects and their lawyers.

Quality

Limited progress has been made regarding the digitalisation of the justice system, but ambitious initiatives are foreseen for the coming years. Given the remaining need to improve the digitalisation of the justice system, the government envisages ambitious initiatives to be completed by 2025[21]. These include the creation of a single online justice portal for citizens and businesses, establishing a single case management system for all courts, facilitating the digital submission of cases and file consultation, publishing the majority of all case law online, and allowing for a resource management for the justice system based on data. While the achievement of these plans would result in a significant improvement of the digitalisation for civil and criminal courts, administrative justice is not included in the scope of these initiatives. Nevertheless, at the Flemish administrative courts, parties can now file litigation documents electronically.

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14 See 2020 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 2.

15 GRECO Fourth Evaluation Round – Evaluation Report, p. 32. See also 2020 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 2.

16 Under the new law, candidates must pass an exam in order to become a substitute judge, and substitute judges most follow a compulsory training, including a module on ethics. The law further abolished the system of substitute prosecutors.

17 GRECO Fourth Evaluation Round – Second Compliance Report (published on 5 May 2021): Belgium, p. 8. GRECO assessed that its recommendations had been implemented satisfactorily.

18 GRECO Fourth Evaluation Round – Second Compliance Report: Belgium, p. 8.

19 See also GRECO Fourth Evaluation Round – Second Compliance Report: Belgium, p. 9-10. GRECO assesses that its recommendation on this matter has been implemented satisfactorily. The High Council for Justice provides every new judge or prosecutor with a copy of the Handbook on ethics for members of the judiciary.

20 The Committee P is the external independent oversight body of the police forces.

21 Belgium, National Recovery and Resilience Plan.

The process to achieve autonomous management of resources by the judiciary continues[22]. The College of Courts and Tribunals and the College of Public Prosecutors continue their efforts in the process to transfer the management of resources to the judiciary, which has been pending for years. In 2022 and 2023, a workload measurement tool should be established, which is necessary for optimal allocation of resources between courts[23]. The objective is to achieve the autonomous resource management powers by the judiciary in 2024. The Government appealed against the judgment of the Brussels French-speaking first instance court of 13 March 2020[24], which condemned the State for not providing the judiciary with the human resources required by law. While the appeal is pending without suspensive effect, the Government has not finalised all steps to fully comply with the judgment[25]. The High Council for Justice is continuing reflections on how to make a career in the judiciary more attractive, with the goal of starting concrete projects after the summer of 2021. Furthermore, increases in financial means for the justice system are foreseen for the coming years. These initiatives aim to lead to an improvement of the human and financial resources situation of the justice system.

The High Council for Justice has made recommendations relating to judicial investigations regarding law enforcement authorities. Following the launch of its special investigation into the ongoing judicial investigation on the circumstances surrounding the death of Jozef Chovanec[26], the High Council for Justice adopted its investigation report on 28 October 2020. The High Council recommended to improve the communication between the different judicial authorities in an investigation, to improve the protocol for judicial investigations following violence against or by the police forces, and to establish a mechanism for regular and thorough follow-up of such cases, as regards both the facts and the investigatory acts. The High Council submitted its recommendations to the Minister of Justice who asked the prosecution service to take the recommendations into careful consideration[27]. The High Council plans to conduct another investigation once the judicial investigation, launched on 27 February 2018[28], is concluded[29]. The High Council will also monitor the follow-up to its recommendations.

Several initiatives seek to further improve the quality of the justice system. Following a GRECO recommendation to introduce periodic general reporting on the functioning of the judicial entities[30], a working group established by the High Council for Justice has now finished developing standard forms for annual reporting by the prosecution service and by the

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22 See 2020 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 4.

23 Information received from the College of Courts and Tribunals in the context of the country visit to Belgium.

24 See also 2020 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 4.

25 The Government has set aside additional budget to strengthen the judiciary and additional vacancies have already been published with the goal of improving the human resources situation.

26 It is the first time the High Council for Justice launched an investigation into judicial investigations that are still ongoing. See also 2020 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 2.

27 The prosecution service is currently revising a circular to improve the dissemination of information about facts that could lead to disciplinary sanctions for police officers, and a has established a working group including magistrates, police officers and medical professionals to establish a good practices guide concerning cases of 'Excited Delirium Syndrome'.

28 The facts occurred on 24 February 2018. The judicial investigation is still ongoing.

29 The High Council would then also be able to assess the decisions in the judicial investigation in more detail.

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

courts and tribunals[31]. Furthermore, initiatives to foster the quality of justice are ongoing, such as the reform of the complaint procedure on the functioning of justice and the initiative to promote the use of clear language in judicial decisions[32]. As regards access to justice, the raising of the income thresholds for legal aid to EUR 1 226 monthly income on 1 September 2020 is a welcomed development, and further gradual increases up to EUR 1 526 are foreseen until 1 September 2023.

Measures were taken to ensure the continued functioning of the justice system during the COVID-19 pandemic. Several laws were adopted to ensure the continued functioning of the justice system during this pandemic. For example, the law of 20 May 2020 temporarily allowed to send documents digitally to initiate legal proceedings. Furthermore, the College of Courts and Tribunals adopted binding directives to ensure that court buildings remained open and that hearings continued in courtrooms or virtually[33]. Cases were also treated through written means, where parties consented to this.

Efficiency

A persistent lack of data prevents having a full overview of the efficiency of the justice system[34]. Significant data gaps continue to exist as regards the length of proceedings in court cases[35], which prevents obtaining a full overview of the efficiency of the justice system[36]. The limited data available show that the high rate of resolving cases at first instance has dropped to around 100% for civil and commercial cases in 2019. The rate of resolving cases for first-instance administrative cases remains above 100%, although proceedings are still lengthy[37]. Stakeholders also report particularly lengthy delays in certain courts, such as the Brussels appeal court[38]. Belgium continues to be subject to enhanced supervision by the Council of Europe's Committee of Ministers regarding the excessive length of proceedings of first-instance civil cases[39]. As regards administrative law cases, the judicial branch of the Council of State faces a significant backlog in its caseload, which has been exacerbated by the COVID-19 pandemic[40]. Moreover, the average length of proceedings is increasing, and backlogs are likely to grow further due to the clearance rate being below 100%[41].

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31 GRECO Fourth Evaluation Round – Evaluation Report, recommendation xiv. GRECO welcomed this development, but notes that these documents remain to be formalised by regulation as required by law.

32 See also 2020 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, pp. 4-5. Both initiatives were delayed due to the COVID-19 pandemic.

33 Input from Belgium for the 2021 Rule of Law Report.

34 GRECO also recommended that the High Council (HCJ) expands its audit and investigation activities, and welcomed in that regard the introduction of legislation strengthening the competences of the HCJ in the area of investigations and audits. Second Compliance Report: Belgium, p. 10. See also 2020 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 3.

35 Figures 6, 7, 14 and 15 EU Justice Scoreboard.

36 See 2020 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 5.

37 Figure 9, 2021 EU Justice Scoreboard.

38 Contribution from the *Ordre des Barreaux francophones et germanophones* for the 2021 Rule of Law Report, which mentions particularly lengthy delays at certain courts (five years). Information received in the context of the country visit to Belgium revealed that in certain cases, delays are even longer than five years.

39 See also Interim Resolution CM/ResDH(2021)103 of the Committee of Ministers of 9 June 2021, expressing deep concern at the persistent lack of comprehensive statistical data on the first instance civil tribunals.

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

41 Information received in the context of the country visit to Belgium.

II. ANTI-CORRUPTION FRAMEWORK

The competence to investigate and prosecute corruption is shared between several authorities. The Central Office for the Repression of Corruption (CDBC-OCRC) is the specialised central service within the federal police with competences to investigate and support the investigation of corruption. The Committee P is the external independent oversight body of the police forces, responsible for monitoring compliance with integrity rules. Furthermore, several national public bodies (Court of Audit, Interfederal Corps of the Inspectorate of Finance, Federal Public Service for Policy and Support, amongst others) 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 Bureau of Administrative Ethics and Deontology changed its name and became the Unit for Integrity and Culture. This formerly independent body has now been integrated in the structure of the Federal Public Service for Policy and Support (FOD BOSA), where it continues to develop rules on integrity and assists federal administrations to put in place integrity measures[42].

The perception among experts and business executives is that the level of corruption in the public sector remains relatively low. In the 2020 Corruption Perceptions Index by Transparency International, Belgium scores 76/100 and ranks 5th in the European Union and 15th globally[43]. This perception has been relatively stable[44] over the past five years[45].

Several anti-corruption networks and cooperation platforms exist at federal level. The Ministry of Foreign Affairs is responsible for the exchange with international bodies in the field of anti-corruption, within a platform where Ministers' Cabinets are invited. Moreover, the Ministry of Justice has recently established a new informal platform, which envisages meetings up to three times a year to coordinate anti-corruption actions and to respond to international recommendations. National authorities expressed their willingness to further develop synergies between the two platforms[46]. This complements the already existing Federal State Integrity Network, which ensures coordination among the integrity agents appointed in the public service. The aim of this network is to support the cooperation between integrity coordinators and to provide a platform for sharing experiences and good practices[47].

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42 Compared to the framework in place before the reorganisation, the autonomy of the Unit for Integrity and Culture has been reduced.

43 Transparency International, Corruption Perceptions Index 2020, pp. 2-3. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

44 In 2015 the score was 77, while, in 2020, the score is 76. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last five years.

45 The Eurobarometer data on corruption perception and experience of citizens and businesses as reported last year is updated every second year. The latest data set is the Special Eurobarometer 502 (2020) and the Flash Eurobarometer 482 (2019).

46 Information received from the Ministry of Justice and the Ministry of Foreign Affairs in the context of the country visit to Belgium.

47 Follow up written input from the National Authorities.

In addition, the Integrity Trusted Persons Network[48] aims at boosting cooperation between the integrity trusted persons appointed to provide protection and to support public officials reporting an alleged integrity breach in the federal administration[49].

Shortcomings on the limitation period for investigations on foreign bribery cases have not been addressed. In the fight against foreign bribery, according to the most recent OECD recommendations, Belgium addressed the issue of criminal liability of legal persons, however, shortcomings have been identified regarding the limitation period for comprehensive and in-depth investigations and prosecution of foreign bribery cases[50]. The mechanism for reporting possible foreign bribery cases is in place, however, as confirmed by national authorities, no reports have been introduced in the system in 2020[51].

Integrity in the police is being monitored by the Committee P and the General Inspectorate. The police has its own dedicated reporting system, whereas the Committee P and the General Inspectorate ensure internal investigation of possible breaches of ethics and integrity rules. In 2020, there were six reports introduced in the system and three were dismissed while the other three led to the start of a formal investigation[52]. On 6 November 2020, the Ministry of Interior announced the intention to propose new legislation on the reporting of breaches of integrity[53].

Some measures are envisaged in the area of preventing conflict of interests for Ministers and their advisors. Federal public servants are bound to respect the code of conduct adopted in July 2018. However, Ministers and members of their cabinets are still out of the scope of these rules. The Group of States against Corruption of the Council of Europe (GRECO) considered that recommendations in this regard have not yet been fully implemented[54]. Only heads and deputy heads of the cabinets are covered by rules of the code of conduct for public office holders[55]. Integrity rules for the members of cabinets are still weak, with no procedure in place to check integrity of these members[56]. In this regard, GRECO also underlined that more transparency should be ensured in the rules governing the recruitment of members of cabinets[57].

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48 This network was established on the basis of the Royal Decree of 9th October 2014 implementing article 3, § 2 of the Law of 15 September 2013 on the reporting of suspected breach of integrity within a Federal Administrative authority by a member of its staff.

49 *Ibid*.

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

51 Information received from Central Office for the Repression of Corruption in the context of the country visit to Belgium.

52 In 2019 there were 5 reports and 4 investigation opened. Information received during the country visit to Belgium.

53 Verlinden, A., *Beleidsverklaring van de minister van Binnenlandse zaken, Institutionele Hervormingen en Democratische Vernieuwing*. Brussel, Belgische Kamer van Volksvertegenwoordigers, 6 November 2020, DOC 55 1610/020, pp. 23-24.

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

55 Art. 4 of the Code of Conduct for public office holders provide with a definition of a conflict of interest.

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

57 GRECO Fifth Evaluation Round – Evaluation Report, recommendation i para. 36. In order to raise awareness on the integrity risks and to improve the prevention of conflict of interests for members of the cabinets, the Government has recently entrusted the Unit for Integrity and Culture with the task of organising a workshop on conflict of interest for members of ministers' cabinets. According to the information

Shortcomings identified in the area of asset declaration remain. The shortcomings identified in the 2020 Rule of Law Report[58] in the area of asset declarations remain, as the Court of Audit receives the declarations in sealed envelopes, which are not published or verified for accuracy. Declarations are only accessible by investigating judges in the context of criminal investigations[59].

Integrity rules for members of Parliament are in place, however, shortcomings identified with regards to rules on gifts and benefits have not been addressed. Members of Parliament need to comply with the Parliament's own Code of Deontology[60], but not all shortcomings identified by GRECO[61] have been addressed. This is specifically the case for benefits and gifts received by members of Parliament, since no comprehensive rules have been adopted for this yet.

Certain gaps remain as regards lobbying rules for members of Parliament and rules for interactions between individuals with top executive functions and lobbyists. According to the rules in force[62], lobbyists need to sign and comply with certain rules of conduct when they aim to directly or indirectly influence policy making. The recommendation of GRECO to adopt rules for interactions between members of Parliament and lobbyists as well as rules governing the relationship between some top executive functions and lobbyists has not been taken up yet[63]. As reported last year, while rules on "revolving doors" for members of the Parliament and public officials are generally adequate, shortcomings remain as regards rules included in the code of conduct for top executive functions. Almost no rules exist for Ministers and members of their cabinets[64].

An amendment to the political parties financing rules has been adopted aiming at addressing international recommendations on the issue of foreign donors. On 21 May 2021, the Senate adopted an amendment to Article 16*bis* of the Law of 4 July 1989 on the financing of political parties[65]. The new provision regulates the issue of foreign donors as also recommended by GRECO[66].

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received, the test workshop was developed in May with the aim of delivering the final product in September 2021.

58 See 2020 Rule of Law Report, Country Chapter on the rule of law situation in Belgium.

59 GRECO Fifth Evaluation Round – Evaluation Report, para. 92. The recommendation of GRECO that the current declaration system be supplemented by information on income, be subject to public disclosure, and be more easily accessible via an official website, is still pending.

60 House of Representatives rules of procedure December 2020.

61 GRECO Fourth Evaluation Round, Second Compliance Report, p. 3.

62 See Rule of Law Report 2020.

63 GRECO Fifth Evaluation Round – Evaluation Report, recommendation viii, para. 60. In this regard, the Coalition Agreement mentions the possibility to extend the scope of the existing transparency register of the Parliament to include also Members of the Government, Coalition Agreement p. 82. In order to address this issue, talks between the Parliament and the Government have already started and an evaluation is currently ongoing.

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

65 Proposition de Loi modifiant l'article 16bis de la loi du 4 juillet 1989 relative à la limitation et au contrôle des dépenses électorales engagées pour l'élection de la Chambre des représentants, ainsi qu'au financement et à la comptabilité ouverte des partis politiques, en ce qui concerne les donateurs. The text was adopted by the House of Representatives on the 18 March 2021.

66 GRECO Fourth Evaluation Round, Second Compliance Report, p. 3.

No comprehensive whistleblowers legislation is in place as yet. The Government coalition agreement foresees the approval of comprehensive rules to protect whistle-blowers, specifically mentioning the protection of civil servants who report misconduct in good faith by the end of 2021[67].

The COVID-19 pandemic has slowed down corruption investigations. According to the authorities, the pandemic has had a negative impact on the activities of the police and the judiciary, including in the fight against corruption. The law enforcement authorities had to adapt to the new situation by trying to conduct activities remotely as well as by postponing certain investigative measures, which need physical presence of officers on the ground[68]. Nevertheless, investigation and prosecution of complex cases continued in a regular manner.

III. MEDIA PLURALISM AND MEDIA FREEDOM

Belgium has three linguistic and cultural Communities 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. Legislation was adopted to transpose the revised Audiovisual Media Services Directive. The independent audio-visual media regulatory authorities ensure transparency of media ownership[69].

The independence and resources of the media regulators have been reinforced. As a result of the transposition of the revised Audiovisual Media Services Directive (AVMSD), the independence of the audiovisual media regulatory authority for the Flemish Community (VRM)[70] has been reinforced, in particular by a new requirement of due justification and transparency of any decision to replace or dismiss a member of the chamber. Two additional employees have been recruited by the VRM to deal with additional tasks stemming from the AVMSD to reach a total staff of 21[71]. The independence of the audiovisual media regulatory authority for the French-speaking Community (CSA)[72] has been similarly reinforced, as a result of the transposition of the revised AVMSD, by a new requirement of transparency of the reasons for any dismissal of the head of the CSA. The regulator's budget has been increased by almost 9% compared to 2020, which allowed for the recruitment of 4 additional staff members, reaching a total of 31[73]. The audiovisual media regulatory authority for the German-speaking Community's[74] has been restructured by separating the decision-making body – the ruling chamber – from the advisory board, which added new members, representing online services and civil society. Moreover, its budget doubled compared to

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67 It is unclear whether the description included in the coalition programme will address the full definition of whistle-blowers. Belgian Government (2020), Coalition program (*Regeerakkoord*) (https://www.belgium.be/sites/default/files/Regeerakkoord_2020.pdf).

68 Information received in the context of the country visit to Belgium.

69 Belgium registers at the 11th position in the Reporters Without Borders 2021 World Press Freedom Index (6th among the EU Member States), up one place from the 12th position last year.

70 *Vlaamse Regulator voor de Media* (VRM).

71 Information received in the context of the country visit to Belgium.

72 *Conseil supérieur de l'Audiovisuel* (CSA).

73 Input from Belgium for the 2021 Rule of Law Report, p. 13.

74 The *Medienrat*.

2020, enabling it to recruit new staff, reaching a total of 4[75]. The Media Pluralism Monitor (MPM 2021) reports a very low risk for the independence of media authorities[76].

Robust media self-regulatory structures are in place and improving. The Journalistic Ethics Council[77] and the Council for Journalism[78] have reported growing interest of audiences in the accuracy of media content and few complaints pertaining to media coverage of the COVID-19 pandemic. The Journalistic Ethics Council is considering applying expedited examination of complaints against investigative journalists in order to avoid self-censorship, which often is a side effect of long examination periods[79]. According to the Journalistic Ethics Council, the disagreement with the CSA over the jurisdictions of the two bodies as regards the respect of deontological standards in audio-visual media services, referred to in the 2020 Rule of Law report, has been resolved, and they are putting in place a global cooperation scheme[80].

Media ownership transparency is largely ensured. To secure media ownership transparency, the VRM publishes an annual Media Concentration Report and gives access to ownership information on its website, while the CSA maintains a website presenting the media offer in the French-speaking Community. However, according to the MPM 2021, for digital news media actors, media regulatory authorities in Belgium have limited data regarding financial or ownership structures[81]. Stakeholders have reported rare cases of certain online media, for instance satirical websites, claiming anonymity as a way to ensure their security[82]. News media concentration is high in Belgium[83].

Authorities have put in place media-specific measures to mitigate the impacts of the COVID-19 pandemic. As a result of the COVID-19 pandemic, most audio-visual and print media have seen a drop in turnover due to the decrease in advertising revenues, with some smaller outlets reporting financial liquidity problems. Freelance journalists have been hit especially hard[84]. At the same time, the audience for trustful journalism appears to have grown, which shows the interest from public for objective and fact-based reporting[85]. The measures put in place by the three Communities include public communication campaigns, emergency support funds for media, direct support to freelance journalists and journalists without income, postponement of payment of licence fees for radios and launching of projects looking into longer-term sustainability of the sector[86]. The MPM 2021 highlights that

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75 Information received in the context of the country visit to Belgium.
76 2021 Media Pluralism Monitor, country report for Belgium, p. 9.
77 The self-regulatory media body for the French- and German-speaking communities.
78 The self-regulatory media body for the Flemish community.
79 Information received from the Journalistic Ethics Council in the context of the country visit to Belgium.
80 Information received in the context of the country visit to Belgium.
81 2021 Media Pluralism Monitor, country report for Belgium, p. 17.
82 Information received in the context of the country visit to Belgium.
83 The market and audience concentration shares of the top four in any media format are close to 100%. Nevertheless, content from media outlets based in France, Germany, Luxemburg and the Netherlands help diversify the offer. Market shares of online-only news media is often unknown. See 2021 Media Pluralism Monitor, country report for Belgium, pp. 11 and 17.
84 2021 Media Pluralism Monitor, country report for Belgium, p. 9.
85 Information received in the context of the country visit to Belgium.
86 Input from Belgium (French Community) for the 2021 Rule of Law report, as well as information received in the context of the country visit to Belgium.

such measures have been implemented while preserving the low risk to political independence of media[87].

There is room to improve access to government-held information. According to the MPM 2021, the systems for obtaining access to government-held information are still not as operational as needed to adequately protect the right to information[88]. Stakeholders have noted several issues specific to the COVID-19 pandemic reporting environment, such as the suspension of certain public meetings (e.g. those of municipal councils) and limited access to courtrooms. On the other hand, as an essential activity, journalism has benefited from exceptions to lock-down rules and other movement restrictions[89].

Some concerns about online and legal threats to journalists were raised. The Council of Europe's Platform to promote the protection of journalism and safety of journalists published three alerts for Belgium since October 2020 concerning online threats to journalists and a search of a journalist's house after a breaking story on vaccine corruption[90]. According to information gathered by the Flemish journalists' union on the use of a specific hotline for aggression against journalists, online attacks often target female journalists and journalists belonging to ethnic minorities. Stakeholders have also reported cases of cyberstalking of journalists[91] as well as recent cases of threat of legal action and confiscation by the police of the press card of a journalist who was covering a demonstration[92]. As a result, the MPM 2021 assesses the indicator on journalistic profession, standards and protection as being at medium risk[93]. The concerns about potential limitations stemming from the Law on Classified Information[94] seem to have been resolved, thanks to an exception for freedom of information added to its draft by the Government[95].

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

Belgium is a federal state with significant powers residing at the level of the Regions and Communities. At the federal level, Belgium has a bicameral parliamentary system. The Parliament is composed of the House of Representatives and the Senate. Legislative proposals can originate from the Government and from members of both houses of Parliament[96]. The advisory branch of the Council of State provides opinions on draft legislation. The Constitutional Court is competent to review legislative acts adopted by the federal Parliament and by the parliaments of the Regions and Communities. In addition to the justice system, independent authorities play an important role for checks and balances.

The Council of State advisory branch continues to face challenges for the effective fulfilment of its mandate[97]. A shortage of resources, in particular budgetary and human

87 2021 Media Pluralism Monitor, country report for Belgium, p. 12.
88 2021 Media Pluralism Monitor, country report for Belgium, p. 9.
89 Information received in the context of the country visit to Belgium.
90 Belgium has not replied to the alerts yet.
91 Information received in the context of the country visit to Belgium.
92 Input from Blueprint for Free Speech for the 2021 Rule of Law report.
93 2021 Media Pluralism Monitor, country report for Belgium, p. 9.
94 According to the initial draft, the law would have exposed anyone revealing classified information to criminal penalties. 2020 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 10.
95 Contribution received from the Flemish journalists' union in the context of the country visit to Belgium.
96 The Senate can only propose legislation in certain fields.
97 See 2020 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 5.

resources, continues to pose challenges for the advisory branch. Due to these challenges, combined with the frequent recourse to procedures with shortened deadlines, the Council is in some cases not able to render an opinion on draft legislation. Moreover, recent budget cuts have further exacerbated the challenges that the advisory branch faces in the effective fulfilment of its mandate, which is important for ensuring the quality of legislation.

The Court of Appeal found that COVID-19 measures were adopted on a correct legal basis, striking down a first-instance judgment. In a case brought before the Brussels French-speaking first instance court, the Government was ordered to provide for a legislative basis for COVID-19 measures within 30 days[98], under a penalty payment of 5,000 EUR per day of delay, in the absence of which the measures would become invalid at the end of the term. The Government appealed the judgment to the Brussels appeal court, which found in its decision of 7 June 2021 that the COVID-19 measures do have a correct legal basis. However, the appeal court considered that a forthcoming ruling of the Constitutional Court must be awaited in relation to the question whether COVID-19 measures have been adopted in full respect of the Constitution and fundamental rights[99].

A 'pandemic law' has been adopted to provide a new legal basis for pandemic emergency measures[100]. After the Minister of Interior had proclaimed the federal phase of the national emergency plan on 13 March 2020, COVID-19 measures were adopted through ministerial decrees on the basis of existing laws[101]. Following growing criticism that the measures adopted to address the COVID-19 pandemic required a more solid legal basis given their impact on fundamental rights, the Government prepared a 'pandemic law', which, following several opinions by the Council of State[102] and of the Federal Institute for the Protection and Promotion of Human Rights (FIRM/IFDH)[103], was adopted on 15 July 2021. The law provides that the Government can declare the state of epidemic emergency by royal decree, after which it has to be confirmed by Parliament within 15 days. Emergency measures are to be adopted by royal decree, except in cases of 'imminent danger', in which case the measures may be adopted by ministerial decree.

Measures were taken to ensure the continued functioning of the Parliament during the COVID-19 pandemic. An amendment of the Rule of Procedure of the House of Representatives enabled that plenary debates and votes could be held with the majority of its Members being present either in person or remotely. Furthermore, the use of videoconferencing allowed to organise committee meetings virtually, and members were able to vote in plenary through digital means.

The Government will launch a wide citizen consultation process to feed into the envisaged new constitutional reform. The Government is preparing for a new 'State

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98 Brussels French-speaking first instance court, judgment of 31 March 2021. Also, in May, the Kortrijk criminal court overturned a fine imposed for violation of COVID-19 related measures on appeal, due to the lack of legal basis of the measures.

99 Brussels appeal court, judgment of 7 June 2021.

100 The draft pandemic law was already in preparation by the Government before the judgment of the Brussels French-speaking first instance court.

101 Following deliberation in the Council of Ministers.

102 The Council of State advised that while emergency measures would not necessarily require Parliamentary ratification, they should be adopted by royal decree rather than by ministerial decree.

103 Federal Institute for Human Rights, Opinion on the Preliminary draft law on the measures of administrative police during an epidemic emergency.

reform' after the 2024 elections, which may amend the Government formation process following elections[104], as well as change the procedure for constitutional revisions. The Government has announced the launch of a dialogue online platform, through which citizens, civil society, academia and local authorities would be able to give their opinion on the envisaged State reform[105]. The consultation would be open for six weeks and would be launched in September 2021. Additionally, the federal Parliament adopted rules laying down the detailed provisions under which petitioners who gather signatures of over 25 000 inhabitants of Belgium must be heard in the responsible committee[106].

The new Federal Human Rights Institute has been established and is now operational[107]. Following the appointment of the board members of the Federal Institute for the Protection and Promotion of Human Rights (FIRM/IFDH) in July 2020, the secretariat of the FIRM/IFDH commenced its work in early 2021. The mandate of the FIRM/IFDH includes issuing non-binding opinions, recommendations and reports to the state authorities, including on its own initiative, as well as promoting human rights. However, the Institute is not competent to treat individual complaints from citizens[108]. The law establishing the FIRM/IFDH provides for the possibility to adopt a cooperation agreement in order to have the Institute's competence, which currently remains limited to the federal level, extended to the non-federal level. While this results in a somewhat scattered landscape of human rights protection, the FIRM/IFDH cooperates with other relevant bodies for human rights protection[109], also at the non-federal level.

Civil society is involved in certain government initiatives, such as the development of an action plan against racism. Belgium is considered as having an open civil society landscape[110], and civil society organisations are invited to participate in certain government initiatives, such as the preparation of a National Action Plan against Racism[111]. The Action Plan will be developed jointly by the government authorities and the 'NAPAR coalition', which is a group of 60 civil society organisations.

[104] The objective of this revision is to decrease the duration of future formation processes.
[105] Statement by the Minister of the Interior to the Parliamentary Commission on the Revision of the Constitution.
[106] Input from Belgium for the 2021 Rule of Law Report. See also 2020 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 12.
[107] See 2020 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 12.
[108] A federal Ombudsperson is competent to investigate complaints on the functioning of the federal administration. Ombudspersons also exist at the non-federal levels and for specific subject matters.
[109] Such as UNIA, the national equality body accredited with B-status by GANHRI, as well as Myria, the Federal Migration Centre. See also 2020 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 12.
[110] See the rating given by CIVICUS; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.
[111] At the same time, stakeholders report a decreasing willingness of government authorities to support certain civil society organisations.

Annex I: List of sources in alphabetical order*

** The list of contributions received in the context of the consultation for the 2021 Rule of Law report can be found at: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2021-rule-law-report-targeted-stakeholder-consultation.*

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Annex II: Country visit to Belgium

The Commission services held virtual meetings in April and May 2021 with:

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

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

- Amnesty International
- Center for Reproductive Rights
- CIVICUS
- 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
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Front Line Defenders
- Human Rights House Foundation
- Human Rights Watch
- ILGA-Europe
- International Commission of Jurists
- International Federation for Human Rights

- International Planned Parenthood Federation European Network (IPPF EN)
- International Press Institute
- Netherlands Helsinki Committee
- Open Society European Policy Institute
- Philanthropy Advocacy
- Protection International
- Reporters without Borders
- Transparency International EU