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## **COMMISSION STAFF WORKING DOCUMENT**

### **2022 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**

#### **2022 Rule of Law Report The rule of law situation in the European Union**

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## **ABSTRACT**

Concrete and comprehensive initiatives are ongoing to increase significantly the level of digitalisation of the Belgian justice system by 2026. Further steps are being taken towards the transfer of judicial management powers from the executive to the judiciary. The High Council for Justice continues its efforts to improve the independence, quality, and efficiency of the justice system, in particular by conducting audits and issuing opinions on draft legislation. The lack of human and financial resources remains a challenge for the justice system, but significant investments and initiatives aim to address this. A persistent lack of court data still hampers progress on the efficiency of justice, but initiatives are ongoing to remedy this issue. While additional human resources are being granted to help address backlogs, particularly lengthy delays reported in certain courts remain a source of concern.

Although aspects related to corruption are included in the national security strategy and different action plans, as well as multiple coordination platforms, Belgium has no specific overarching anti-corruption strategy. The situation at the Central Office for the Repression of Corruption has improved, including in terms of results in high-level corruption cases, however, its resources continue to be overall limited. Generally, there is good compliance with the requirement to declare assets and mandates, however, the verification and transparency of such declarations remains an issue of concern. The system to report potential foreign bribery cases is in place but obstacles to the successful prosecution of such cases include the statute of limitations, a lack of prioritisation of cases, and difficulties to obtain evidence. Mainstreaming integrity rules in the police is a challenge, with each police zone having its own rules. A broad integrity policy for Ministers, their Cabinets and as well as members of Parliament remains lacking and existing codes of conduct continue to have gaps. There are no clear and consistent rules in place on how to deal with gifts and benefits for Parliament and Government. Initial steps were taken towards a reform of the legislative framework regarding lobbying, and a reform of the legislation on whistleblowing is ongoing. Gaps continue to exist in the rules on revolving doors, in particular relating to their scope and to a lack of transitory measures.

A robust legal framework and independent media regulators continue to ensure media pluralism. Specific safeguards for the governance and the operational and editorial independence of the public service broadcasters guarantee their autonomy and impartiality. The media markets of the three linguistic Communities remain highly concentrated. Recent legislation introducing new refusal grounds, and delays in treating public document requests might affect the right to access public documents. Cases of physical or verbal abuse as well as online and offline threats are an increasing source of concern for journalists. While there are sporadic reports about police officers seizing and erasing journalistic material, recent jurisprudence has brought clarity about the possibility for journalists to film police interventions and courts enforce robust legal safeguards.

The Council of State and the Constitutional Court, as well as other independent institutions with an important role in the system of checks and balances, face some challenges regarding resources, but certain steps are being taken to address this. The pandemic law that provided a new legal basis for pandemic emergency measures was deactivated in March 2022, and the Constitutional Court will rule on its constitutionality. Civil society is being regularly involved in Government initiatives, but a certain narrowing of the civil society landscape has been reported. A citizen consultation process was held on the preparation of a future State reform.

## **RECOMMENDATIONS**

In addition to recalling the commitments made under the national Recovery and Resilience Plan relating to certain aspects of the justice system, it is recommended to Belgium to:

- Continue measures to provide adequate human and financial resources for the justice system as a whole, taking into account European standards on resources for the justice system.
- Complete the legislative reform on lobbying, establishing a framework including a transparency register and a legislative footprint, covering both members of Parliament and Government.
- Strengthen the integrity framework, including by adopting a Code of Conduct covering all members of ministerial private offices, rules on gifts and benefits for members of Parliament and Government and rules on revolving doors for government and their private offices.
- Strengthen the framework for access to official documents, in particular by improving request and appeal processes and by limiting the grounds for rejection of disclosure requests, taking into account European standards on access to official documents.

## **I. JUSTICE SYSTEM**

The justice system includes 13 first-instance courts of general jurisdiction<sup>1</sup>, a number of specialised first instance courts<sup>2</sup>, five appeal courts, a Supreme Court<sup>3</sup> and a Constitutional Court. The judicial branch of the Council of State<sup>4</sup> acts as the highest administrative court. A non-permanent court of assizes hears the most serious criminal cases<sup>5</sup>. The Constitutional Court is exclusively competent to scrutinise the constitutionality of legislation. Most competences related to justice are federal<sup>6</sup>. The independence of the judiciary and of the prosecution service is enshrined in the Constitution<sup>7</sup>. An independent High Council for Justice<sup>8</sup> is tasked with recruitment for the judiciary and with fostering the quality of justice through control mechanisms such as audits, as well as by giving advice on justice-related matters to the Government and to Parliament, both on request and on its own initiative. Candidate judges are selected by the High Council for Justice, and are appointed for life by the King on the proposal of the Minister of Justice<sup>9</sup>. The College of Courts and Tribunals, which consists of court presidents elected by their peers, is responsible for the general functioning of the courts. The Flemish Bar Association and the French- and German-speaking Bar Association represent lawyers from different parts of the country. Belgium participates in the European Public Prosecutor's Office (EPPO).

### **Independence**

**The level of perceived judicial independence in Belgium continues to be high among the general public and is now high among companies.** Overall, 60% of the general population and 63% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2022<sup>10</sup>. According to data in the 2022 EU Justice Scoreboard, the perceived judicial independence among the general public has decreased in comparison with 2021 (66%), inverting a previously increasing trend. However, the perceived judicial independence among companies has increased compared to 2021 (58%) and 2016 (54%).

**New rules regarding delegation of judges are under preparation, and the High Council for Justice is taking steps to further strengthen the independence and accountability of justice.** The Government is preparing new rules on the possibility of delegating judges, which

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

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

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

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

<sup>5</sup> It is composed of 3 judges and a jury of 12 citizens.

<sup>6</sup> There exists a number of specialised Flemish administrative courts.

<sup>7</sup> Art. 151 of the Constitution.

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

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

<sup>10</sup> Figures 50 and 52, 2022 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%).

would require an agreement between the two court presidents involved for such a delegation<sup>11</sup>. The objective of these new rules is to further limit the role of the Minister of Justice, who would no longer be competent to decide on such a delegation<sup>12</sup>. Both under current and future rules, the consent of the judge or prosecutor would always be required for such a delegation<sup>13</sup>, which is consistent with Council of Europe Recommendations<sup>14</sup>. The rules will be submitted to the Council of State for an advice. In addition, the High Council had issued an advisory opinion on an earlier draft of these proposed amendments. The High Council advised that the grounds for delegation should be clearly defined in the new rules, and that they should be expressly stated in writing in the delegation decision, together with the formal agreement of the magistrate in question. The High Council for Justice has more generally continued its efforts to improve safeguards for judicial independence, including by drawing up reports on disciplinary procedures conducted regarding judges and prosecutors and on initiatives taken concerning the compliance with general ethical principles applicable to them<sup>15</sup>. Following the introduction of standard forms for reporting on disciplinary action, the first consolidated report will be prepared by the High Council for Justice in the course of 2022<sup>16</sup>.

**Investigations into alleged breaches of legal professional privilege are ongoing.** In the 2021 Rule of Law Report it was reported that meetings between suspects in criminal proceedings and their lawyers in a police station had potentially been recorded, triggering criticism on the respect for legal professional privilege<sup>17</sup>. Criminal investigations by the prosecution service and the Committee P<sup>18</sup> into this matter are still ongoing<sup>19</sup>. Since the 2021 Rule of Law Report, no new cases have been reported by lawyers<sup>20</sup>.

## Quality

**The lack of human and financial resources remains a challenge for the justice system, but significant investments and initiatives aim to address this.** As noted in the 2020 and 2021 Rule of Law Reports, a lack of human and financial resources remains a challenge for the justice system<sup>21</sup>, and a wide-ranging audit by the High Council for Justice concluded that the courts of first instance and prosecutors' offices lacked resources and capacity to deal with the

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<sup>11</sup> In the absence of such an agreement, the College of Courts and Tribunals would decide.

<sup>12</sup> With the exception of delegations to the Court of Cassation and concerning delegations outside the judicial order.

<sup>13</sup> Written contribution from the High Council for Justice in the context of the country visit. The only exception that exists regards justices of the peace in the Brussels district, who can be tasked to also sit on the bench of other peace courts in the same district.

<sup>14</sup> Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 52.

<sup>15</sup> See also GRECO Fourth Evaluation Round – Second Compliance Report.

<sup>16</sup> Input from Belgium for the 2022 Rule of Law Report, p. 2.

<sup>17</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 3.

<sup>18</sup> The 'Committee P' is the external independent oversight body of the police forces.

<sup>19</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 3.

<sup>20</sup> Information received from the Bar Associations in the context of the country visit to Belgium.

<sup>21</sup> According to Council of Europe recommendations, each state should allocate adequate resources, facilities and equipment to the courts to enable them to function in accordance with the standards laid down in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms and to enable judges to work efficiently, see Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para 33. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 4 and 2020 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 4. See also Constitutional Court, Court of Cassation and Council of State (2019), Joint Memorandum.

challenges posed by the COVID-19 pandemic<sup>22</sup>. The Government has allotted substantial additional financing to address these issues<sup>23</sup>, of which EUR 55,8 million<sup>24</sup> are devoted to recruiting 131 additional magistrates and 803 additional court staff by the end of 2022<sup>25</sup>. Filling vacancies remains a challenge, however, and initiatives are ongoing to attract more candidates to a career within the justice system<sup>26</sup>. The College of Courts and Tribunals continues its efforts to develop a reliable workload measurement tool, which would serve to optimise the allocation of resources between courts and allow for the further transfer of management powers to the judiciary<sup>27</sup>. The objective is to formalise the next steps in the process towards autonomous management in legislation by 2023<sup>28</sup>.

**Steps are being taken to further improve the quality of the justice system.** Following the development of standard forms by the High Council for Justice for annual reporting of the courts and the prosecution service<sup>29</sup>, the adaptation of the form is to be formalised by regulation in the course of 2022 for future use by the courts and prosecution service<sup>30</sup>. The reform of the complaint procedure on the functioning of justice is also gradually progressing, with an agreement having been reached on a single entry point where citizens can file their complaints. The income threshold for eligibility for full legal aid for a single person without dependents was raised to EUR 1 326 net monthly income in 2021, and will gradually increase to EUR 1 526 by 1 September 2023, improving citizens' access to justice<sup>31</sup>. Furthermore, legislation provides that the General Procurator at the Supreme Court and the College of Public Prosecutors file an inventory of laws in force that present application or interpretation difficulties to the courts on a yearly basis<sup>32</sup>. This provides the judiciary with an opportunity to flag such issues to the legislature, although it is reported that the proposals made are rarely taken into consideration nor followed up<sup>33</sup>. As regards the recommendations made by the High Council for Justice in its investigation report into the ongoing judicial investigation of the death

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<sup>22</sup> See also High Council for Justice (2021), 'The COVID-19 crisis: Impact on litigants and the approach of the judiciary', which concluded that the courts and prosecution service lacked resources to properly deal with the challenges brought by the COVID-19 pandemic.

<sup>23</sup> An extra EUR 500 million is foreseen by 2024. The Council of State has also received certain additional funding.

<sup>24</sup> Input from Belgium for the 2022 Rule of Law Report, p. 4.

<sup>25</sup> The appeal brought by the Government against the judgment of the Brussels French-speaking first instance court of 13 March 2020, which condemned the State for not providing the judiciary with the human resources required by law, is currently still pending. See also Rule of Law Report 2021, Country Chapter on the rule of law situation in Belgium, p. 4 and Rule of Law Report 2020, Country Chapter on the rule of law situation in Belgium p. 4. Following a critical call from the College of Courts and Tribunals in May 2022, the Government has also agreed to allocate additional financing for recruitments to replace outgoing magistrates and court staff.

<sup>26</sup> The High Council for Justice organises training weeks to raise awareness among law students of a career in the judiciary. The Ministry of Justice and the College of Courts and Tribunals are also organising awareness campaigns to attract more candidates to a career in the justice system.

<sup>27</sup> The process was set in motion in 2014. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 4.

<sup>28</sup> Information received from the College of Courts and Tribunals in the context of the country visit to Belgium.

<sup>29</sup> As recommended by GRECO, see GRECO Fourth Evaluation Round – Evaluation Report, recommendation xiv. The standard forms concern the reporting by the courts and the prosecution service on their annual activity and functioning.

<sup>30</sup> GRECO had evaluated the recommendation as being only partly implemented until such regulation would be adopted. See GRECO Fourth Evaluation Round – Second Compliance Report, p. 10. The standard forms will be used in the preparation of the activity reports for the year 2021.

<sup>31</sup> Partial legal aid is granted to citizens up to a higher income grade. Input from Belgium for the 2022 Rule of Law Report, pp. 3-4.

<sup>32</sup> Act of 25 April 2007 establishing a Parliamentary Committee in charge of the evaluation of laws.

<sup>33</sup> Information received in the context of the country visit to Belgium.

of Jozef Chovanec<sup>34</sup>, the High Council is expected to conduct further investigations once the judicial investigations will be concluded. Furthermore, the Committee P has made a number of recommendations regarding the functioning of the airport police<sup>35</sup>, and is currently examining the results of the self-evaluation conducted by the federal police in light of these recommendations<sup>36</sup>.

**Concrete and comprehensive initiatives are ongoing to improve the digitalisation of the justice system.** Investments are ongoing to increase the level of digitalisation of the justice system for the period 2021-2026<sup>37</sup>. By 2026, these initiatives should result in the introduction of a single online justice portal for citizens and businesses, establishing a single case management system for the courts, facilitating the digital submission of cases and file consultation, publishing the majority of all case law online, and allowing for resource management based on real-time data<sup>38</sup>. The completion of these measures aims to bring significant improvements for the digitalisation of the justice system, although administrative justice is not included in their scope<sup>39</sup>. As regards the judicial branch of the Council of State, 80% of pending cases are now treated (partially) digitally and the tool for digital filing of litigation documents is being modernised<sup>40</sup>. At the Flemish administrative courts, initiatives continue on developing a digital case file and to further facilitate electronic communication between the courts and parties to a case<sup>41</sup>.

## Efficiency

**A full overview of the efficiency of the justice system remains unavailable due to a persistent lack of data, but steps are being taken to address this issue.** Significant gaps remain in the availability of data on court proceedings<sup>42</sup>. The Council of Europe's Committee of Ministers continues its enhanced supervision of Belgium regarding the excessive length of proceedings in civil cases at first instance, and has expressed deep concerns at the persistent lack of comprehensive statistical data on the first-instance civil tribunals<sup>43</sup>. To address these issues, initiatives are ongoing to achieve the gathering of consistent, reliable, and uniform court data on the functioning of the justice system<sup>44</sup>. The currently limited available data show that the rate of resolving first-instance civil and commercial cases has dropped below 100% for

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<sup>34</sup> See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 4.

<sup>35</sup> Committee P, Leadership and integrity in the airport police forces.

<sup>36</sup> Information received from Committee P in the context of the country visit to Belgium.

<sup>37</sup> Including through funding under the Belgian Recovery and Resilience Plan.

<sup>38</sup> The different steps will be completed gradually from 2021 until the end of 2025. Since June 2022, victims, surviving family members, and their lawyers can consult their case file online via the 'Just-on-web' portal for a number of cases, which will further increase over the coming years. For more detail, see Council of the European Union (2021), Annex to the Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Belgium, milestones 56-60.

<sup>39</sup> For more detail, see Council of the European Union (2021), Annex to the Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Belgium, milestones 56-60.

<sup>40</sup> Digitalisation efforts are also made for the advisory branch of the Council of State, where requests for an advice of the Council of State are made digitally.

<sup>41</sup> Information received from the Service of the Administrative Law Courts in the context of the country visit to Belgium.

<sup>42</sup> Figures 6, 7, 14, and 15, 2022 EU Justice Scoreboard. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 5 and 2020 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 5.

<sup>43</sup> Interim Resolution CM/ResDH(2021)103 of the Committee of Ministers of 9 June 2021. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 5.

<sup>44</sup> Including through funding under the Belgian Recovery and Resilience Plan.

2020<sup>45</sup>, but remained above 100% for administrative cases<sup>46</sup>. Furthermore, the overall clearance rate of cases before the Supreme Court was above 100% for 2021<sup>47</sup>. Particularly lengthy delays are reported in certain courts including the Brussels appeal court<sup>48</sup>, and the High Council for Justice is carrying out an extensive audit into its functioning. Against this background, additional human resources will be granted on the short term to certain courts with significant backlogs.<sup>49</sup> For the longer term, the College of Courts and Tribunals has been tasked with mapping judicial backlogs across courts and assisting their management in developing action plans to improve the situation. As regards administrative justice, the judicial branch of the Council of State continues to face certain backlogs due to a lack of resources, but efforts to ensure the efficiency of justice continue to be made<sup>50</sup>. The Flemish administrative courts also continue to further improve the efficiency of administrative justice, reporting a positive clearance rate over the past years, aiming at further decreasing the average length of proceedings over the next years<sup>51</sup>.

## II. ANTI-CORRUPTION FRAMEWORK

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

**The perception among experts and business executives is that the level of corruption in the public sector remains relatively low.** In the 2021 Corruption Perceptions Index by Transparency International, Belgium scores 73/100 and ranks 7<sup>th</sup> in the European Union and

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<sup>45</sup> Figure 12, 2022 EU Justice Scoreboard.

<sup>46</sup> Even if it declined somewhat compared to 2019, see figure 13, 2022 EU Justice Scoreboard.

<sup>47</sup> Information received from the Supreme Court in the context of the country visit to Belgium.

<sup>48</sup> Input from Belgium for the 2022 Rule of Law Report. Information received from the Bar Associations in the context of the country visit to Belgium revealed that in certain cases, delays appear longer than five years.

<sup>49</sup> Input from Belgium for the 2022 Rule of Law Report. The reinforcements consist of 14 magistrates and 30 full-time equivalents of court staff.

<sup>50</sup> The amount of pending cases increased in 2020, see Council of State, Activity Report 2019-2020, p. 15. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 5.

<sup>51</sup> Service of the Administrative Law Courts (2020), Annual Report 2019-2020. A number of specialised administrative courts for Flanders have jurisdiction to rule on certain cases. They are supported by the Service of the Administrative Law Courts.



18<sup>th</sup> globally<sup>52</sup>. This perception has been relatively stable<sup>53</sup> over the past five years. The 2022 Special Eurobarometer on Corruption shows that 56% of respondents consider corruption widespread in their country (EU average 68%) and 16% of respondents feel personally affected by corruption in their daily lives (EU average 24%)<sup>54</sup>. As regards businesses, 57% of companies consider that corruption is widespread (EU average 63%) and 33% consider that that corruption is a problem when doing business (EU average 34%)<sup>55</sup>. Furthermore, 40% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 34%)<sup>56</sup>, while 29% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 29%)<sup>57</sup>.

**While aspects related to corruption are included in the National Security Strategy and different action plans, there is no specific overarching or comprehensive anti-corruption strategic framework or action plan**<sup>58</sup>. Parts of anti-corruption policy are dealt with in different thematic policy documents. Aspects of fraud are dealt with in the National Security Plan 2022-2025, including both “social fraud” as well as “fiscal fraud and other financial and economic phenomena” as priorities for the police<sup>59</sup>. In addition, the Ministry of Finance and the College for the Fight against Social and Fiscal Fraud adopted the 2021 Action Plan for the Fight against Social and Fiscal fraud, with concrete actions for further cooperation among Government services to fight such fraud<sup>60</sup>. There are several networks and cooperation platforms at federal level that deal with coordination of some aspects of anti-corruption policy, although no body was identified that coordinates anti-corruption policy as a whole. However, there is a lack of an overarching anti-corruption strategic framework or action plan<sup>61</sup>. The Ministry of Foreign Affairs is responsible for the exchange with international bodies in the field of anti-corruption through a formal platform (CoorMulti) involving other federal ministries and the regions. An informal platform of the Ministry of Justice (PACORR) further coordinates responses to international recommendations in the anti-corruption area<sup>62</sup>.

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<sup>52</sup> Transparency International (2022), Corruption Perceptions Index 2021, 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).

<sup>53</sup> In 2017 the score was 75, while, in 2021, the score is 73. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last five years.

<sup>54</sup> Special Eurobarometer 523 on corruption (2022). The Eurobarometer data on citizens’ corruption perception and experience is updated every second year. The previous data set is the Special Eurobarometer 502 on corruption (2020).

<sup>55</sup> Flash Eurobarometer 507 on businesses’ attitudes towards corruption in the EU (2022). The Eurobarometer data on business’ attitudes towards corruption as is updated every second year. The previous data set is the Flash Eurobarometer 482 on business’ attitudes towards corruption (2019).

<sup>56</sup> Special Eurobarometer 523 on corruption (2022).

<sup>57</sup> Flash Eurobarometer 507 on businesses’ attitudes towards corruption in the EU (2022).

<sup>58</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 7 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 6.

<sup>59</sup> Federal Ministerial Council, Framework Note on National Security Plan and Federal Police, An integrated police who renews, improves and anchors its approach against insecurity.

<sup>60</sup> SIOD, Action Plan fight against Social Fraud 2021 and Minister of Finance, Minister Van Peteghem launches action plan in the fight against fiscal and social fraud.

<sup>61</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 7 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 6.

<sup>62</sup> Information received from the Ministry of Justice and the Ministry of Foreign Affairs in the context of the country visit to Belgium and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 6-7.

**Despite a significant improvement over the past years, the Central Office for the Repression of Corruption (CDBC-OCRC) within the police continues to tackle high-level corruption cases with overall limited resources.** The budgetary situation of the Office, which was described as particularly problematic in an internal 2018 report and by GRECO<sup>63</sup>, has significantly improved over the past years<sup>64</sup>. Despite these improvements, its resources remain limited overall. Nevertheless, the CDBC-OCRC manages to achieve results in high-level corruption cases and initiates investigations ex officio<sup>65</sup>. Stakeholders signal good results of the CDBC-OCRC in the context of recent investigations, in particular those relating to corruption concerning public officials through the influence of organised crime<sup>66</sup>. Limited resources in parts of the federal police also affect corruption-related cases, with the Federal Judicial Police dropping investigations in some fraud cases in the Brussels-Capital region<sup>67</sup> and the chief of the Federal Police highlighting issues in dealing with all corruption cases uncovered through the SkyECC investigation<sup>68</sup>.

**While the system for reporting foreign bribery cases is in place, shortcomings remain particularly as regards the statute of limitations, gathering evidence, and prioritisation of such cases.** As indicated in the 2021 Rule of Law Report, the implementation of some OECD recommendations, in particular on investigations and prosecution of foreign bribery cases, has not been finalised, including as regards the limitation period of investigations<sup>69</sup>. Investigations and prosecutions of foreign bribery cases continue to be difficult given the complex operations in third countries and the overall limited resources of the CDBC-OCRC<sup>70</sup>. This exacerbates difficulties in gathering evidence, including the execution of mutual legal assistance requests. The prosecution has reported seven cases of foreign bribery registered from 2019 to 2021<sup>71</sup>. Stakeholders signal progress in advancing a number of these cases<sup>72</sup>.

**Out-of-court settlements are positively regarded by law enforcement and regularly used to obtain results in high profile corruption cases.** The legislation on out-of-court settlements<sup>73</sup> foresees the possibility for a deal between the prosecution and the accused person

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<sup>63</sup> The 2018 report by a federal magistrate is not public but was widely reported on in the media. See for example De Standaard (2019), ‘Understaffed and no leadership: fight against corruption is swaying tanker’. See also GRECO, Fifth Evaluation Round – Evaluation Report, Belgium, paras 140-142 and 2020 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 6.

<sup>64</sup> Information received from the CDBC-OCRC in the context of the country visit to Belgium, 2020 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 6 and Federal Police, Annual Report 2020.

<sup>65</sup> Information received from the CDBC-OCRC and Transparency International in the context of the country visit.

<sup>66</sup> In particular the results as regards the SkyECC/Encrochat investigation (for more information see VRT NEWS, 1 year SkyECC). See written contribution from the Public Prosecution Office in the context of the country visit; De Standaard (2022), “‘The money is gone. Too many budget cuts’ Cry for help from chief of Federal Police”.

<sup>67</sup> Het Nieuwsblad (2022), ‘Justice system in Brussels leaves aside one in five fraud files: “By necessity”’.

<sup>68</sup> De Standaard (2022), “‘The money is gone. Too many budget cuts’ Cry for help from chief of Federal Police’ and Federal House of Representatives (2022), Joint Session of Committee on Interior and Justice, Hearing on the Situation of the Federal Judicial Police.

<sup>69</sup> OECD (2018), Phase 3 evaluation of Belgium: additional written report; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p.7.

<sup>70</sup> GRECO, Fifth Evaluation Round – Evaluation Report, Belgium (2020), paras 141-142.

<sup>71</sup> Two in 2019; two in 2020; three in 2021. Written contribution from the Prosecution Service in the context of the country visit.

<sup>72</sup> Information received from Transparency International in the context of the country visit.

<sup>73</sup> Also known as ‘*Wet op verzuimde minnelijke schikking / Loi sur la transaction penale*’, the provisions in question are anchored in art. 216bis of the Code of Criminal Procedure. The system has been under increased

to drop proceedings without a guilty plea<sup>74</sup>. According to the prosecution, nine such settlements were registered in cases of corruption over the past three years<sup>75</sup>. Law enforcement officials note the positive effect of such settlements, which allow for faster results both in terms of fines issued and the time needed to conclude a case in high-profile corruption cases<sup>76</sup>. However, the Minister of Justice has indicated that caution remains necessary and that such settlements, while being a useful additional tool, should not replace the more traditional way of working<sup>77</sup>. The College of Public Prosecutors is conducting an evaluation of the current rules<sup>78</sup>.

**While mainstreaming of the integrity policy within the integrated police forces is a challenge, a number of initiatives to address this issue are ongoing.** Discussions are taking place with a view to updating the integrated police's Code of Conduct, in line with GRECO recommendations, but no concrete timeline is foreseen yet<sup>79</sup>. Separately, the Federal Police has adopted an overall integrity policy in order to mainstream further measures across the organisation<sup>80</sup> and has increased the staffing of its integrity department<sup>81</sup>. Mainstreaming integrity policy across the entire police force remains a challenge, given that all 185 local police zones maintain their own integrity policy<sup>82</sup>. A full evaluation of the entire police has been launched in May 2021 and will inform concrete policy proposals by 2023 to further modernise the police, including as regards integrity<sup>83</sup>. In parallel, following commitment of the Minister of the Interior<sup>84</sup> as well as recent investigations highlighting some corruption cases in the police<sup>85</sup>, a working group is examining ways to introduce integrity screening during the entire career of the police officer and not just at the start. To achieve this, the police indicated that they are working to further revise the police guidelines and to set up a new IT system for that purpose. A pilot project on this topic is also foreseen<sup>86</sup>. Separately, a proposal introducing an integrity check at the moment of promotion of the police officer is pending in the Parliament since September 2020<sup>87</sup>. The Customs and Excises service within the Ministry of Finance has

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judicial control since the reform of March 2018. See also Eubelius (2018), 'New legal framework on out of court settlements'.

<sup>74</sup> Law of 18 March 2018 on Diverse changes to the Criminal Code, Criminal Procedure Code and Judicial Law and *Het Laatste Nieuws*, 'Out-of-court settlements brought nearly 1 billion euro into treasury since 2011'.

<sup>75</sup> Zero in 2019, seven in 2020 and two in 2021. See written contribution from the Prosecution Service in the context of the country visit.

<sup>76</sup> Information received from the CDBC-OCRC in the context of the country visit to Belgium.

<sup>77</sup> Van Besien, D. (Federal MP), Plenary question on the Penal Transaction Law to the Minister of Justice - "Penal Transaction Law leads to double standards".

<sup>78</sup> Van Besien, D. (Federal MP), Plenary question on the Penal Transaction Law to the Minister of Justice - "Penal Transaction Law leads to double standards".

<sup>79</sup> Information received from the police and Committee P in the context of the country visit to Belgium and GRECO, Fifth Evaluation Round – Compliance Report, Belgium, recommendation xvi, paras 75-81.

<sup>80</sup> Information received from the police and Committee P in the context of the country visit to Belgium and Federal Police, Permanent Note, 'Integrity Policy in the Federal Police'.

<sup>81</sup> GRECO, Fifth Evaluation Round – Compliance Report, Belgium, recommendation xvii, paras 82-87.

<sup>82</sup> Information received from the police in the context of the country visit. For a recent example of the various integrity policies at play, see Committee P, Investigation Report on potential integrity violations at the Airport Police, pp. 13-16.

<sup>83</sup> Ministry of the Interior, *Staten-Generaal/Etats-Generaux* of the Police and information received from the Ministry of the Interior and the Police in the context of the country visit to Belgium.

<sup>84</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 7.

<sup>85</sup> Written contribution from the Prosecution Service in the context of the country visit.

<sup>86</sup> Information received from the police and Committee P in the context of the country visit to Belgium and GRECO, Fifth Evaluation Round – Compliance Report, Belgium, recommendation xviii, par 88-93.

<sup>87</sup> Information received from the police and Committee P in the context of the country visit to Belgium and Federal House of Representatives (2020), Legislative proposal 55-1497/001 on the review of some elements of the statute of police services to introduce an institutionalised integrity check at the moment of promotion.

also adopted a specific action plan to increase awareness of corruption and improve integrity across the administration, including training of specific techniques to deal with approaches of criminal organisations<sup>88</sup>.

**While an overall Code of Conduct is in place for federal public office holders, integrity policy for Ministers, their Cabinets as well as members of Parliament continues to have gaps.** Discussions on the general implementation of GRECO recommendations in this area (a significant number of which remain largely unimplemented<sup>89</sup>) and on the advancement of integrity policy are ongoing both within the Government and the Parliament. While limited progress has been achieved to date, ministers involved are expected to come forward with ‘a coordinated initiative’ during 2022<sup>90</sup>. Ministers and members of their cabinets continue to remain mostly out of the scope of existing rules<sup>91</sup>. The Code of Conduct for (federal) public office holders continues to only apply to chiefs and deputy chiefs of ministerial cabinets. However, the Government has committed to extend the existing scope of this Code of Conduct to all cabinet members but the exact timing of this step remains to be defined<sup>92</sup>. A ministerial letter<sup>93</sup> on ethical standards for officials of the federal administrative public services remains applicable to all civil servants, with the Unit for Integrity and Culture within the Federal Public Service Policy and Support carrying the overall responsibility for the integrity management of federal civil servants<sup>94</sup>. As a priority for the Minister of Public Administration, work is ongoing on improving the overall federal integrity policy (focusing on the civil service), possibly to include a sanctioning mechanism<sup>95</sup>. The Federal Deontological Commission has indicated it would prepare an opinion concerning the accumulation of functions in the public sector<sup>96</sup>.

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<sup>88</sup> Written contribution from the Ministry of Finance in the context of the country visit.

<sup>89</sup> GRECO, Fifth Evaluation Round – Compliance Report, Belgium, paras 115-120.

<sup>90</sup> GRECO, Fifth Evaluation Round – Compliance Report, Belgium, paras 115-120 and information received from the Prime Minister’s Office and the Federal Deontological Commission in the context of the country visit to Belgium. See also Federal House of Representatives (2022), Commission on the Constitution and Institutional Renewal, p. 7.

<sup>91</sup> GRECO, Fifth Evaluation Round – Evaluation Report, Belgium, paras 37-40 and GRECO, Fifth Evaluation Round – Compliance Report, Belgium, recommendation iii, paras 18-24. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, pp. 6-7.

<sup>92</sup> Some limited progress was made, including the publication of names and positions of members of ministerial private offices on an internet portal. Staff in the Cabinets of Ministers and Secretaries of State can participate in integrity workshops, although they remain organised on an ad hoc basis contrary to GRECO recommendations. See Belgian Federal Government, Policy Note on Institutional reforms and democratic renewal, p. 8-9; Input from Belgium for the 2022 Rule of Law Report, p. 9; GRECO, Fifth Evaluation Round – Compliance Report, Belgium, para 117 and information received from the Unit for Integrity and Culture in the context of the country visit to Belgium.

<sup>93</sup> See Circulaire / Omzendbrief 573 ‘on ethical standards for officials of the federal administrative public services’.

<sup>94</sup> The Unit coordinates both the Federal Network of Integrity Coordinators across all ministries and the Network of Integrity Trusted Persons as an internal channel in relation to cases involving whistleblowers. The Centre for Integrity of the Federal Ombudsperson functions as the external reporting tool for civil servants in case of integrity breaches. Information received from the Unit for Integrity and Culture and the Ombudsperson in the context of the country visit to Belgium and written contribution from the Ombudsperson in the context of the country visit. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, pp. 6-7.

<sup>95</sup> Information received from the Ministry of Justice and the Unit for Integrity and Culture in the context of the country visit to Belgium and Federal Government, Policy note on public administration (2022), p. 16 and Federal Government, Policy note on public administration (2021), p. 5.

<sup>96</sup> Written information received from Belgium in the context of the country visit.

**Shortcomings concerning the verification and transparency of asset and interest declarations remain.** As noted in the 2020 and 2021 Rule of Law Reports<sup>97</sup>, the system of asset declarations does not ensure adequate verification and transparency, as the Court of Audit receives the declarations in sealed envelopes and declarations are only accessible by investigating judges in the context of criminal investigations<sup>98</sup>. However, all persons required by law to submit a declaration of their mandates in 2021 complied with this requirement. The Court of Audit can transfer files to the prosecution and, since 2020, issue administrative fines if the prosecution does not take the file forward (either for those failing to file a mandate or asset declaration or for those who miss the legal deadline)<sup>99</sup>. Declarations of the extra-parliamentary mandates of members of Parliament to the Court of Audit are now also listed on the website of the Parliament<sup>100</sup>. Belgian authorities plan to start initial consultations between the executive and legislative branch to improve the asset and mandate declaration system<sup>101</sup>. A minor revision to extend the scope of asset and mandate declaration to district mayors and aldermen was approved by parliament in May 2022<sup>102</sup>. A number of other legislative initiatives on this topic remain pending in Parliament, although it remains unclear whether they would be able to collect a sufficient majority<sup>103</sup>.

**Consultations within Parliament are ongoing to modify the rules on gifts and benefits for members of the Federal House of Representatives.** Shortcomings identified in previous Rule of Law Reports<sup>104</sup> have not been addressed so far. In particular, the Parliament remains without clear and consistent rules on gifts and benefits. Consultations within the Parliament on possible changes to the rules on gifts and benefits are ongoing<sup>105</sup>, while the Government is expected to wait for the conclusion of parliamentary deliberations to also adjust rules for Ministers and their Cabinets in relation to gifts and benefits<sup>106</sup>. The Parliament addressed the Federal Deontological Commission twice during 2021 with requests for an opinion on the existing system of gifts and benefits for Members of Parliament<sup>107</sup>. In response, the Commission indicated in its advice that Parliament should set out concrete limits as to what constitutes a

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<sup>97</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 8 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 8.

<sup>98</sup> GRECO repeated the previous remarks (as mentioned in the 2021 Rule of Law report) from the Fifth Round Evaluation Report in its new compliance report. See GRECO, Fifth Evaluation Round – Compliance Report, Belgium, recommendations xii and xiii, paras 63-66.

<sup>99</sup> Court of Audit (2022), Court of Audit publishes mandate lists.

<sup>100</sup> Written contribution from the Federal House of Representatives in the context of the country visit.

<sup>101</sup> GRECO, Fourth Evaluation Round – Second Compliance Report, Belgium, para 23.

<sup>102</sup> See the legislative proposal ‘to amend the special legislation in relation to the mandate and asset declarations to extend the scope to district mayors and aldermen’ DOC 55-2297), which was adopted by the Senate on 25 February 2022 and by the House of Representatives on 19 May 2022.

<sup>103</sup> Written contribution from the Federal House of Representatives in the context of the country visit. See in particular the legislative proposals ‘to amend the law of 2 May 1995 as regards the obligation for judges and civil servants of the public prosecutor’s office to declare their mandates, offices and professions and declare assets’ DOC 55-0819) and ‘to amend the special law of 2 May 1995 regarding the obligation to declare mandates, offices and professions and declare assets.’ DOC 55-1533).

<sup>104</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 8 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 8.

<sup>105</sup> GRECO, Fourth Evaluation Round – Second Compliance Report, Belgium, paras 9-10 and 27.

<sup>106</sup> GRECO, Fifth Evaluation Round – Compliance Report, Belgium, recommendation x, paras 54-58.

<sup>107</sup> Information received from the Federal Deontological Commission in the context of the country visit to Belgium and Federal Deontological Commission (2021), Advice nr. 2021/3 on prevention of corruption for parliamentarians (gifts) and Federal Deontological Commission (2021), Interpretative Advice 2021/5 on prevention of corruption for parliamentarians (gifts).

gift of symbolic value to provide clear guidance to Members of Parliament on these issues<sup>108</sup>. Concrete further steps in such a reform are to be decided by the Parliament. In the meantime, the function of the Federal Deontological Commission to offer individual advice to Members of Parliament on potential issues of conflict of interest remains sparsely used, with only three opinions having been delivered to individual members since the Commission started functioning in 2016<sup>109</sup>.

**The Government committed to extend the scope of lobbying legislation to all members of the Government and their cabinets, while the Parliament carries out a reform of existing legislation.** The Government has committed to expanding the existing parliamentary transparency register in a policy note, specifying reforms announced in the 2020 Coalition Agreement<sup>110</sup>. This reform would expand the existing parliamentary transparency register to cover the entire Government and all Cabinet Members in line with GRECO recommendations, after the Parliament has completed its evaluation of the existing legislation<sup>111</sup>. The House of Representatives has, in the meantime, consulted the political groups and discussed a comparative study on such a reform<sup>112</sup>. Following this, a legislative initiative aimed at expanding the existing legislation on lobbying was introduced in December 2021 and is currently under discussion in Parliament, with the Council of State issuing an opinion in February 2022<sup>113</sup>. The proposal would introduce a transparency register covering the Federal Parliament and the Federal Government, and introduce a legislative footprint<sup>114</sup> in each legislative proposal<sup>115</sup>. This work could conclude by summer of 2022<sup>116</sup>.

**Gaps in the rules on ‘revolving doors’ remain, both as regards the scope of application of the existing rules and the lack of transitory restrictions.** As reported in previous years<sup>117</sup>, while there are some rules in place on ‘revolving doors’ for members of Parliament and public officials, shortcomings remain as regards rules included in the Code of Conduct for the members of the Government and their Cabinets<sup>118</sup>. Should the Government expand the application of the Code of Conduct for public office holders to Cabinet members (see above), this would also expand the application of rules on revolving doors. Overall, however, there are no clear or binding rules regarding cooling-off periods or transitory restrictions for either

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<sup>108</sup> Written contribution from the Federal Deontological Commission in the context of the country visit.

<sup>109</sup> Written contribution from the Federal Deontological Commission in the context of the country visit.

<sup>110</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, pp. 8-9 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 8.

<sup>111</sup> Belgian Federal Government, Policy Note on Institutional reforms and democratic renewal, p. 8-9.

<sup>112</sup> Written contribution from the Prime Minister’s Office in the context of the country visit.

<sup>113</sup> Written contribution from the Ministry of Justice in the context of the country visit and Federal House of Representatives (2022), Advice of the Council of State on the legislative proposal regarding the introduction of a transparency register and legislative footprint.

<sup>114</sup> A legislative footprint is a comprehensive public record of lobbyists’ and stakeholders’ contacts with legislators on a specific piece of legislation.

<sup>115</sup> Federal House of Representatives (2021), Legislative proposal 55-2394 regarding the introduction of a transparency register and legislative footprint and Knack (2021), Soon legislative footprint in each legislative proposal – Vivaldi takes first steps towards increased transparency.

<sup>116</sup> Written contribution from the Prime Minister’s Office in the context of the country visit.

<sup>117</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, pp. 8-9 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 8.

<sup>118</sup> The Code of Conduct states ‘when they relinquish their duties, must comply with the obligations arising from their office, in particular the duties of honesty and caution concerning acceptance of certain posts or gifts’. See GRECO, Fifth Evaluation Round – Evaluation Report, Belgium, recommendation x, para 89.

ministers, their staff or members of Parliament<sup>119</sup>. Any work on such reforms remains at a preliminary stage<sup>120</sup>. No further developments took place in the area of political party financing, following amendments adopted in line with GRECO recommendations on foreign donors in 2021<sup>121</sup>.

**A revision of the legislative framework to strengthen whistleblower protection is foreseen.**

The Government coalition agreement announced comprehensive rules to protect whistleblowers, specifically indicating the protection of civil servants who report misconduct in good faith<sup>122</sup>, in order to align with the relevant EU Directive<sup>123</sup>. Two separate laws are under preparation, one for the private sector led by the Ministry of Economy and one for the public sector, led by the Federal Public Service Policy and Support<sup>124</sup>. The existing 2013 law on whistleblowers within the public administration serves as a basis<sup>125</sup>. Both an internal and an external reporting channel (the latter being, in most cases, the Federal Ombudsperson) would be introduced<sup>126</sup>. Timelines for adoptions of these two laws remain, however, unclear. A legislative change in December 2021 updated the existing whistleblowing reporting lines within the police, making the Committee P the main external channel of reporting for all police employees<sup>127</sup>.

**Corruption risks related to COVID-19 continue.** The OCRC-CDBC has identified new types of corruption-related cases linked to the pandemic, in particular related to fraud and public procurement (of masks, personal protective equipment, etc.)<sup>128</sup>. In view of increasing transparency, the Court of Audit created an interactive dashboard gathering information on governmental support measures for businesses and individuals in the context of the COVID-19 crisis<sup>129</sup>.

### **III. MEDIA PLURALISM AND MEDIA FREEDOM**

In Belgium, the three linguistic and cultural Communities have relevant competences for media pluralism. Independent media regulatory authorities and a legal framework based on a set of constitutional safeguards, such as for the press and freedom of expression, aim to ensure media pluralism<sup>130</sup>.

**A stable regulatory framework ensures the independence and effective functioning of media regulators and self-regulatory bodies.** Since the transposition of the revised

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<sup>119</sup> Information received from the Federal Deontological Commission in the context of the country visit.

<sup>120</sup> Written contribution from the Prime Minister's Office in the context of the country visit.

<sup>121</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 8.

<sup>122</sup> Belgian Federal Government (2020), Coalition program.

<sup>123</sup> Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law.

<sup>124</sup> Information received from the Ombudsperson and the Unit for Integrity and Culture in the context of the country visit to Belgium and Input from Belgium for the 2022 Rule of Law Report, pp. 9-10.

<sup>125</sup> Information received from the Ombudsperson and the Unit for Integrity and Culture in the context of the country visit to Belgium.

<sup>126</sup> Minister of Economy (2022), Improved Protection for Whistleblowers and information received from the Ombudsperson and the Unit for Integrity and Culture in the context of the country visit to Belgium.

<sup>127</sup> Information received from the police and Committee P in the context of the country visit and input from Belgium for the 2022 Rule of Law Report, pp. 9-10.

<sup>128</sup> Information received from the OCRC-CDBC in the context of the country visit to Belgium.

<sup>129</sup> See the COVID-19 platform of the Court of Audit.

<sup>130</sup> Belgium ranks 23<sup>rd</sup> in the 2022 Reporters without Borders World Press Freedom Index compared to 11<sup>th</sup> in the previous year.

Audiovisual Media Services Directive<sup>131</sup>, the regulatory framework of the regulators of the Flemish and French-speaking communities has remained stable, and their independence and financial resources are adequate<sup>132</sup>. The Media Regulatory Authority for the German-speaking community has been provided with additional budget and human resources<sup>133</sup>. The two journalistic self-regulatory bodies active in the country<sup>134</sup> are efficient and dynamic<sup>135</sup>.

**Media markets remain highly concentrated in all three linguistic communities.** Belgium is characterised by small and highly concentrated markets<sup>136</sup>. Besides the significant concentration of the Flemish media market<sup>137</sup>, the French-speaking community has experienced a recent increase in the concentration of its media market<sup>138</sup>. Four media outlets hold close to 100% of the Flemish and French-speaking markets and audience concentration shares, leading to high concentration indices in the relevant linguistic markets<sup>139</sup>. While the regulator of the Flemish community can only map concentrations in the Flemish media sector<sup>140</sup>, the regulator of the French-speaking community has the power to monitor concentration indices and take regulatory action if it concludes that the media market concentration is too high<sup>141</sup>. The Belgian Competition Authority, although not legally required to do so, has traditionally considered media pluralism aspects in its assessments on concentrations in the media sector<sup>142</sup>. Nevertheless, a lack of provisions enabling non-economic threats in the assessment of media concentrations may hinder the ability of the media regulatory authorities to effectively address the potential risks posed to media pluralism by the high concentration rate of the media markets<sup>143</sup>.

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<sup>131</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 9.

<sup>132</sup> Input from Belgium for the 2022 Rule of Law Report, p. 11, as confirmed by information given by the media regulators during the country visit.

<sup>133</sup> Input from Belgium for the 2022 Rule of Law Report, p. 11.

<sup>134</sup> The Journalistic Ethics Council (*Conseil de déontologie journalistique*), the self-regulatory media body for the French and German-speaking communities, and the Council for Journalism (*Raad voor de Journalistiek*), the self-regulatory media body for the Flemish community, 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium p. 10; 2020 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 10.

<sup>135</sup> Both the Journalistic Ethics Council and the Council for Journalism play a significant role in the Media Councils in the Digital Age project, launched by the European Federation of Journalists and supported by the European Commission, contribution from the European Federation of Journalists for the 2022 Rule of Law Report, p. 10.

<sup>136</sup> 2021 Media Pluralism Monitor, country report for Belgium, p. 7.

<sup>137</sup> Concerning classic media products, 80 to 100% of the market is in the hands of just five media groups: VRT, DPG Media, Mediahuis, Roularta and Telenet (De Vijver Media), Flemish Regulator for the Media (2021), English guide to the Flemish report on media concentration 2021, p. 12.

<sup>138</sup> RosselGroup and DPG Media have bought RTL Belgium, whereas IPM have bought a regional press group (EDA) and a private television (LN24), contribution from the European Federation of Journalists for the 2022 Rule of Law Report, p. 11, as confirmed by information from the Flemish Press Council (*Raad voor de Journalistiek*) and the French-speaking Press Council (*Conseil de déontologie journalistique*) in the context of the country visit.

<sup>139</sup> 2022 Media Pluralism Monitor, country report for Belgium, p. 13.

<sup>140</sup> Decree on radio and television broadcasting of 27 March 2009, art. 218(2)(8).

<sup>141</sup> French Community Act on Audiovisual Media Services and Video Platform Services, art. 2.2.1 and 2.2.3.

<sup>142</sup> 2021 Media Pluralism Monitor, country report for Belgium, p. 17; 2022 Media Pluralism Monitor, country report for Belgium, p. 13.

<sup>143</sup> Contribution from the European Federation of Journalists for the 2022 Rule of Law Report, pp. 11-12.



### **Well-established safeguards continue to ensure the independence of public service media.**

Three public service broadcasters cover their respective communities<sup>144</sup>. The editorial independence of the public service broadcasters is guaranteed by rules on impartiality and independence from political parties. In all three linguistic communities, the mandate of director of a public service broadcaster cannot be combined with a political office, nor with a position in a press or media company<sup>145</sup>. A system of proportional representation of recognised political groups when appointing the members of Managing and Supervisory Boards enables every elected political party in the respective Parliaments to also be represented in the Boards<sup>146</sup>. A recently adopted reform has further strengthened the independence of the Board of Directors of the Flemish public broadcaster (VRT) by making the appointment of four independent directors to the Board compulsory<sup>147</sup>. The Flemish Government also appoints a community representative who is responsible for ensuring that the VRT abides by the relevant regulatory framework and the management agreements when carrying out its activities<sup>148</sup>.

### **New developments might lead to limitations on the access to information and public documents.**

In transposing the Public Sector Information Directive<sup>149</sup>, the Flemish Parliament, on 1 June 2021, adopted the draft decree amending the Administrative Decree of 7 December 2018 and introduced several grounds for refusal, which might affect the right of access to information and to public documents. In particular, stakeholders have highlighted that the possibility for administrative authorities to refuse disclosure if it relates to ‘internal communication’ is prone to misinterpretation and could therefore result in restrictions of the access to information<sup>150</sup>. Stakeholders also complain that requests for disclosure of official documents are not centralised and that the procedure is very lengthy. In case of refusal, appeal is possible at the Commission for Access to Public Documents, but the latter only has an advisory function. Moreover, at federal level, the ceasing of the functioning of the Federal Commission for Access to Administrative Documents (CADA) since September 2021 may

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<sup>144</sup> Belgian Radio-Television of the French Community, RTBF (*Radio-Télévision Belge de la Communauté Française*), Flemish Radio and Television Organisation, VRT (*Vlaamse Radio en Televisieomroep*), and Belgian Broadcasting, BRF (*Belgisches Rundfunk- und Fernsehzentrum der Deutschsprachigen Gemeinschaft*), European Audiovisual Observatory (2022), *Governance and independence of public service media*, p. 7.

<sup>145</sup> For the Flemish community, Decree on radio and television broadcasting of 27 March 2009, art. 12(2); for the French-speaking community, Decree on the Belgian Radio-Television of the French Community of 14 July 1997, art. 12(1); In the German-speaking community, the director of the BRF is appointed through a public tender procedure, see Decree of 27 June 1986 on the Belgian Radio and Television Centre of the German-speaking Community, art. 27. Furthermore, according to art. 107(2) of the Decree of 1 March 2021 on media services and film showings, staff members and members of the board of directors or management of the BRF cannot be a member of the Media Regulatory Authority.

<sup>146</sup> According to Art. 12(1) of the Decree on radio and television broadcasting of 27 March 2009, eight members of the board of directors of the Flemish public broadcaster are appointed by taking into account the proportionate representation of the political groups in the Flemish Parliament. According to Art. 11(1) and 21(2) of the Decree on the Belgian Radio and Television of the French Community of 14 July 1997, the 13 directors of the managing board and the political figures in the regional advisory commissions are elected by applying the system of proportional representation of the political group recognised by the Parliament of the French-speaking Community.

<sup>147</sup> Decree on radio and television broadcasting of 27 March 2009, art. 12(1) as amended by the amending Decree of 4 February 2022.

<sup>148</sup> Decree on radio and television broadcasting of 27 March 2009, art. 30(1).

<sup>149</sup> Directive (EU) 2019/1024 on open data and the re-use of public sector information.

<sup>150</sup> As stated by the Flemish journalists’ union (VVJ) in an open letter, this would particularly happen if, after consideration, it appears that the protected interest (particularly internal decision-making) outweighs the public interest served by the disclosure, Flemish journalists’ union (2021), Open letter VVJ to the Flemish legislator about amendments to the administrative decree regarding the openness of administration.

make it more difficult for citizens to flag difficulties in consulting or obtaining copies of administrative documents.<sup>151</sup> The above developments strengthen the indications from the 2021 Rule of Law Report regarding the need to improve the rules on access to Government-held information to adequately address the shortcomings as regards right to information.<sup>152</sup>

**Ensuring the security of journalists is increasingly a point of concern.** As pointed out in the 2021 Rule of Law Report, the safety of journalists continues to be an issue gaining importance in Belgium<sup>153</sup>. An increasing number of journalists have experienced cyber-harassment or intimidations when covering outside demonstrations and events.<sup>154</sup> In 2021 and early 2022, several alerts on the Council of Europe’s Platform to promote the protection of journalism and safety of journalists<sup>155</sup> and on the Mapping Media Freedom platform<sup>156</sup> recorded cases of SLAPPs or defamation lawsuits asking for disproportionate damages, online threats or physical assaults against journalists. According to data gathered by the Reporting Centre of the Flemish Journalists’ Union<sup>157</sup>, approximately 15 alerts were reported each year, with an increase of incidents against journalists recorded in 2021 and early 2022<sup>158</sup>. Stakeholders have also reported cases of complaints filed against police officers seizing and erasing journalistic material or arresting journalists who were reporting on demonstrations and police interventions<sup>159</sup>. The legal safeguards in place are nevertheless robust and the complaints are usually successful in court<sup>160</sup>. The Federal Government is also taking steps to review legislation in order to effectively prosecute and adjudicate instances of hate speech in audio-visual media<sup>161</sup>.

#### **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

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<sup>151</sup> Written contribution from the Civil Liberties Union for Europe in the context of the country visit, p. 60.

<sup>152</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 11.

<sup>153</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 11.

<sup>154</sup> Contribution from CIVICUS for the 2022 Rule of Law Report, p. 18; Contribution from the European Federation of Journalists for the 2022 Rule of Law Report, p. 12.

<sup>155</sup> Council of Europe, Platform to promote the protection of journalism and safety of journalists - Belgium.

<sup>156</sup> Mapping Media Freedom (2021), country profile Belgium.

<sup>157</sup> In early 2019, the Flemish journalists’ union set up the Aggression against Journalists Hotline, a specific reporting point for cases of aggression towards journalists in Flanders, contribution from the European Federation of Journalists for the 2022 Rule of Law Report, p. 13.

<sup>158</sup> In 2021, 19 reports were recorded, increasing to 52 the total number of reports since the establishment of the Reporting Centre in 2019. Contribution from the European Federation of Journalists for the 2022 Rule of Law Report, p. 12; Vlaamse Vereniging van Journalisten (2022), ‘Contact point aggression against journalists: a new state of affairs’, as confirmed by information received from EFJ in the context of the country visit.

<sup>159</sup> Contribution from CIVICUS for the 2022 Rule of Law Report, p. 18; Written contribution from Civil Liberties Union for Europe in the context of the country visit, p. 58.

<sup>160</sup> For example, in December 2021 a Brussel civil court stated that the arrest of two journalists covering a peaceful demonstration was ‘a clear violation of the fundamental right to freedom of expression of journalists’, written contribution from Civil Liberties Union for Europe in the context of the country visit, pp. 58-59. See also <https://journalist.be/2021/01/politie-mag-perscamera-niet-in-beslag-nemen>.

<sup>161</sup> Because of the current wording of Article 150 of the Belgian Constitution, hate speech although in theory punishable, is practically almost never prosecuted, as it requires trial by a jury. The Ministry of Justice expressed the willingness to amend Article 150 Constitution so as to ensure that cases of hate speech, including against journalists, can be brought before criminal courts and effectively prosecuted and adjudicated. A two-thirds majority in the Parliament would be necessary to amend the Constitution, VRT NWS (2021), Minister Van Quickenborne wants to make prosecution for hate speech easier.

can originate from the Government and from Members of both Houses of Parliament<sup>162</sup>. 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 in checks and balances.

**The application of the ‘pandemic law’ has been ‘deactivated’.** In March 2022, the Federal Parliament ended the state of epidemic emergency under the pandemic law<sup>163</sup>. The law provides that the Government can declare the state of epidemic emergency by royal decree, which has to be confirmed by Parliament within 15 days. Under the ‘pandemic law’, emergency measures are adopted by royal decree, except in cases of ‘imminent danger’, in which case measures can be adopted by ministerial decree. While the law provided an increased role for the Parliament in terms of ongoing scrutiny, parliamentary confirmation is required only for the declaration and prolongation of the state of epidemic. The courts also remained active in their scrutiny of COVID-19 related measures throughout 2021 and 2022<sup>164</sup>, and requests for annulment of the ‘pandemic law’ are pending before the Constitutional Court.

**The Federal Human Rights Institute (FIRM/IFDH) has taken an active role during its first year of activity<sup>165</sup>.** In particular, the Institute has issued numerous opinions and made recommendations on important topics subject to societal debate<sup>166</sup>. The strategic plan of the FIRM/IFDH mentions the intention to work towards a possible cooperation agreement extending its competence to non-federal levels, as laid down in the law establishing the FIRM/IFDH<sup>167</sup>. To ensure its effective functioning, further expansion of its activity or mandate, such as a competence to handle individual complaints, would need to be accompanied by matching additional resources. In parallel, the Flemish Government has announced the establishment of a separate Flemish Human Rights Institute<sup>168</sup>, given its withdrawal from the national equality and anti-discrimination institution Unia in 2023<sup>169</sup>. While the objective of establishing an institute aiming to be accredited with A-status by GANHRI<sup>170</sup> can be

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<sup>162</sup> The Senate can only propose legislation in certain fields.

<sup>163</sup> Law on measures of administrative police during an epidemic emergency situation. The law was adopted in July 2021 to provide a new legal basis for pandemic emergency measures.

<sup>164</sup> See for example the judgments of the Supreme Court on the validity of a royal decree providing for special grounds for suspension of the limitation period for criminal proceedings in the context of the pandemic (judgment P.20.1346.N of 13 April 2021) and on measures prohibiting gatherings without reason on public roads in order to limit the spread of COVID-19 (judgments P.21.1129.N of 28 September 2021 and P.21.0931.F of 10 November 2021) decision of the Council of State suspending the closure of the cultural sector (ruling 252.564 of 28 December 2021) and the ruling of the Constitutional Court regarding the Covid Safe Ticket (ruling 10/2022 of 20 January 2022, ECLI:BE:GHCC:2022:ARR.010).

<sup>165</sup> See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 13. The FIRM/IFDH intends to increase its monitoring of the follow-up given to its recommendations in the coming years.

<sup>166</sup> For example, on mandatory vaccination in the context of the COVID-19 pandemic. FIRM/IFDH, Advice 6/2022 of 21 March 2022 on the draft law on mandatory vaccination against COVID-19 of healthcare professionals.

<sup>167</sup> See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 13.

<sup>168</sup> The new institute will have a mandate to protect all human rights within the sphere of Flanders’ competences. Input from Belgium for the 2022 Rule of Law Report.

<sup>169</sup> Input from Belgium for the 2022 Rule of Law Report. The independent national equality and anti-discrimination institution Unia has inter-federal competence and is accredited with B-status by GANHRI.

<sup>170</sup> The Global Alliance of National Human Rights Institutions.

welcomed, some concerns exist regarding potential further fragmentation of the landscape for fundamental rights protection<sup>171</sup>.

**Independent institutions play an important role for safeguarding fundamental rights, and a rationalisation exercise is ongoing to foster their efficient functioning.** A rationalisation exercise is ongoing regarding the administrative functioning of institutions that receive an endowment from Parliament, including the Federal Ombudsman<sup>172</sup>, the FIRM/IFDH, and the High Council for Justice. This initiative, which aims to generate additional funding and efficiency gains, is to be welcomed against a background of independent institutions facing certain challenges as regards the resources at their disposal<sup>173</sup>. The latter is also the case for the Council of State and the Constitutional Court, who continue to play an important role in the system of checks and balances. Certain challenges remain as regards the human and financial resources available to them<sup>174</sup>, even if some improvements were made in recent years.

**On 1 January 2022, Belgium had 21 leading judgments of the European Court of Human Rights pending implementation<sup>175</sup>.** At that time, Belgium's rate of leading judgments from the past 10 years that remained pending was at 49%, and the average time that the judgments had been pending implementation was 3 years and 3 months<sup>176</sup>. The oldest leading judgment, pending implementation for 13 years, concerns the excessive length of civil proceedings at first instance level<sup>177</sup>. On 1 July 2022, the number of leading judgments pending implementation has decreased to 20<sup>178</sup>.

**Initiatives are ongoing to further develop cooperation with the Government, whilst the landscape for civil society organisations has been reported as narrowed.** CIVICUS has downgraded the status of the civil society landscape from open to narrowed<sup>179</sup>, due to limitations imposed and police force used in 2021 relating to the right to protest<sup>180</sup>. As regards cooperation with civil society organisations, the Government involved them in discussions on

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<sup>171</sup> See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, p. 13. FIRM/IFDH frequently cooperates with other relevant bodies for fundamental rights protection, such as Unia or Myria, the Federal Migration Centre.

<sup>172</sup> The independent Federal Ombudsman has issued 16 recommendations in the period of 2020-2021, of which three were addressed to the Parliament and 13 to the federal authorities.

<sup>173</sup> Information received in the context of the country visit to Belgium.

<sup>174</sup> Information received in the context of the country visit to Belgium. See also Constitutional Court, Court of Cassation, and Council of State (2019), Joint Memorandum.

<sup>175</sup> The adoption of necessary execution measures for a judgment by the European Court of Human Rights is supervised by the Committee of Ministers of the Council of Europe. It is the Committee's practice to group cases against a State requiring similar execution measures, particularly general measures, and examine them jointly. The first case in the group is designated as the leading case as regards the supervision of the general measures and repetitive cases within the group can be closed when it is assessed that all possible individual measures needed to provide redress to the applicant have been taken.

<sup>176</sup> All figures are calculated by the European Implementation Network and are based on the number of cases that are considered pending at the annual cut-off date of 1 January 2022. See the contribution from the European Implementation Network for the 2022 Rule of Law Report, p. 28.

<sup>177</sup> Judgment of the European Court of Human Rights of 4 November 2008, *Bell v. Belgium*, 44826/05, pending implementation since 2009. See also above, under I. Justice System.

<sup>178</sup> Data according to the online database of the Council of Europe (HUDOC).

<sup>179</sup> Rating given by CIVICUS; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

<sup>180</sup> Contribution from CIVICUS for the 2022 Rule of Law Report; Information received in the context of the country visit to Belgium corroborates these views.

the future of international development cooperation<sup>181</sup>. For the Brussels-Capital Region, a draft law on the organisational framework of the Economic and Social Council aiming to reinforce the consultation of civil society organisations on future draft legislation was adopted in December 2021. Finally, litigation by civil society organisations led to courts ruling against the State in several high-profile court cases relating to the environment<sup>182</sup>.

**A comprehensive online citizen consultation will feed into the envisaged new State reform<sup>183</sup>.** During a six-week period from 25 April until 5 June 2022, citizens, civil society, academia, and local authorities were consulted on an envisaged State reform<sup>184</sup>. The consultation focused on six thematic topics, including the functioning of the Government and Parliament, the Belgian state structure, and the division of competences between different levels of Government. The results of this consultation will be taken into account in the preparations of a potential new State reform<sup>185</sup>.

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<sup>181</sup> Franet (2022), Country research – Legal environment and space of civil society organisations in supporting fundamental rights – Belgium.

<sup>182</sup> Brussels French-speaking first instance court, judgment of 17 June 2021, and Brussels appeal court, ruling of 14 December 2021. The cases were brought by environmental NGOs against several Belgian governments for failure to meet their climate obligations, including on CO2 reductions. The judgment of 17 June 2021 has been appealed.

<sup>183</sup> See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, pp. 12-13.

<sup>184</sup> See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Belgium, pp. 12-13.

<sup>185</sup> This consultation process is intended to feed into preparations by 2024 of a potential new State reform.

## **Annex I: List of sources in alphabetical order\***

\* *The list of contributions received in the context of the consultation for the 2022 Rule of Law report can be found at [https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation\\_en](https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation_en).*

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## Annex II: Country visit to Belgium

The Commission services held virtual meetings in March, April, and May 2022 with:

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

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

- Amnesty International
- Article 19
- Civil Liberties Union for Europe
- Civil Society Europe
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Free Press Unlimited
- Human Rights Watch
- ILGA Europe
- International Federation for Human Rights (FIDH)
- International Press Institute
- Open Society European Policy Institute ( OSEPI)
- Osservatorio Balcani e Caucaso Transeuropa
- Philea
- Reporters Without Borders
- Transparency International Europe