

2023 Rule of Law Report - targeted stakeholder consultation

Fields marked with * are mandatory.

Introduction

The annual Rule of Law Report lies at the centre of the European rule of law mechanism, which acts as a preventive tool, deepening multilateral dialogue and joint awareness of rule of law issues. So far, three editions of the Rule of Law Report have been published in 2020, 2021 and 2022.

In the preparation of the first three editions of the Rule of Law Report, the Commission has relied on a diversity of relevant sources, including from Member States, country visits, and stakeholders' contributions collected through the targeted stakeholder consultation [1]. The information provided has informed the Commission's country-specific assessments in preparing the Report. Building on the positive experience from the first three editions of the Rule of Law Report, the Commission is now inviting stakeholders to provide written contributions for the preparation of the 2023 Rule of Law Report through this targeted consultation.

The contribution to be provided should include (1) information on measures taken to implement the recommendations addressed to the Member State in the 2022 Rule of Law report, as well as developments with regard to the points raised in the respective country chapter and (2) any other significant developments since January 2022 [2] falling under the 'type of information' outlined in the next section.

The input should be short and concise and summarise information related to one or more of the areas referred to in the template. You are invited to focus on the areas that relate to the scope of work and expertise of your organisation. Existing reports, statements, legislation or other documents may be referenced with a link (no need to provide the full text). Stakeholders are encouraged to make references to any contributions already provided in a different context or to Reports and documents already published. Contributions should focus on significant developments both as regards the legal framework and its implementation in practice.

If you wish to submit information concerning several Member States, you will have to fill-in the questionnaire separately for each Member States (due to the size of the questionnaire). There is no limit to the number of contributions submitted by a single participant. In such cases, you are not required to repeat the information in the section "about you" that is non-mandatory nor the information on horizontal developments.

Please provide your contribution by **20 January 2023**. Should you have any requests for clarifications or encounter difficulties in filling in the questionnaire, you can contact the Commission at the following email

address: rule-of-law-network@ec.europa.eu.

[1] For the consultation for the 2022 Report, see https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation_en

[2] Unless the information was already submitted in the consultation for the previous Rule of Law Reports.

Type of information

The topics are structured according to four pillars: I. Justice system; II. Anti-corruption framework; III. Media pluralism; and IV. Other institutional issues related to checks and balances. The replies could include aspects set out below under each pillar. This can include challenges, current work streams, positive developments and best practices:

Legislative developments

- Newly adopted legislation
- Legislative drafts currently discussed in Parliament
- Legislative plans envisaged by the Government

Policy developments

- Implementation of legislation
- Evaluations, impact assessment, surveys
- White papers/strategies/actions plans/consultation processes
- Follow-up to reports/recommendations of Council of Europe bodies or other international organisations
- Important administrative measures
- Generalised practices

Developments related to the judiciary / independent authorities

- Important case law by national courts
- Important decision/opinions from independent bodies/authorities
- State of play on terms, nominations and expired mandates for high-level positions (e.g. Supreme Court, Constitutional Court, Council for the Judiciary, heads of independent authorities included in the scope of the questionnaire[1])

Any other relevant developments

- Respondents are free to add any further information, which they deem relevant; however, this should be short and to the point.

If there are no changes, it is sufficient to indicate this and the information covered in the contributions for the previous Rule of Law Reports should not be repeated.

[1] Such as: media regulatory authorities and bodies, national human rights institutions, equality bodies, ombudsman institutions, supreme audit institutions and, where they exist, transparency authorities.

About you

* I am giving my contribution as

- ☐ Academic/research institution
- ☐ Business association
- ☐ Civil society organisation/NGO
- ☐ International organisation
- ☐ Judicial association or network
- ☐ Media organisation or association
- ☒ Public authority or network of public authorities
- ☐ Other

* Organisation name

250 character(s) maximum

Federal Institute for the Protection and Promotion of Human Rights (FIRM-IFDH)

Main Areas of Work

- ☒ Justice System
- ☐ Anti-corruption
- ☒ Media Pluralism
- ☒ Other

If "Other", please specify

Human Rights Protection and Promotion

Please insert an URL towards your organisation's main online presence or describe your organisation briefly:

500 character(s) maximum

<https://www.institutfederaldroitshumains.be/en>

Transparency register number

Check if your organisation is in the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making

* Country of origin

Please add the country of origin of your organisation

- ☐ Afghanistan
- ☐ Albania

- ☐ Algeria
- ☐ Andorra
- ☐ Angola
- ☐ Antigua and Barbuda
- ☐ Argentina
- ☐ Armenia
- ☐ Australia
- ☐ Austria
- ☐ Azerbaijan
- ☐ Bahamas
- ☐ Bahrain
- ☐ Bangladesh
- ☐ Barbados
- ☐ Belarus
- ☒ Belgium
- ☐ Belize
- ☐ Benin
- ☐ Bhutan
- ☐ Bolivia
- ☐ Bosnia and Herzegovina
- ☐ Botswana
- ☐ Brazil
- ☐ Brunei Darussalam
- ☐ Bulgaria
- ☐ Burkina Faso
- ☐ Burundi
- ☐ Cabo Verde
- ☐ Cambodia
- ☐ Cameroon
- ☐ Canada
- ☐ Central African Republic
- ☐ Chad
- ☐ Chile
- ☐ China
- ☐ Colombia
- ☐ Comoros
- ☐ Congo
- ☐ Costa Rica
- ☐ Côte D'Ivoire
- ☐ Croatia
- ☐ Cuba
- ☐ Cyprus
- ☐ Czechia
- ☐ Democratic Republic of the Congo
- ☐ Denmark
- ☐ Djibouti
- ☐ Dominica

- ☐ Dominican Republic
- ☐ Ecuador
- ☐ Egypt
- ☐ El Salvador
- ☐ Equatorial Guinea
- ☐ Eritrea
- ☐ Estonia
- ☐ Eswatini
- ☐ Ethiopia
- ☐ Fiji
- ☐ Finland
- ☐ France
- ☐ Gabon
- ☐ Gambia
- ☐ Georgia
- ☐ Germany
- ☐ Ghana
- ☐ Greece
- ☐ Grenada
- ☐ Guatemala
- ☐ Guinea
- ☐ Guinea Bissau
- ☐ Guyana
- ☐ Haiti
- ☐ Honduras
- ☐ Hungary
- ☐ Iceland
- ☐ India
- ☐ Indonesia
- ☐ Iran
- ☐ Iraq
- ☐ Ireland
- ☐ Israel
- ☐ Italy
- ☐ Jamaica
- ☐ Japan
- ☐ Jordan
- ☐ Kazakhstan
- ☐ Kenya
- ☐ Kiribati
- ☐ Kuwait
- ☐ Kyrgyzstan
- ☐ Laos
- ☐ Latvia
- ☐ Lebanon
- ☐ Lesotho
- ☐ Liberia

- ☐ Libya
- ☐ Liechtenstein
- ☐ Lithuania
- ☐ Luxembourg
- ☐ Madagascar
- ☐ Malawi
- ☐ Malaysia
- ☐ Maldives
- ☐ Mali
- ☐ Malta
- ☐ Marshall Islands
- ☐ Mauritania
- ☐ Mauritius
- ☐ Mexico
- ☐ Micronesia
- ☐ Monaco
- ☐ Mongolia
- ☐ Montenegro
- ☐ Morocco
- ☐ Mozambique
- ☐ Myanmar
- ☐ Namibia
- ☐ Nauru
- ☐ Nepal
- ☐ Netherlands
- ☐ New Zealand
- ☐ Nicaragua
- ☐ Niger
- ☐ Nigeria
- ☐ North Korea
- ☐ North Macedonia
- ☐ Norway
- ☐ Oman
- ☐ Pakistan
- ☐ Palau
- ☐ Panama
- ☐ Papua New Guinea
- ☐ Paraguay
- ☐ Peru
- ☐ Philippines
- ☐ Poland
- ☐ Portugal
- ☐ Qatar
- ☐ Republic of Moldova
- ☐ Romania
- ☐ Russian Federation
- ☐ Rwanda

- ☐ Saint Kitts and Nevis
- ☐ Saint Lucia
- ☐ Saint Vincent and the Grenadines
- ☐ Samoa
- ☐ San Marino
- ☐ Sao Tome and Principe
- ☐ Saudi Arabia
- ☐ Senegal
- ☐ Serbia
- ☐ Seychelles
- ☐ Sierra Leone
- ☐ Singapore
- ☐ Slovakia
- ☐ Slovenia
- ☐ Solomon Islands
- ☐ Somalia
- ☐ South Africa
- ☐ South Korea
- ☐ South Sudan
- ☐ Spain
- ☐ Sri Lanka
- ☐ Sudan
- ☐ Suriname
- ☐ Sweden
- ☐ Switzerland
- ☐ Syrian Arab Republic
- ☐ Tajikistan
- ☐ Tanzania
- ☐ Thailand
- ☐ Timor-Leste
- ☐ Togo
- ☐ Tonga
- ☐ Trinidad and Tobago
- ☐ Tunisia
- ☐ Turkey
- ☐ Turkmenistan
- ☐ Tuvalu
- ☐ Uganda
- ☐ Ukraine
- ☐ United Arab Emirates
- ☐ United Kingdom
- ☐ United States of America
- ☐ Uruguay
- ☐ Uzbekistan
- ☐ Vanuatu
- ☐ Venezuela
- ☐ Viet Nam

- ☐ Yemen
- ☐ Zambia
- ☐ Zimbabwe

First name

Surname

Email Address of the organisation (this information will not be published)

* Publication of your contribution and privacy settings

You can choose whether you wish for your contribution to be published and whether you wish your details to be made public or to remain anonymous.

- ☐ Anonymous - Only your type of respondent, country of origin and contribution will be published. Organisation name, URL, transparency register number, first name and surname given above will not be published. **To maintain anonymity, please refrain from mentioning the name of your organisation and any details from which your organisation can be identified in the rest of your contribution.**
- ☒ Public - Your personal details (name, organisation name, transparency register number, country of origin) will be published with your contribution).
- ☐ No publication - Your contribution will not be published. Elements of your contribution may be referred to anonymously in documents produced by the Commission based on this consultation.

☒ I agree with the personal data protection provisions.

[Specific privacy statement targeted stakeholder consultation 2023 rule of law report.pdf](#)

Questions on horizontal developments

In this section, you are invited to provide information on general horizontal developments or trends, both positive and negative, covering all or several Member States. In particular, you could mention issues that are common to several Member States, as well as best practices identified in one Member State that could be replicated. Moreover, you could refer to your activities in the area of the four pillars and sub-topics (an overview of all sub-topics can be found below), and, if you represent a Network of national organisations, to the support you might have provided to one of your national members.

Overview topics for contribution

[list of topics 2023 Report.pdf](#)

Please provide any relevant information on horizontal developments here

5000 character(s) maximum

The Institute for the Protection and Promotion of Human Rights (FIRM-IFDH) was created by the law of 12 May 2019 to provide Belgium with a national human rights institution (NHRI). FIRM-IFDH is currently coordinating a report on the state of the rule of law in Belgium, which will be co-authored by a number of independent institutional actors active in the protection of human rights and the strengthening of the rule of law (Unia, the Interfederal Centre for Equal Opportunities; Myria, the Federal Migration Centre; the Combat Poverty Service; the Central Monitoring Council for Prisons). As last year, this report will be sent to ENNHRI, the European Network of NHRIs, before being sent to the European Commission. The 2023 report will focus on the problem of non-implementation of judgments by the Belgian authorities, the regulation of artificial intelligence, and the protection of civic space in Belgium. Some other elements, in particular an evaluation of the recommendations made by the Commission in 2022 and a few more relevant issues for the rule of law in Belgium, will also be included.

In this context and in order to avoid repeating the same information twice, we have chosen to add to this targeted stakeholder consultation only elements that will not be the subject of that report and on which we have worked during the year 2022. This information should therefore be read in conjunction with our report, which ENNHRI will send you in the coming months.

Questions for contribution

The following four pillars (I.-IV.) are sub-divided into topics (A., B., etc.) and sub-topics (1., 2., 3., etc.). For each of the topics and sub-topics, you are invited to provide (1) information on measures taken to implement the recommendations addressed to the Member States in the 2022 Rule of Law report, as well as developments with regard to the points raised in the respective country chapter of the 2022 Rule of Law Report and (2) any other significant developments since January 2022^[1]. Please include a link to and reference relevant legislation/documents (in the national language and/or where available, in English) if relevant. Significant developments can include challenges, positive developments and best practices, covering both legislative developments or implementation and practices.

If there are developments you consider relevant under each of the four pillars that are not mentioned in the sub-topics, please add them under the section "other - please specify". Only significant developments should be covered.

Information provided in reply to the first question under each pillar, related to the follow-up to the recommendations, does not need to be repeated in subsequent parts of the questionnaire, but can be cross-referenced in the subsequent questions, where relevant. All other questions are not limited to the recommendations, but as in previous years, cover the entire scope of the Report.

[1] Unless already covered in the input for the previous Rule of Law Reports.

Member State covered in contribution [only one choice possible]

If you wish to submit information concerning several Member States, please fill in the questionnaire separately for each Member State. There is no limit to the number of contributions submitted by a single participant.

- ☐ Austria
- ☒ Belgium
- ☐ Bulgaria

- ☐ Croatia
- ☐ Cyprus
- ☐ Czechia
- ☐ Denmark
- ☐ Estonia
- ☐ Finland
- ☐ France
- ☐ Germany
- ☐ Greece
- ☐ Hungary
- ☐ Ireland
- ☐ Italy
- ☐ Latvia
- ☐ Lithuania
- ☐ Luxembourg
- ☐ Malta
- ☐ Netherlands
- ☐ Poland
- ☐ Portugal
- ☐ Romania
- ☐ Slovak Republic
- ☐ Slovenia
- ☐ Spain
- ☐ Sweden

I. Justice System

Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the justice system (if applicable)

3000 character(s) maximum

In 2022, the Commission has recommended that Belgium should “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.”.

This recommendation refers to a recurring problem in Belgium: the underfunding of the justice system. This problem remains relevant in 2022. FIRM-IFDH has addressed this issue in a submission to the Council of Europe Department for the Execution of Judgments of the European Court of Human Rights concerning the follow-up of the *Bell v. Belgium* group of cases. In this context, FIRM-IFDH has welcomed the intent of the State to increase the financing of the justice system. It has however expressed concerns over the conditionality to performance requirements associated with the allocation of the additional resources.

The Minister of Justice has announced that the additional resources planned by this legislature to strengthen the judiciary, amounting to 300 million € per year (including 50 million for digitalization), will be linked to measurable objectives. The minister also stated that “[a]dditional resources will be made available when entities present clear objectives or precise and measurable projects that are part of the quest for a swift, human and firm justice. This is an obligation of result: if the expected results are not achieved, this will be taken into account in the subsequent allocation of resources”. Furthermore, on 16 June 2021, a “Cooperation Protocol for a better financed and organised justice system on the way to management autonomy” was concluded between the Minister of Justice and the College of Courts and Tribunals in the context of the allocation of the announced additional resources reinforcing the justice system. The protocol links objectives (for the organization as a whole) to the allocated resources.

The vague nature of this ‘carrot and stick’ approach regarding the additional financial means for the justice system is a cause for concern. It raises a number of questions, including how results will be measured and who will assess whether targets were reached, which could infringe upon the quality of the work of the judiciary and, in principle, also upon the independence of the judiciary vis-à-vis the executive. It should also be noted that the citizen (who rarely has a choice of judge) will be the first to bear the consequences of an entity underfinanced for not meeting the abovementioned ‘targets’.. The Commission should urge the Belgian State to ensure that the conditionality attached to additional resources does not have the unwarranted effect of threatening the quality of the work of the judiciary as well as the independence of the judiciary, nor citizens’ effective access to justice . Furthermore, the conditionality should avoid leading to sanction understaffed and underfunded courts and tribunals if they fail to meet the objectives due to lack of resources.

A. Independence

Appointment and selection of judges, prosecutors and court presidents (incl. judicial review)

(The reference to ‘judges’ concerns judges at all level and types of courts as well as judges at constitutional courts)

3000 character(s) maximum

Irremovability of judges, including transfers, (incl. as part of judicial map reform), dismissal and retirement regime of judges, court presidents and prosecutors (incl. judicial review)

3000 character(s) maximum

Promotion of judges and prosecutors (incl. judicial review)

3000 character(s) maximum

Allocation of cases in courts

3000 character(s) maximum

See the above and under points on judicial backlogs in the Belgian courts system.

Independence (including composition and nomination and dismissal of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

3000 character(s) maximum

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal/civil (where applicable) liability of judges (incl. judicial review)

3000 character(s) maximum

Remuneration/bonuses/rewards for judges and prosecutors, including observed changes (significant and targeted increase or decrease over the past year), transparency on the system and access to the information

3000 character(s) maximum

Independence/autonomy of the prosecution service

3000 character(s) maximum

Independence of the Bar (chamber/association of lawyers) and of lawyers

3000 character(s) maximum

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

3000 character(s) maximum

B. Quality of justice

(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under section 2)

Accessibility of courts (e.g. court/legal fees, legal aid, language)

3000 character(s) maximum

Resources of the judiciary (human/financial/material)

(Material resources refer e.g. to court buildings and other facilities)

3000 character(s) maximum

Belgium has a significant backlog of cases, which has already led to several condemnations by the European Court of Human Rights for repeated violations of the right to a trial within a reasonable time. Abnormally long proceedings are not present in all courts or in the whole of Belgium. They particularly affect certain courts or tribunals within certain judicial districts. Some jurisdictions of Belgium's two largest cities, Brussels and Antwerp, for example, have the largest backlogs. One of the measures to combat this backlog is to strengthen the autonomous management of courts and tribunals.

FIRM-IFDH notes that the autonomous management of the courts and tribunals, as foreseen in the Act of 18 February 2014, has not been implemented as of yet. This Act purports to give the judiciary more autonomy on how it uses and prioritize its resources, while limiting the powers of the executive branch on the issue.

As the implementation of the self-management of courts and tribunals cannot be separated from the issue of (additional) resources (inter alia, as self-management would imply the use of the new allocation model, see hereunder), it is important that continuous progress is made in this respect. The Belgian State should therefore be encouraged to give full effect to the Act of 18 February 2014 on autonomous management for the judiciary. In doing so, the Belgian State should monitor from the outset the effects of implementation on the right of individuals to access to justice, including their right to a trial within a reasonable time, and on the reduction of the judicial backlog.

Training of justice professionals (including judges, prosecutors, lawyers, court staff)

3000 character(s) maximum

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)

3000 character(s) maximum

1. Good practice : Digital helpdesks

Digitalization can sometimes improve the efficiency of the justice system, but it can also leave out people who are less familiar with or who have less access to technology. In this respect, the creation by the State of digital helpdesks in courts and tribunals to assist those persons is a positive step.

However, little information is currently available regarding the timing for the creation of these helpdesks as well as their number, localization and the human resources allocated to the assistance of citizens in order to ensure that digitalization and assistance go hand in hand. In order to ensure that efficiency gains expected from digitalization are not made at the expense of individuals who are less familiar with or who have less access to technology.

FIRM-IFDH recommends that the Commission request the State to provide more details on its plan to assist persons adversely impacted by digitalization.

2. Remote hearings

A recent draft law aims to create a general legal framework for the use of remote hearings in civil and criminal matters. The draft law sets out the circumstances in which videoconferencing may be used, and establishes as a general principle the consent of the parties, with certain exceptions also legally defined. The draft also defines the modalities of appeal against such decisions.

FIRM-IFDH welcomes the intention expressed by the legislator to implement videoconferencing in courts and tribunals in a manner that respects the requirements of due process. The draft law refers to case law of the Constitutional Court and the European Court of Human Rights, as well as to the guidelines on videoconferencing in judicial proceedings of the European Commission for the Efficiency of Justice. The use of videoconferencing must always serve a legitimate aim and its implementation must be compatible with respect for the rights of the parties, particularly the right to a fair trial. FIRM-IFDH is currently working on an advisory opinion regarding the draft law on videoconferencing, which will include several recommendations aimed at providing a stronger human rights framework for videoconferencing. The advisory opinion will be published in February 2023.

Use of assessment tools and standards (e.g. ICT systems for case management, court statistics and their transparency, monitoring, evaluation, surveys among court users or legal professionals)

3000 character(s) maximum

As part of its reform of the judicial system to tackle the backlog of cases, the Belgian State has announced the further development of an internal resource allocation model - known as IAMAI. This is dynamic system of allocating resources based on a workload measurement, which will be set up in the framework of the autonomous management (see above). The further development of the IAMAI allocation model should be encouraged.

The implementation of this allocation model would imply the end of the current personnel framework system. These personnel frameworks legally define the number of staff members – magistrates and other personnel – available to the courts and tribunals. In practice, however, these frameworks have not been fully implemented in all entities, among other reasons, due to budget cuts made by successive governments. In anticipation of the implementation of the allocation model, a law has been adopted in December 2022 to ensure greater flexibility in the existing frameworks. On the basis of this law, the Minister of Justice will be able to modify, subject to the assent of the College of Courts and Tribunals, the distribution of the personnel frameworks (magistrates, clerks, judicial staff) between the different judicial entities, as established by the law, without exceeding the national total and without any overall budgetary impact.

In any event, it would appear that aside from a redefinition of the needs of the different entities or any flexibility arrangement, it is important that the current personnel frameworks are filled and that vacancies are published in a timely manner, with a sufficient number of candidates applying. In May 2022, the College of Courts and Tribunals criticised the limited budget for new vacancies. Subsequently, the College of Courts and Tribunals stated that discussions with the Minister of Justice had resulted in the budget for vacancies

that were published in December but not yet filled, being made available again to the Courts and Tribunals on an accelerated basis. This shows that the filling of the current framework in practice has been shown to be far from self-evident.

FIRM-IFDH therefore suggests that in anticipation of the implementation of the IMAI allocation model, the Belgian state should already commit itself to respecting the existing personnel framework, by publishing all the relevant vacancies, as well as increase the framework, even if only temporarily. It should also provide sufficient budget to recruit all magistrates and personnel provided for in the framework.

Geographical distribution and number of courts/jurisdictions (“judicial map”) and their specialization, in particular specific courts or chambers within courts to deal with fraud and corruption cases

3000 character(s) maximum

C. Efficiency of the justice system

(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under section

2)

Length of proceedings

3000 character(s) maximum

In Belgium, there is a lack of adequate statistical data on the “disposition time” in civil proceedings, especially in first instance. The “disposition time” refers to “the estimated minimum time that a court would need to resolve a case while maintaining the current working conditions”. It provides information concerning the average length of the proceedings.

FIRM-IFDH has taken note of the efforts of the State to produce statistics on the “disposition time” of Belgian courts and tribunals. The data remains unavailable at present. FIRM-IFDH recommends that the Commission requests data on disposition time. The data should account for the disparities between judicial districts and include all Belgian judicial jurisdictions.

There is also a lack of adequate statistical data on the redress procedure to complain about excessive length of proceedings. This procedure enables a litigant to claim compensation when he or she has experienced a judicial procedure that exceeds a reasonable time. Redress procedures to complain about the excessive length of judicial proceedings should be treated with special diligence by the authorities as, by definition, they follow an already long previous procedure. For these reasons, FIRM-IFDH considers it necessary for the Belgian State to provide statistical data on the domestic redress procedure to complain about the excessive length of judicial proceedings.

Other - please specify

3000 character(s) maximum

FIRM-IFDH has published an evaluation of the penal transaction mechanism and formulated recommendations to improve it.

The penal transaction is a plea bargain system that allows, in certain cases, the perpetrator of an offence not to be tried by a court in exchange for the payment of a certain sum of money. FIRM-IFDH notes that some

penal transactions are not subject to judicial review. However, the intervention of a judge is important to guarantee the right to a fair trial. This is particularly the case for vulnerable persons who are not always in a position to freely agree to a settlement.

FIRM-IFDH also notes that the recent development of the so-called mechanism of 'immediate penal transaction' increases the risk of human rights violations. This type of transaction is proposed by the police without the intervention of a judge. Initially, this procedure was set up for covid-19 related offences, such as not wearing a mask in public transport. It has since been extended to other offences, such as bicycle theft and drug possession. Individuals are presented with a choice ; accept the payment of a fine up to €400 or risk a court case that could result in a prison sentence. FIRM-IFDH considers that the choice presented to the litigant is in fact a forced one. Given the vast disproportionality of the alternative, consent to the transaction cannot be considered as freely given with sufficient knowledge of the legal consequences.

FIRM-IFDH has also stressed that this mechanism turns police officers in de facto judges, which raises questions about the principle of the separation of powers.

FIRM-IFDH recommended to the Minister of Justice :

- the abolition of the immediate penal transaction mechanism ;
- the introduction of a judicial review for all penal transactions (with the possible exception of purely regulatory traffic offences)
- the verification, by this judicial review mechanism of the vulnerability of the persons who consent to the transaction;
- the allocation of sufficient resources for courts and tribunals to guarantee the effectiveness of judicial review.

II. Anti-Corruption Framework

Where previous specific reports, published in the framework of the review under the UN Convention against Corruption, of GRECO, and of the OECD address the issues below, please make a reference to the points you wish to bring to the Commission's attention in these documents, indicating any relevant updates, changes or measures introduced that have occurred since these documents were published.

Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the anti-corruption framework (if applicable)

3000 character(s) maximum

A. The institutional framework capacity to fight against corruption (prevention and investigation / prosecution)

List any changes as regards relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption and the resources allocated to each of these authorities (the human, financial, legal, and technical resources as relevant), including the cooperation among domestic authorities. Indicate any relevant measure taken to effectively and timely cooperate with OLAF and EPPO (where applicable)

3000 character(s) maximum

Safeguards for the functional independence of the authorities tasked with the prevention and detection of corruption

3000 character(s) maximum

Information on the implementation of measures foreseen in the strategic anti-corruption framework (if applicable). If available, please provide relevant objectives and indicators

3000 character(s) maximum

B. Prevention

Measures to enhance integrity in the public sector and their application (including as regards incompatibility rules, revolving doors, codes of conduct, ethics training). Please provide figures on their application

3000 character(s) maximum

General transparency of public decision-making, including rules on lobbying and their enforcement, asset disclosure rules and enforcement, gifts policy, transparency of political party financing

3000 character(s) maximum

Rules and measures to prevent conflict of interests in the public sector. Please specify the scope of their application (e.g. categories of officials concerned)

3000 character(s) maximum

Measures in place to ensure whistleblower protection and encourage reporting of corruption.

3000 character(s) maximum

The federal State has adopted two laws to transpose Directive 2019/1937 into national law in 2022, namely the law of 24 November 2022 (for the private sector) and the law of 8 December 2022 (for the public sector). However, the transposition by the Belgian authorities is not yet fully complete, as the Brussels-Capital Region, the French-speaking Community in Brussels (COCOF) and the Bilingual Community in Brussels (COCON) have not yet adopted legislative acts transposing the Directive into their own legislation. However, a joint draft decree and ordinance (for the Brussels Region, COCOF and COCON) is currently under consideration in the respective parliaments.

At the federal level, the legislator opted for a relatively broad protection of the Directive, covering EU law as well as many areas of national law. The scope of application at the federal level is significantly broader

compared to the Directive. For example, the same regime applies to the police force and the army. The protection and support regime is largely entrusted to two independent human rights institutions:

- The Federal Ombudsman is the main external channel for the public sector and, in the absence of a more specific external channel, for the private sector. In addition, he acts as the coordinating authority for the external channels for the private sector. He plays a key role in the implementation of protection against reprisals.
- FIRM-IFDH has four specific competences in relation to whistleblowers: (1) it is responsible for legal, financial, psychological, technical, media and social support measures, in parallel with the internal and external channels; (2) it has a general mission to provide information on the protection of whistleblowers to all interested persons; (3) it has to promote a whistleblower-friendly culture in Belgium; and (4) biennially, it has to evaluate the functioning of the regime implemented by the Belgian authorities.

List the sectors with high-risks of corruption in your Member State and list the relevant measures taken /envisaged for monitoring and preventing corruption and conflict of interest in these sectors (e.g. public procurement, healthcare, citizen investor schemes, risk or cases of corruption linked to the disbursement of EU funds, other), and, where applicable, list measures to prevent and address corruption committed by organised crime groups (e.g. to infiltrate the public sector)

3000 character(s) maximum

Any other relevant measures to prevent corruption in public and private sector

3000 character(s) maximum

C. Repressive measures

Criminalisation, including the level of sanctions available by law, of corruption and related offences, including foreign bribery

3000 character(s) maximum

Data on investigation and application of sanctions for corruption offences, including for legal persons and high level and complex corruption cases and their transparency, including as regards to the implementation of EU funds

(Please include, if available the number of (data since 2019): indictments; first instance convictions; first instance acquittals; final convictions; final acquittals; other outcomes (final) (i.e. excluding convictions and acquittals); cases adjudicated (final); imprisonment / custodial sentences through final convictions; suspended custodial sentences through final convictions; pending cases at the end of the reference year)

3000 character(s) maximum

Potential obstacles to investigation and prosecution as well as to the effectiveness of criminal sanctions of high-level and complex corruption cases (e.g. political immunity regulation, procedural rules, statute of limitations, cross-border cooperation, pardoning)

3000 character(s) maximum

Information on effectiveness of non-criminal measures and of sanctions (e.g. recovery measures and administrative sanctions) on both public and private offenders

3000 character(s) maximum

Other - please specify

3000 character(s) maximum

III. Media Freedom and Pluralism

Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding media freedom and pluralism (if applicable)

3000 character(s) maximum

A. Media authorities and bodies

(Cf. Article 30 of Directive 2018/1808)

Measures taken to ensure the independence, enforcement powers and adequacy of resources (financial, human and technical) of media regulatory authorities and bodies

3000 character(s) maximum

Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media regulatory authorities and bodies

3000 character(s) maximum

Existence and functions of media councils or other self-regulatory bodies

3000 character(s) maximum

B. Safeguards against government or political interference and transparency and concentration of media ownership

Measures taken to ensure the fair and transparent allocation of state advertising (including any rules regulating the matter)

3000 character(s) maximum

Safeguards against state / political interference, in particular:

- safeguards to ensure editorial independence of media (private and public)
- specific safeguards for the independence of heads of management and members of the governing boards of public service media (e.g. related to appointment, dismissal), safeguards for their operational independence (e.g. related to reporting obligations and the allocation of resources) and safeguards for plurality of information and opinions
- information on specific legal provisions and procedures applying to media service providers, including as regards granting/renewal/termination of licenses, company operation, capital entry requirements, concentration and corporate governance

3000 character(s) maximum

Transparency of media ownership and public availability of media ownership information, including on direct, indirect and beneficial owners, as well as any rules regulating the matter

C. Framework for journalists' protection, transparency and access to documents

Rules and practices guaranteeing journalist's independence and safety, including as regards protection of journalistic sources and communications

3000 character(s) maximum

Increased violence in Belgium against journalists is highlighted in surveys, studies and parliamentary discussions. Whereas women only represent 31% of journalists, more female than male journalists face remarks, insults, slander, intimidation and threats. Concerns arise over increasing online intimidation against female journalists, especially those of colour. This often leads to self-censoring and some women need therapy, feel obligated to use a pseudonym, or leave the profession.

Journalists are currently not included in the Criminal Code among those professionals performing a social function – e.g. medical professionals, police officers – against whom violence may lead to harsher sentences. As the government is in the process of reforming the Criminal Code, calls have been made during parliamentary debates to add journalists to that list of professions. Because there is no specific qualification of facts for violence against journalists within the police nomenclature, the General National Database does not include information on the number of complaints registered.

In March 2019, the Flemish Journalists' Association (VVJ) created a hotline for violence against journalists in Flanders. In French-speaking Belgium, the Association des journalistes professionnels (AJP) helps female journalists who fell victim to online harassment to seek justice. Both also raise awareness and provide information on ways to tackle online intimidation. Furthermore, the 2021-2025 National Action Plan against Gender Violence identifies female journalists as particularly vulnerable to cyberviolence, but does not include specific measures.

In its 2022 parallel report to the UN Committee on the Elimination of Discrimination against Women, FIRM-IFDH, the Combat Poverty, Insecurity and Social Exclusion Service made two recommendations to improve journalists' safety :

- 1) adopt measures to facilitate data collection on the number of complaints regarding violence against journalists in the police's General National Database ;
- 2) include specific measures to fight all types of on- and offline violence against female journalists in national action plans, paying special attention to intersectional vulnerabilities.

In addition, Belgium's transposition of the GDPR regarding the processing of personal data for journalistic purposes (art. 85 GDPR) was criticised recently. Belgium opted for a strict definition of the notion of journalist, which is now contrary to the case law of the European Court of Justice (see Buivids judgment, C-345/17). Under Belgian law, only persons who are subject to "journalistic ethics" (déontologie/deontologische regels) are able to invoke the exemptions provided for journalists by the GDPR. However, a recent law proposal (DOC 55 2694/001) seeks to amend the 2018 Belgian Data Protection law, bringing it in line with European case law.

Law enforcement capacity, including during protests and demonstrations, to ensure journalists' safety and to investigate attacks on journalists

3000 character(s) maximum

Access to information and public documents (incl. transparency authorities where they exist, procedures, costs/fees, timeframes, administrative/judicial review of decisions, execution of decisions by public authorities, possible obstacles related to the classification of information)

3000 character(s) maximum

In the course of 2022, FIRM-IFDH published several advisory opinions calling for a reform of the legal regimes for access to public information and documents. At present, the publicity of administrative documents requires a relatively complex procedure, placing little emphasis on the proactivity of administrations (principle of active publicity by the administration) to render documents more easily accessible . Several legislative proposals were introduced on this issue in 2021 and 2022. The Minister of the Interior and Institutional Reforms has consulted FIRM-IFDH on a reform proposal, which FIRM-IFDH generally supported while underlining that some proposals should go further to strengthen the right to information.

At present, three different publicity regimes co-exist at federal level, and a simplification would be appropriate. FIRM-IFDH considers it necessary to simplify these different federal regimes on publicity of the administration, by adopting one joint appeal procedure for all in a clear and easily accessible legislative text.

FIRM-IFDH also recommends merging and reforming the two appeal bodies that exist to challenge refusal of access to documents by a federal authority, namely the Commission d'accès et de réutilisation des documents administratifs (CADA) and the Commission fédérale de recours pour le droit d'accès à

l'information en matière environnementale. Such a unified Commission - or, failing that, the CADA - must also be reformed in several important ways :

- it should be given decision-making powers, on top of its current advisory powers, on access to administrative documents;
- its resources should be increased;
- its decisions should be systematically published and its independence guaranteed by law;
- there should be a legal obligation to either consult or inform the Commission of any draft legislative amendment relating to the publicity of the administration.

Furthermore, the procedures for effective access to documents are relatively long in Belgium. This is particularly detrimental to journalists, among others. It would be advisable to put in place an emergency procedure, allowing a decision to be obtained within a shorter period of time if the circumstances justify it.

Finally, FIRM-IFDH recommends that Belgium fully ratifies the Tromsø Convention, to which the federal government committed itself in 2021 . These and other recommendations are included in two opinions on this topic published by FIRM-IFDH last year: <https://www.institutfederaldroitshumains.be/fr/publications/renforcement-de-la-publicite-de-ladministration-federale> and <https://www.institutfederaldroitshumains.be/fr/publications/propositions-de-loi-relatives-a-la-publicite-de-ladministration>

Lawsuits (incl. SLAPPs - strategic lawsuits against public participation) and convictions against journalists (incl. defamation cases) and measures taken to safeguard against manifestly unfounded and abusive lawsuits

3000 character(s) maximum

The protection of civic space, including from SLAPPs directed at human rights defenders and journalists, is one of the topics highlighted in the forthcoming ENNHRI report on Belgium.

Other - please specify

3000 character(s) maximum

In order to establish instances of (alleged) illegitimate police violence, video footage produced by the victim or by bystanders can be crucial evidence. While Belgian legislation does not prohibit the filming of police officers if this is done in the public interest, a number of incidents have been reported pertaining to citizens – and even journalists – exercising their freedom of expression by filming police officers. A notable case is the one of Ibrahima Barrie, a twenty-three-year-old man who died in police custody after having been arrested for what bystanders said was his attempt to film police officers who were conducting Covid-related checks. In another incident, police seized camera equipment and erased footage of journalists, who had explicitly identified themselves as such. The police officers were later convicted of theft. In the context of this event, the Flemish Journalists' Association (VVJ) stated that , as a general rule, it is not forbidden to film the police during their work, and that the seizure of camera equipment and the erasure of footage by police is not allowed.

Many prominent human rights organisations in Belgium – including the French and Dutch-speaking Leagues of Human Rights and Amnesty International – assert that the exercise of the right to film police officers, as part of the right to freedom of expression, is a fundamental safeguard against illegitimate violence by police officers. In practice, however, this right is often disregarded and the exercise thereof prevented, especially when citizens are forced to hand over their phones or other devices to the police.

In its 2021 Report to the UN Committee against Torture, FIRM-IFDH recommended the adoption of a clearer entrenchment in the law of the right to film police officers during their work, as part of the right to freedom of

expression. This initiative would provide a stronger guarantee of this right and, with it, a stronger safeguard against illegitimate violence by police officers.

IV. Other institutional issues related to checks and balances

Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the system of checks and balances (if applicable)

3000 character(s) maximum

A. The process for preparing and enacting laws

Framework, policy and use of impact assessments and evidence based policy-making, stakeholders'[1] /public consultations (particularly consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process

[1] *This includes also the consultation of social partners*

3000 character(s) maximum

Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

3000 character(s) maximum

Regime for constitutional review of laws

3000 character(s) maximum

COVID-19: provide update on significant developments with regard to emergency regimes/measures in the context of the COVID-19 pandemic

- judicial review (including constitutional review) of emergency regimes and measures in the context of COVID-19 pandemic
- oversight (incl. ex-post reporting/investigation) by Parliament of emergency regimes and measures in the context of COVID-19 pandemic
- processes related to lessons learned/crisis preparedness in terms of the functioning of checks and balances

3000 character(s) maximum

B. Independent authorities

Independence, resources, capacity and powers of national human rights institutions ('NHRIs'), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions

(Cf. the website of the European Court of Auditors: <https://www.eca.europa.eu/en/Pages/SupremeAuditInstitutions.aspx#>)

3000 character(s) maximum

The functioning on independent authorities and the enabling space in Belgium, is one of the topics highlighted in the forthcoming ENNHRI report on Belgium.

Statistics/reports concerning the follow-up of recommendations by National Human Rights Institutions, ombudsman institutions, equality bodies and supreme audit institutions in the past two years

3000 character(s) maximum

The functioning on independent authorities and the enabling space in Belgium, is one of the topics highlighted in the forthcoming ENNHRI report on Belgium.

C. Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data)

3000 character(s) maximum

Judicial review of administrative decisions:

- short description of the general regime (in particular competent court, scope, suspensive effect, interim measures, and any applicable specific rules or derogations from the general regime of judicial review)

3000 character(s) maximum

Follow-up by the public administration and State institutions to final (national/supranational) court decisions, as well as available remedies in case of non-implementation

3000 character(s) maximum

The non-implementation of European courts' judgments is one of the topics highlighted in the forthcoming ENNHRI report on Belgium.

D. The enabling framework for civil society

Measures regarding the framework for civil society organisations and human rights defenders (e.g. legal framework and its application in practice incl. registration and dissolution rules)

3000 character(s) maximum

The protection of civic space, including the protection of human rights defenders, is one of the topics highlighted in the forthcoming ENNHRI report on Belgium.

Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures for protection from attacks – verbal, physical or on-line –, intimidation, legal threats incl. SLAPPs, negative narratives or smear campaigns, measures capable of affecting the public perception of civil society organisations, etc. It also includes measures to monitor threats or attacks and dedicated support services.

3000 character(s) maximum

The protection of civic space, including the protection of human rights defenders, monitoring of threats and attacks against them and SLAPPs, is one of the topics highlighted in the forthcoming ENNHRI report on Belgium.

Organisation of financial support for civil society organisations and human rights defenders (e.g. framework to ensure access to funding, and for financial viability, taxation/incentive/donation systems, measures to ensure a fair distribution of funding)

3000 character(s) maximum

Rules and practices on the participation of civil society organisations and human rights defenders to the decision-making process (e.g. measures related to dialogue between authorities and civil society, participation of civil society in policy development and decision-making, consultation, dialogues, etc.)

3000 character(s) maximum

E. Initiatives to foster a rule of law culture

Measures to foster a rule of law culture (e.g. debates in national parliaments on the rule of law, public information campaigns on rule of law issues, contributions from civil society etc.)

3000 character(s) maximum

Other - please specify

3000 character(s) maximum

Contact

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