

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

The Irish Environmental Network, IEN - perspective from the Environmental Law Officer of the IEN

Main Areas of Work

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

If "Other", please specify

Environmental Law

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

500 character(s) maximum

<https://ien.ie/> The Irish Environmental Network is the coalition of national environmental NGOs (eNGOs) in Ireland, with 34 member groups.

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

Attracta

Surname

Uí Bhroin

Email Address of the organisation (this information will not be published)

[REDACTED]

* 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

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

The Judicial Appointments Commission Bill 2022 is still not enacted.s.9 of the bill still provides for a Judicial Appointments Commission, JAC with 4 members from the Judiciary,4 lay members & the Attorney General (AG). While s.9(3) provides the AG has no vote they will be party to discussions. s.13 on the selection of the lay members allows for significant discretion on criteria & significant involvement of the Public Appointments Service.The Commission for Public Service Appointments has a significant political & Departmental composition: <https://www.cpsa.ie/the-commission/who-we-are/> .The Minister can bypass the process & limited safeguards in s.13 for one of the lay appointments if it is made before the "establishment day". s.13(7-9) refers.

Litigation Costs: Changes outlined by Gov in Dec 2022 to be enacted in early 2023 on costs in environmental cases are gravely concerning. They appear to considerably worsen the current regime implemented to comply with a range of EU law requirements & the Aarhus Convention to provide for access to justice in environmental cases & to uphold EU law rights in the face of the extraordinarily high litigation costs in Ireland. Concerns noted by the Commission again in the 2022 Environmental Implementation Report, EIR pg no 41 stated: "Own costs in complex cases are not unknown to exceed EUR 500 000 Euros228. The Commission remains concerned about the high costs of environmental litigation and the lack of clarity as to what costs environmental litigants are likely to face from the outset. The Commission has opened an infringement procedure on this matter and addressed a letter of formal notice to Ireland under Article 258 of the Treaty on the Functioning of the European Union. For several years, Ireland has promised to clarify the rules on costs for access to justice through a consolidating Aarhus Bill, but this has not yet materialized. Instead, recent national court judgments have created confusion about what costs fall under the cost protection rule."

In Nov 2022, the Supreme Court ruling in Heather Hill,[2022] IESC 43, provided clarity & a positive interpretation on costs in planning. Then Government immediately moved to change the law & introduce a new regime with litigants exposed to costs & a totally uncertain prospect of what aid they may be able to avail of after the proceedings. This puts Ireland back to a similar situation which the CJEU found unacceptable in c-423/07 the original Irish costs case, where having to rely on the discretion of the Court to award costs was considered too chilling & non-compliant,para 93-94 refers. The particulars are entirely opaque but will involve the Dept for Public Expenditure also. The proposals also risk making it unsustainable for lawyers to engage with clients with little resources, in a country with significant compliance issues with environmental law (see EIR rpt).

The changes will be compounded by new locus standi restrictions for the public,CSOs & eNGOs

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

The Judicial Appointments Commission Bill 2022 is still not enacted.s.9 of the bill still provides for a Judicial Appointments Commission, JAC with 4 members from the Judiciary,4 lay members & the Attorney General (AG). While s.9(3) provides the AG has no vote they will be party to discussions. s.13 on the selection of the lay members allows for significant discretion on criteria & significant involvement of the Public Appointments Service.The Commission for Public Service Appointments has a significant political & Departmental composition: <https://www.cpsa.ie/the-commission/who-we-are/> .The Minister can bypass the process & limited safeguards in s.13 for one of the lay appointments if it is made before the "establishment day". s.13(7-9) refers.

On Nov 3 2022, Government simply announced it had approved a new Planning & Environmental Court with no consultation on this at all. It is to operate as a new Division of the High Court. [https://merrionstreet.ie/en/newsroom/news](https://merrionstreet.ie/en/newsroom/news/government_approves_establishment_of_dedicated_planning_and_environment_division_of_the_high_court.175118.shortcut.html)

[/government_approves_establishment_of_dedicated_planning_and_environment_division_of_the_high_court.175118.shortcut.html](https://merrionstreet.ie/en/newsroom/news/government_approves_establishment_of_dedicated_planning_and_environment_division_of_the_high_court.175118.shortcut.html)

In the face of the highly aggressive approach to Judicial Review in environmental & planning cases from this government - extreme concerns pertain to: the rules which will pertain to this division of the court; whether there will be consultation on them & with who; and how appointments to the division will be determined. Further detail can be provided on the lack of evidence provided to date to support the changes proposed or the line of rhetoric advanced from multiple members of Government, and on how changes to JR were rushed in with effectively no scrutiny or debate in the Oireachtas in July 2022 in s.22 of the Planning and Development, Maritime and Valuation (Amendment) Act 2022

The EC RoL rpt in 2022 p.8, highlighted the failure to systematically record the length of proceedings & so there's no info. provided in the Justice Scoreboard. This is clearly an important input on the adequacy of numbers of the judiciary.

The following is an extract from an article from The Law Society Gazette <https://www.lawsociety.ie/gazette/top-stories/2022/october/irish-judge->

"A report published by the European Commission for the Efficiency of Justice (CEPEJ), part of the Council of Europe, has found that European states spent an average of €79 a year per inhabitant on their legal systems in 2020 – up €7 since 2018.

CEPEJ found that a large majority of the 47 countries covered in the report increased the allocations to their justice systems in 2020, with an average rise of 8%.

Ireland did not provide data on the total budget for its judicial system in 2020, but the report shows that its spending on courts and prosecution services lagged behind the European median figures.

Spending per inhabitant for courts was €31.10 – below the European median of €43.53. Ireland's €8.90 per inhabitant figure for prosecution services was also behind the median of €13.86."

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

New rules in High Court Practice Direction HC 107 were introduced in 2022 to determine which cases can now additionally be heard in the special list established for the Strategic Infrastructure and Strategic Housing cases. The list is called the Commercial Planning and Strategic Infrastructure Development List. The criteria are actually in Order 63A the Commercial Court rules and appear to focus on the commercial nature or significant value of the projects involved with no consideration for the potential environmental significance, nor the potential for environmental damage at issue in the proceedings.

This is despite:

a) The fact Ireland has failed to implement a system of injunctive relief for applicants to JR which is not prohibitively expensive, as is required under the Public Participation Directive, 2003/35/EC, for projects covered by the Directives amended therein (EIA and IPPC now IED), and as required by the Aarhus Convention Art 9(4), which is an integral part of the EU legal order, CJEU c-240/09, para 30 refers.

b) That the Planning and Development Act 2000 still provides for the ability of the Court to require undertakings from applicants to Judicial Review, JR as a condition for granting leave for JR - see s.50A(6) - which is of serious concern

So the allocation of cases in these important lists is based on the commercial nature or value - with no associated or complementary measures in place to address EU law and Aarhus obligations around injunctive relief, and infact further punitive and barriers to accessing justice.

Further details on the above available on request.

However the current rules on allocations may all be supplanted by the establishment of the Environmental and Planning Court as a new division of the High Court and it is entirely unclear what rules will pertain to this division, including in respect of allocation of cases.

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

As the Commission is aware the EU Justice Scorecard 2022 provides comparative data on the efficiency, quality and independence of justice systems across the union.

It shows that, since last year, the public perception of judicial independence has decreased in 14 member states, based on figures from a Eurobarometer survey.

Ireland ranks relatively highly in this area, however, coming in eighth of the 27 countries. Poland and Hungary fill the bottom two places.

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

Based on a quick check - judgments even particularly relevant for areas where the Irish language is spoken as the primary tongue in areas known as Gaeltachts - are not available in the Irish language. But even more generally this is a concern given we are a common law system.

Resources of the judiciary (human/financial/material)

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

3000 character(s) maximum

The EC's criticism in its 2021 Rule of Law Rpt for Ireland on having the lowest number of judges per inhabitant in the EU was welcome. While it stated this 'could also affect the efficiency of the Irish justice system' it is worth reflecting on the further consequences & how entirely inappropriate in the context is the Government's move to curtail the public's rights to access justice. and particularly relevant considerations in this regard are addressed under section "C Efficiency" below - under Other", and the Commission is urged to consider the persistent deficiencies in resourcing the Courts in this wider context.

According to the EU Justice Scorecard 2021, Ireland:

- has the lowest number of judges per 100,000 inhabitants in the EU in 2020
- was also third from the bottom for spending on law courts as a percentage of gross domestic product (GDP) in 2020.

The Judicial Panel Working Group established by Gov. in April 2021 to "consider the number of and type of judges required to ensure the efficient administration of justice over the next five years.", was due to complete its report within 12 months, but it did not.

Increases in spend for 2023 including for the courts can be found here: <https://tinyurl.com/mnwhstcf>

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

Serious concerns have arising in respect of administrative proceedings arising out of practices and legislative changes introduced purportedly to react to the challenges presented as a consequence of the Covid-19 pandemic, in The Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020.

While the need to provide for remote hearings was and is well understood in the context the concern is on how this has compromised in certain sectors the quality of justice provided. The Act provides for the use of an audio link only in the definition of electronic communication in s31(6), for hearings by designated bodies. Regrettably this has been relied upon by certain of the designated bodies (e.g. The Forestry Appeals Committee, (FAC) in order to conduct hearings by telephone line only, even in circumstances where the appellant has objected to this given very compelling reasons on the difficulties for such a limited interface in their particular circumstances, or where the technology has failed. Despite the most compelling of representations, the obligation under that legislation to consider how the interests of justice may be served pursuant to section 31 (2) which provides that

"Subsection (1) shall not apply in respect of a particular hearing where the designated body concerned, of its own volition, or following the making of representations by a person concerned, is of the opinion that the application of the subsection to the hearing would be unfair to the person, or would otherwise be contrary to the interests of justice" However despite really compelling circumstances and representations, including to the Committee and relevant Minister, no accommodation has been forthcoming. Additional cost and practical burdens have thus been visited on appellants, to secure dedicated facilities to participate in hearings. In one instance an electricity power supply interruption was notified to an appellant. This meant they would not have access to wi-fi, had to rely on mobile data, could not recharge their phone or laptop over the course of multiple appeals on the day. They could not go to another location as with a disabled partner and livestock they could not leave the premises during the power blackout. Additionally, for someone who has a a disabled partner and using the poor quality phone line meant commandeering the farm kitchen for the entire day on successive days. It is understandable that the use of these provisions has been seen by many as an absolute abuse, and to compromise access to administrative appeals.

Timelines for public participation have not been adjusted to accommodate issues with delay in providing online access to various applications for consent or permission or access to notifications. Further detail available if required.

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

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

In its 2021 Rule of Law Report the Commission highlighted:

"The length of court proceedings is not systemically assessed. There is no system to regularly evaluate the court performance based on defined indicators. Therefore, there is no information on the length of proceedings provided in the Justice Scoreboard⁴⁸, with the exception of the rate of resolving litigious civil and commercial cases, which is one of the lowest in the EU⁴⁹.

Some information is available in annual reports from the Court Service. Those reports show that the average length of proceedings in the High Court in 2020 was 660 days, a decrease of around 125 days from 2019⁵⁰. However, the average length of proceedings for criminal cases regarding summary offences slightly increased (by around 33 days in comparison with 2019)⁵¹.

The length of proceedings at the Court of Appeal has significantly decreased both for civil cases (from 1220 days in 2019 to 579 days in 2020) and criminal cases (from 705 days in 2019 to 371 days in 2020)⁵². The average length of proceedings in the Supreme Court has also decreased, but remains very high (2513 days in 2020). It would be important that data on the length of proceedings is systematically recorded in line with the methodology of the Council of Europe European Commission for the efficiency of justice⁵³."

I am unaware of any improvement in the recording of data on such matters.

For certain environmental cases - the use of new Practice Directions in the Commercial Planning & Strategic Infrastructure Development List has in certain cases led to improvement in the progress of cases. However requests from the State Respondents or Commercial Notice Parties for adjournments and extra time are I understand from practitioners generally always accommodated, whereas any issue of time for applicants becomes a major focus and issue in argumentation raised by the State Respondents. There is no systematic measuring of the delays or the reasons or sources of the request for delay. But then ironically, delays associated with JR are being used to drive curtailment of access to justice rights.

Therefore the issue of duration and good data on this is particularly important.

It is important to consider the extent of additional duration that is added to proceedings consequent on what is referred to as satellite litigation - that is litigation to sort out issues associated with the lawfulness of rules relating to standing or costs and in particular given narrow & restrictive interpretations of Access to Justice obligations from State Respondents, & preliminary references required consequent on confused and/or delayed and inadequate transposition etc.

There can also be knock on effects for other cases with similar issues, being adjourned.

A measurement system which collates information highlighting the reasons for delays is essential in order to learn, resolve and prevent delays in the future, including from bad & rushed legislation.

Other - please specify

3000 character(s) maximum

The EC's criticism in its 2021 Rule of Law Rpt for Ireland on having the lowest number of judges per inhabitant in the EU was welcome. While it stated this 'could also affect the efficiency of the Irish justice system' it is worth reflecting on the further consequences & how entirely inappropriate in the context is the Government's move to curtail the public's rights to access justice.

At the Chief Justice's Working Group on Access to Justice in Oct 2021, the then CJ Frank Clarke commented [1]

"I have commented before, but it worth repeating, that an analysis of what we spend on our justice system in Ireland, compared with comparators both in the European Union and in other countries with similar legal systems to our own, places Ireland at or near the bottom. I do accept that international comparisons can be difficult. What counts as a judge in one state may be considered an administrative tribunal in another. Judicial numbers can be affected by factors such as the presence of lay magistrates in the United Kingdom system. It is not really possible to have exact comparisons and I would, therefore, accept that modest variations in numbers and sums of money spent could well be explained simply by different ways of counting.

However, an overall view of the data seems to me to demonstrate two things very clearly.

First, Ireland's position at or near the bottom of the table is so stark that it cannot be explained solely by differences in our systems or ways of counting.

Second, and perhaps equally importantly, it is clear that taxpayers in countries in the common law system end up spending very significantly less on their justice system than is spent on behalf of the taxpayers of countries in the civil law system prevalent in continental Europe. It is beyond the scope of this short address to go into the reasons for this in detail but it is fair to say that there is a significant shift, in a common law system, towards work being done by parties and their lawyers (if they have them) as opposed to being done by the court and its researchers. This significant difference has the effect of transferring cost from the taxpayer to the parties to litigation. It is at least part of the explanation as to why the Irish taxpayer spends significantly less on our justice system compared with most continental countries while the Irish litigant spends more.

There are other consequences as well. It makes it harder for the unrepresented litigant in a common law system to deal with anything other than the most straightforward of case."

[1] <https://www.lawlibrary.ie/access-to-justice-conference-friday-1st-october-2021/>

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

The Office of the Planning Regulator (OPR) in Ireland was established in April 2019 on foot of recommendations made by the Tribunal of Inquiry into Certain Planning Matters and Payments (the Mahon Tribunal), in short on a tribunal on corruption in planning.

Despite what the OPR described in a recent report [1] as an exponential increase in the amount of decisions of An Bord Pleanála, which the Courts found to be unlawful, it entirely failed to exercise powers it had under s. 31AS of the Planning and Development Act, to initiate an investigation into the "systems and procedures used by such authority or the Board in relation to the performance of its functions under this Act". This increase occurred in circumstances where the legal fees of ABP were being reported in its annual reports with massive increases associated in large part with the extent of unlawful decisions being made.

[1] <https://www.opr.ie/wp-content/uploads/2022/10/OPR-Review-Report-Phase-1-of-ABP-Review-1.pdf>

Regardless of the reasons for that exponential increase in unlawful decision-making - and in the context of the importance of the Board's role at the apex of our Planning system it is quite extraordinary that as we understand it the OPR's office positioned the Board as the last Planning Body on its cycle to review. It was only when matters came to a head so to speak and its hand was forced - it conducted a review, and the above review report produced. But then it also appeared to fail to consult key external stakeholders until the review was in practical effect concluded, and an action plan agreed with the Minister.

We also understand the OPR failed to leverage its own investigation powers innovatively to address issues raised in complaints made to it, and the requirements in legislation around the transparency and requirements here clearly need more focus in the interests of all concerned including the OPR.

The fact there was, and is no bar on civil servants moving directly from senior Departmental Service into the two top jobs in the two independent planning bodies in Ireland also raises serious concern in relation to the independence and measures in place to provide for proper separation and independence.

Further serious concerns are raised in section B below in respect of legislative changes enacted in Dec 2022 to the appointments process for member of the Board of An Bord Pleanála, and the extent of political influence the Minister now has over what is supposed to be an independent body.

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

This is an area where we have seen serious regression in 2022. The Planning & Development and Foreshore (Amendment) Act 2022, enacted in December swept away decades of policy & legislation focused on preserving the independence of An Bord Pleanála, the body at the apex of our planning system, from political interference.

Born out of shocking political planning scandals, it was established in 1977, as a significant and positive political & legislative commitment to bring independence to planning decisions, & remove them from political control & interference. In 1983, that was reinforced with more legislation requiring the involvement of civil society in the nomination of persons to be considered by the Minister as Board members.

A special committee, including the President of the High Court, was also specified to provide for the selection of nominees for the position of Chairperson, ultimately appointed by Government.

The nomination system was certainly not perfect, but it represented a significant further policy commitment to reduce political discretion.

Multiple safeguards over Board appointments in the current Planning and Development Act are gone.

Minister Darragh O'Brien supported by Government, rejected simple quick reforms of the current system in favour of giving the Minister new powers giving him total control over the specification of a new system to select & appoint Board members. The Act does not require a competitive process open to the public. We have no idea what will or won't be done. In short, the bill allows him & future ministers, do whatever he/she likes While such powers may not be exploited in the manner feared by this or successive Ministers, it is deeply concerning to see why so many safeguards have been removed and how amendments proposed to provide for safeguards on the new powers were entirely rejected in a curtailed Oireachtas debate.

Also Oireachtas oversight on further changes to the size & configuration of the Board have been removed, as have limits on the number and proportion of overall Board members the Minister can install as temporary appointments for 12 months. He can now appoint both former & acting civil & public servants Acting civil servants will have the unenviable task of being expected to act independently on the Board in deciding potentially against the wishes of the Department & Government to whose service they will have to return. No safeguards are in place to ensure this doesn't provide a conveyor belt access on to the Board from private sector interests. A new role of interim chairperson can now be appointed by Gov for up to 2 yrs, bypassing the normal system.

A fully annotated version of the above referencing the relevant sections can be provided but has been omitted here given character limits.

The compromise is all the more concerning given that in early 2023 it is proposed to compromise the ability to hold this new Board to account with Judicial Review of its decisions.

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

The Regulation of Lobbying (Amendment) Bill 2022 was only initiated in the Dáil in Sep 2022. It has not completed passage.

Based on a cursory examination it still fails to include key decision-making bodies for Environmental decisions in the bodies against which lobbying activity needs to be recorded - eg An Bord Pleanála which is decision-maker of first instance for major strategic infrastructure & strategic housing developments, and i.a. appeals on certain Local Government decisions, Neither is the Environmental Protection Agency included who is i.a. a licensing and permitting body including for waste and industrial emissions facilities, nor is the Office of the Planning Regulator included who has a role in oversight of the proper conduct of planning bodies functions etc to put it simply.

It is surprising that a more comprehensive approach to additional inclusions to the Regulation of Lobbying Act 2015 have not been addressed by Government during the publication and passage of this amending legislation, even in the context of a proactive precautionary approach for the future, given the announcement that Gardaí have sent a file to the Director of Public Prosecutions after an investigation into claims of serious impropriety against someone in a decision-making body which is not currently covered by the lobbying register.

Of course all parties are entitled to the presumption of innocence - the observation here is that every rigour in respect of transparency and integrity of bodies involved in significant decisions might be expected to be in sharp focus.

Given the really significant and un-precedent value of Offshore Renewable Energy developments - in the interests of ensuring public confidence in decision-making and without casting any aspersions on any of the parties or bodies involved in such matters, it is of concern that An Bord Pleanála and the new Maritime Area Regulatory Authority, MARA are not included.

Also the schedule of bodies who are included in the schedule in the Lobbying Act of 2015 and thus excluded for the purposes of recording lobbying to them remains a concern - and in fact the current bill proposes to extend this to include a number of port authorities. In the context of the vast sums of money involved in Offshore Renewable Energy in an Irish context this is gravely concerning.

It is also still not possible to interrogate the Lobbying Register to ascertain easily who has been lobbying a particular Designated Public Official (someone against whom lobbying needs to be recorded)

In recent months there have been issues with the adequacy of asset declarations made by a number of politicians and political parties and some associated high profile resignations. It could be seen in the context that the legislation has failed to drive compliance, and detection of breaches. At time of writing further issues are unfolding incrementally, and it would not be appropriate or fair to comment in the context.

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

In addition to the concerns raised in Section II. B on changes made in the Planning & Development & Foreshore (Amendment) Act to the appointments process for An Bord Pleanála - the body at the apex of our Planning System with responsibility for key strategic developments in both the terrestrial and offshore environment - please see

Media article here: <https://www.irishexaminer.com/opinion/commentanalysis/arid-41032205.html>

Also it is particularly important to consider how the relevant Minister & Government also went to extraordinary lengths to bring the bill to the floor of the Oireachtas before Pre-Legislative Scrutiny, PLS of the General Scheme of the Bill had concluded. It is notable that the PLS report - [1] from the Joint Oireachtas Committee was clear in its concerns on the proposals in the General Scheme stating "The Committee is of the opinion that the Minister is afforded undue power over the size and operations of the Bord without the appropriate oversight, which may conflict with An Bord Pleanála's independence."

It also made 2 recommendations in its report [1] seeking safeguards be both preserved and added - and both were ignored in the very guillotined debates which followed - see [2] for the Dail debates in particular, and [3] for the .

"5. The Committee recommends, should the proposed legislation proceed with the committee system outlined in the General Scheme, that appropriate and robust safeguards and oversight are prescribed in the proposed legislation to ensure undue power is not concentrated in the Minister. "

"12. The Committee recommends, should the proposed legislation proceed with the committee system outlined in the General Scheme, that appropriate and robust safeguards and oversight are prescribed in the proposed legislation to ensure undue power is not concentrated in the Minister."

[1] PLS Rpt rephttps://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_housing_local_government_and_heritage/reports/2022/2022-12-07_report-on-pre-legislative-scrutiny-of-the-general-scheme-of-the-planning-and-development-and-foreshore-amendment-bill-2022_en.pdf

[2] key elements of the Oireachtas debate where simple reforms and safeguards were rejected can be found here:

<https://www.oireachtas.ie/en/debates/debate/dail/2022-12-14/12/>

<https://www.oireachtas.ie/en/debates/debate/dail/2022-12-14/17/>

<https://www.oireachtas.ie/en/debates/debate/seanad/2022-12-08/18/>

In short every effort was made by Government to secure this level of control of the Board, and while the powers may not be abused - the powers and lack of safeguards are now on the statute books.

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

3000 character(s) maximum

The extent to which there is an adequate solution in the political & public service sphere & in relation to environmental matters remains to be seen particularly given the complexity of the architecture & potential for confusion on the body to report to:

Government effected a transposition of EU directive 2019/1937 on protected disclosures, PD, in the Protected Disclosures (Amendment) Act 2022 which establishes the Office of the Protected Disclosures Commissioner and expands protections for whistle-blowers.

However, according to ICCL, the government have derogated from the directive in a number of areas which would serve to strengthen protections for whistle-blowers, e.g. limiting the requirements to establish internal whistleblowing channels to companies with more than 49 employees. ICCL & others called on the government to reverse this decision and further strengthen whistle-blower protections. [1][1] https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_finance_public_expenditure_and_reform_and_taoiseach/reports/2021/2021-12-16_report-of-the-joint-committee-on-the-pre-legislative-scrutiny-of-the-general-scheme-of-the-protected-disclosures-amendment-Bill-2021_en.pdf

It seems that in respect of “All matters relating to the protection of the environment in the State” the prescribed person is the EPA. However there can also be disclosures to external persons e Office of the Protected Disclosures Commissioner (‘OPDC’), and the potential for confusion, delay & issue may arise.

In the context there has been ineffective and/or insufficient efforts made to ensure the public are aware of what protections they are afforded and how to proceed in the event they wish to make a Protected Disclosure, and it remains to be seen how well the public service are aware also of the processes and points of contact. Such efforts are essential for effective implementation and delivery of the objectives of the protections envisaged by the legislation, particularly in light of the well publicized issues whistleblowers have historically experience in Ireland.

The issue of SLAPP is closely aligned and continues to be an issue. While the Courts have in the in the main dealt well in a number of cases with such legal suits - there has undoubtedly been a chilling effect for the wider public in seeing the extent of persecution which those seeking to exercise their participation and access to justice rights have been subject to - which has been well publicized in the media. For example here: <https://www.irishtimes.com/business/construction/developer-seeks-injunction-to-prevent-planning-challenge-by-killiney-residents-1.4745188>

Lawyers acting in the the field of planning litigation also have commented on the additional burdens involved in representing certain profiles of clients and cases, given the potential for SLAPP.

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

Planning and Development - terrestrial and offshore. Please see the concerns raised in Section B in respect of the changes made in the Planning and Development and Foreshore (Amendment) Act to the appointments process for An Bord Pleanála - the body at the apex of our Planning System with responsibility for key strategic developments in both the terrestrial and offshore environment. Media article here: <https://www.irishexaminer.com/opinion/commentanalysis/arid-41032205.html>

The granting of Maritime Area Consents for offshore renewable energy has been done in an entirely non-transparent manner. No applications or decision materials were published. Further detail on this can be provided if useful.

Massive expansion of forestry is also proposed. In addition to introducing charges via legislative changes in 2020 associated with participation and access to justice on licencing decisions - which compromise environmental democracy and oversight - additional proposals were enacted in 2022 to bring potentially significant areas of forestry outside of a licencing regime in circumstances where there will also be grants. This was done in the Animal Health and Welfare and Forestry (Miscellaneous Provisions) Act 2022. Further information can be provided on this if useful.

The proposed curtailment of access to justice rights is of serious concern in the context of not just environment Human Rights, EU law obligations, but as Judicial Review is a fundamental element of the rule of law architecture - it is a key mechanisms for holding public authorities to account,

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

3000 character(s) maximum

This is an area where I would be happy to expand on in the context of the country visits - given the limitations of resources at this point in responding to this as adequately as I would wish at this juncture.

C. Repressive measures

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

3000 character(s) maximum

Enforcement for environmental crime remains a serious concern. Local Government enforcement units are notoriously under-resourced, and enforcement and the burdens of evidence make environmental prosecutions difficult.

Penalties for certain environmental crimes and breaches of environmental law do not provide a sufficient deterrent. The role of the state and state bodies even in the context of high profile developments done in breach of EU law such as the Derrybrien windfarm send the wrong signal on the States commitment to uphold the law - where are 11 years following on from the original 2008 judgment in case c-215/06, the Commission had to bring Ireland back to Court to secure fines in case c-261/18.

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

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

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

Other - please specify

3000 character(s) maximum

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

This is an area of significant and increasing concern given how this Government is using its majority to compromise Oireachtas scrutiny of legislation.

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

In the 2021 report done in conjunction with ICCL and Libertas I raised at a high level the serious issues which had been encountered with the passage of legislation in the Oireachtas. The volume of legislation being passed just before recesses had prompted the President to write to the Oireachtas to express his concerns given the short period he is afforded under the Constitution to review and refer bills as necessary to the Supreme Court. But this was the tip of an iceberg in respect of effective abuse of the large Government majority to effectively compromise the Constitutional role of both houses of the Oireachtas in law making. The situation has not improved in 2022. Not only has the President expressed subtly reflected his concern again in Dec 2022 by highlighting the volume of legislation in his inbox <https://twitter.com/gavreilly/status/1601660842339991552>

It is important to note that the Government has sought to bypass Pre-Legislative Scrutiny on multiple pieces of complex legislation, it has also amended the scope of bills to add on entirely new elements to bills, amending entirely different legislation, and/or adding really complex and controversial changes, even after the bill has completed passage in one House of the Oireachtas. I can provide multiple examples of such practices in 2022.

Additionally before the summer recess in July - it added 48 pages of amendments to an 18 page bill (which was already controversial and in a particularly complex area of planning law). It went to the business committee proposing just 90 mins to complete the major stages of the bill, which would not even have allowed for 2 mins per page of amendments. It eventually conceded to extending the timeframe to if memory serves to 2.5 hrs. In the order of 12-13 amendments were dealt with - with the remaining 55 or so Government amendments being passed by default when the guillotine fell. This included two deeply controversial changes to the rules on Judicial Review in Planning legislation - which were enacted then in what became The Planning and Development, Maritime and Valuation (Amendment) Act 2022

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

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

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

Under the new Maritime Area Planning Act 2021, Maritime Area Consents have been granted in Dec 2022. There has been no applications published or decision materials published, only the resulting consent. The Government's position is that these are not environmental decisions and do not require public participation - a view which is hotly contested. Notwithstanding this the decisions represent a major public interest issue in respect of the grant of such consents and the adequacy of the basis on which they have been granted - nearly a month after the apparent granting of these consents - there is no publication of the decision. Those seeking access to them using access to information on the environment requests have been advised it will take a month - this is in the context of an 8 week window to judicially review the decisions. It is also unclear if the applications will be provided within the month and whether access to the decision considerations will be provided and what fees may be charged for access.

The website of An Bord Pleanála remains of serious concern and the need for online access to its decision files.

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

Sections 50, 50A and 50B of the Planning and Development Act 2000 provide for the rules on Judicial Review in Planning matters. It is important to note the special rules on costs in the Planning Act work across sectors being based on key EU Directives. The timeframes for Judicial Review in Planning Matters is 8 weeks from as set out in the Planning and Development Act, section 50(6), with in practice very limited ability to apply for leave beyond that, s50(8) refers, whereas in other areas it is 3 months governed by Order 84 of the Superior Courts. A decision is live once granted, and there is no provision for injunctive relief to be not prohibitively expensive contrary to the requirements of the Public Participation Directive 2003/35/EC and the Aarhus Convention Article 9(4). On the contrary, the Planning and Development act can require as a condition for granting leave - undertakings for damages from the applicant seeking leave to JR, pursuant to s. 50A(6). Put simply and informally to address certain of the issues that access to justice in environmental matters should not be prohibitively expensive - Ireland instituted in s.50B what is referred to as the own costs principle - meaning the usual rule of costs following the event and loser pays did not apply. However if you were successful in securing your reliefs you might be awarded costs. This meant that no foal no fee arrangements were feasible for certain cases where lawyers felt a case had good prospects even though the clients could not pay them. However this clearly presented issues for borderline cases particularly where eNGOs may have been seeking to press the law. The cost protection could be punctured if the case was found to be frivolous or vexatious or if there was conduct issues. Ireland has failed to amend the legislation on foot of the CJEU judgment in C-470/16 to ensure even in those cases the NPE requirement still applies. Standing rules are not well expressed in the legislation in respect of eNGOs, being for eg only in respect of EIA cases and requiring an objective of environmental protection & 12 months of activity pursuing that. But up to recently this did not present as an issue. However in the context of a more aggressive position of state bodies this has presented as an issue. Similar provisions for other environmental decisions are provided in the Environmental (Misc) Provisions Act 2011. Extensive satellite litigation was incurred clarifying the provisions. Now that clarity has been achieved particular following on from the Supreme Court Ruling in Nov Heather Hill [2022] IESC 43, the Government published an outline of deeply concerning, regressive changes to both standing rules and costs in Judicial Review in Planning Legislation. The bill has not yet been published. Pre-legislative scrutiny is expected in February & Government indicate they plan to enact this in early 2023. <https://www.gov.ie/en/publication/1b115-outline-of-the-proposed-planning-and-development-bill/>

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

As highlighted Government response to CJEU judgments has been very poor. For example in case s-215/06 judgment in 2008, some 11 years later the Commission had to pursue fines in the context of case c-261/18. In the context of changes identified consequent on preliminary references not involving Ireland - changes even in important participation rights in Appropriate Assessment were not implemented until 2021 in SI 293 of 2021 to address clarifications made in case c-243/15 in Nov 2016. Matters highlighted by the CJEU in case c-470/16 in March 2018 respect of our special cost rules in environmental cases have not been addressed still.

Ireland's Action Plan to comply with the findings adopted by the Meeting of the Parties of the Aarhus Convention were in sharp focus at a meeting before the Aarhus Convention Compliance Committee in December where it had highlighted the inadequate and non-compliant nature of changes made and changes proposed.

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

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

While it is welcome that Ireland supported financially the establishment of the Rapid Response Mechanism for Environmental Defenders under the Aarhus Convention, the State itself has not effectively implemented a response to implement obligations under Article 3(8) of the Aarhus Convention to prevent environmental defenders from persecution or harassments. reliance on the Courts is not sufficient to deal with the nature and complexity of issues being faced by defenders.

Comments have been made earlier in respect of issues with SLAPP litigation and these are relied upon here.

Of particular concern is the emergence of a view from Government that public policy and Government policy are one and the same, and an effective appropriation of public policy by Government. This presents multiple sensitive difficulties for a whole range of civil society organisations which I would be happy to expand on confidentially with the Commission. This is in addition to and complementary to the very serious issues which the ICCL have outlined in their submission.

Criticisms of eNGOs who have pursued JR have been subject to sustained attack, including from senior politicians in Government both directly and more subtly, and this has a very chilling effect, and has included calls for termination of the limited funding they receive. This was highlighted in the context of the 2021 submission done with the ICCL, but it is regrettable to say little if anything has been done to push back or stop such comments and calls.

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

There was a welcome increase in funding in 2022 for environmental NGOs members of the IEN from Government. However what this equates to in terms of funding per group remains extremely low, and the sector still relies hugely on voluntary work. It is also far from clear whether this will be sustained or increased in 2023. However it does not serve to resolve the historic deficit in funding the sector which has led to an effective de-professionalisation of the sector. It has not been seen to be an attractive or sustainable professional opportunity for many young professionals. The uncertainty in respect of future funding compounds this. The Irish Environmental Network administers funding for National eNGOs only. Sources of other funding including through Local Agenda 21 have seen serious issues in recent years and this has had significant consequences particularly for small, local eNGOs who play such an important role in environmental defence, and environmental Human Rights. The population of Ireland is very small. It is worth

considering that the membership of the National Trust in the UK is roughly equivalent to the entire population of Ireland. The potential to attract independent sources of funding are very limited, and national and local eNGOs have to compete for support on a global stage. The under-funding of the environmental sector is a serious issue in the context of the existential climate and inter-dependent biodiversity crises.

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

Multiple fora are provided for - but the practical efficacy of these in meaningfully influencing policy is a concern. A most recent practical example of this can be considered in the context of the Planning Advisory Forum which was supposed to be a stakeholder forum to feed into the Attorney General's review of Planning legislation. The representation on the forum was in the first instance imbalanced, particularly when taken with the other fora feeding into the process. The experience of dialog and discussion on proposals was to put it mildly disappointing. The experience of consultations across multiple sectors where environmental decisions are in play is a serious concern in terms of the timeframes provided, the volume and quality of materials provided, the extent to which concerns are given due consideration. Serious issues are now arising in respect of fees for participation and administrative appeal fees across multiple sectors including in Forestry and Aquaculture in addition to Planning. It is worth considering that on one day alone 1864 felling licences were lodged with the Forestry Service by the semi-state body Coillte, covering over 15,004 hectares. To make observations on these would have cost €37,280 to make submissions on all of these applications because of the charge of €20 for a submission, which were introduced in 2020. It would have cost €372,800 to appeal these decisions because of the charges of €200 for appeal fee introduced, in 2020. This is quite apart from costs incurred trying to evaluate cumulative impacts of the felling and the need to access additional information. Depending on whether you count weekends and bank holidays - around 62 applications would have had to have been dealt with and many of these applications are complex and can run to over 100 pages. Despite the fact the relevant Minister had discretion to extend the 30 day consultation window - she choose not to do so despite a formal request from the Environmental Pillar, the advocacy coalition of national eNGOs. This is far from a one off incident.

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

We understand and welcome the fact the ICCL has received Government support for its co-ordination role in the rule of law report. However there are multiple sectors and groups who need to contribute to this rule of law reporting and assessment process for it to be meaningful and effective. But no practical financial or resourcing support - not even to cover the cost of attending meetings with the Commission has been provided, let alone for the considerable time and effort involved in trying to contribute to this critically important process.

The approach of the Irish Government at this juncture has to be of the most serious concern in respect of the rule of law given its approach to access to justice in environmental matters. Consequent on the Aarhus Convention to which Ireland is bound through it's EU membership which is of course a party to the Convention, and as a party in its own right, together with the Charter and the Treaties and our Constitution we

should be advancing positively in respect of access to justice in environmental matters, and indeed providing a beacon and example for other sectors. However - the direction of travel proposed is regressive and without justification. The increase in JR in planning cases - was undoubtedly due in large part due to flawed legislation for Strategic Housing Developments which even this Government have abandoned, and bad decision-making.

There has been no evidence provided in accordance with Article 52(1) of the EU Charter of Fundamental Rights to evidence the proportionality of the response given the proposed impingement on Article 47 Rights to an effective judicial remedy of the restrictions proposed. Basic questions raised by eNGO participants on the rationale, impact, evidence base for proposed changes have not been responded to, and moreover the changes proposed now are widely different to those discussed, and while the Planning Advisory Forum was assured no changes would be made to the cost rules for JR in Planning - now the Government has outlined in December that it intends to do so with the most deeply concerning changes which will make environmental litigation effectively impossible for those who cannot afford the risk of the huge costs they may incur if they loose. Serious issues arise in respect of collective re-dress considerations given the limitations proposed for associations of the public and multiple issues of compliance with the Convention, Charter and treaties arise based on the outline - while the devil will be in the detail of the published legislation.

It is therefore critically important the the EU Commission itself adequately support and resource the Rule of Law Process and work closely with DG ENVI on access to justice issues in environmental matters. In 2022 - with the invasion of Ukraine and serious issues within the Union itself - it has never been more important for the EU to show it respects and will uphold the Rule of Law.

Other - please specify

3000 character(s) maximum

I thank the Commission for its consideration of this input, and would be happy to provide further detail and clarifications - given the time and resource constraints pertaining to the input provided here.

Contact

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