Justice system

1. **Could you please provide your assessment of the key elements of the reform of justice? What about the implementing phase?**

5. **In your written input, you inform us about the implementing legislation for the civil justice reform (Legislative Decree no. 149/2022), which we discussed last year. Could you please elaborate how does this implementing legislation further strengthens the efforts to address the efficiency challenges in the area of civil justice? Have there been any preliminary results that you could share with us already?**

6. **In your written input, you also inform us about the implementing legislation for the criminal justice reform (Legislative Decree no. 149/2022), which we discussed last year. Could you please elaborate how does this implementing legislation further strengthens the efforts to address the efficiency challenges in the area of criminal justice? Have there been any preliminary results that you could share with us already?**

Both the reforms of civil and criminal justice are based on three pillars: digitalization of civil and criminal proceedings; provisions amending the Code of Civil Procedure and the Code of Criminal Procedure in order to speed up and streamline proceedings; unprecedented investments in human resources (Office for the Trial) and hiring of young lawyers (addetti all'Ufficio del Processo) (law clerks) who will assist and help judges in a wide range of tasks (legal research; drafting of decisions; organization of hearings).
It should be noted that the reform of civil justice (Legislative Decree no. 149/2022) entered into force on 28 February 2023 and that the reform of criminal justice (Legislative Decree no. 150/2022) entered into force on 30 December 2022.

Therefore, it is too early to assess the results and impact of the reforms on the duration and efficiency of the civil and criminal trial.
However, please find attached the report issued by the General Directorate for Statistics of the Ministry of Justice on the duration of civil and criminal proceedings in the first semester of 2022, and on reduction of backlog in the same period (Annex 1).
Moreover, it is worth noting that in March 2023, the Judicial Organisation Department of the Ministry of Justice [DOG], together with DGSTAT (General Directorate for Statistics) and with the participation of the NRRP Mission Unit, held a series of meetings at district level involving all the judicial offices (recipients of NRRP interventions and in particular of the project *Office for the Trial and Human Capital*) of the 26 Court of Appeal Districts. During these meetings, the offices were presented with the results of the analysis of the integrated monitoring activity at district level; the presentation was preceded by a brief statistical update on pending and backlog cases. The meetings also gave the Department the opportunity to grasp the organisational models adopted, best practices and critical issues through the opinions directly expressed by the Heads and Managers of judicial offices or by the UPP contact points. In this context, general satisfaction was expressed by the judicial offices with the contribution provided by the UPP clerks and with the impact that the new structure has had on the organisation of judicial work. In fact, there is widespread conviction that the "new" office for the trial is capable of bringing about (and has already begun to bring about) a significant change, also in cultural terms, in the traditional way of conceiving jurisdiction, directing the traditional individual model towards the concept of teamwork.

Please find below a summary of the key elements of the reforms.

As to the civil justice reform:

ADR (pre or out of court settlement): incentives to facilitate pretrial mediation and negotiation with assistance of defence lawyers (artt. 3, para 52 to 56, 7, 8 e 9 Legislative Decree n. 149/2022):

- legal aid (to persons unable to afford the payment of a defence lawyer) (art. 15 Legislative Decree 28/2010 on mediation and art. 11 bis Law Decree 132/2014 on negotiation) and
- tax advantages/relief on possible agreements (art. 17 Legislative Decree 28/2010)

Trial procedure:

- At a general level
  - principle of clarity and conciseness of written attorneys' briefs and judges' decisions (artt. 121 CPC + 46 Att.)
  - the so called "telematic trial" is completed: the case file is now completely electronic (attorneys' briefs, court records, evidence, judge's decision) + rules on video conference/hearings
- jurisdiction of Justices of peace (honorary/non professional judges) increased, from to 5.000 € to 10.000 € in general, and from 20.000 to 25.000 for damages caused in road accidents (art. 7 CPC)
- first instance trials (art. 3, para 12 to 21):
  - CPC requires now a total discovery of claims, defense and evidence since the initial stage of the trial (art. 281 decies and following articles. CPC)
  - only in the more complex cases, the parties are allowed to reply to each other with a sequence/set of defense briefs (claims + replies + evidence)
  - simplified decision when the case appears clearly/manifestly grounded (or ungrounded)
- appeal trials:
  - within the panel of 3 judges, one of the judges of the panel is delegated by the presiding judge to the management of the trial and the evidentiary proceeding → afterwards he/she reports to the panel of 3 judges for the decision
  - the panel can reject the appeal at the very first hearing when the appeal is manifestly ungrounded
- Supreme court:
  - similarly to the appeal trials, it is possible for the panel to reject the case at the first hearing when the appeal is manifestly ungrounded
  - the judges in 1st instance or appeal cases can request the Supreme Court a preliminary ruling on a matter of law relevant in the instant case
- final enforcement of the decisions simplified:
  - certain redundant formalities – with no practical effect on right of defense – have been canceled
  - the forced/judicial sale has been simplified (now the sale of real estates can be done directly by the debtor, with certain conditions – art. 568 bis CPC)
- family disputes:
  - a new court with competence on family cases, juvenile cases, divorces will soon be established (presently juvenile cases are dealt by juvenile courts, family cases by ordinary civil courts) → the goal is increasing specialization of judges and then efficiency
  - the procedure has been rationalized (art. 473 bis 11 and following articles CPC), especially for protection of minors and against domestic violence (art. 473 bis.70: injunctions against the author of violence + art. 473bis.45: duty for judges to hear minors)

As to the criminal justice reform:

A comprehensive reform of the criminal procedure and the sanctions system has been set up with the aim of simplifying, expediting and streamlining criminal proceedings, in compliance with the safeguards of the rights of defence.

The underlying rationale of all principles and criteria is to strengthen the efficiency of criminal proceedings and significantly reduce their duration (at least by 25% in the next five years in line with the plan agreed upon with the EU Commission for the implementation of the EU Recovery and Resilience Plan). The reform aims at achieving such objectives including by introducing measures which are expected to significantly improve the organisation and management of judicial offices (courts and prosecution offices), shorten the duration of proceedings, reduce the number of criminal proceedings adjudicated by courts.

Among the principles underlying the reform of the criminal justice system set forth in Legislative Decree n. 150/2022, the following ones are worth mentioning: 1) strengthening the digitalisation of criminal proceedings; 2) amending provisions on the service of procedural documents with a view to speeding up criminal proceedings; 4) identifying cases where participation in the proceedings or the hearing can take place remotely; 5) introducing new rules for dismissal of cases by providing that a criminal case should be dismissed when the evidence gathered during preliminary investigations does not allow for a reasonable prediction of conviction; 6) strengthening judicial supervision (carried out by the Judge for preliminary investigations) on preliminary investigations; 7) extending the list of criminal offences falling within the jurisdiction of the single-judge court thus eliminating the stage of the preliminary hearing for such criminal offences; 8) introducing incentives for defendants to opt for the "patteggiamento" procedure and not to lodge appeal against judgments rendered in summary trials ("giudizio abbreviato"); 9) expediting appeal proceedings both before Courts of Appeal and the Supreme Court of Cassation; 10) providing for criminal sanctions as an alternative to short custodial sentences (fine; community service; semi-detention; house detention); 11) introducing restorative justice programmes; 12) extending the scope of application of Article 131-bis of the Criminal Code that provides for the exclusion of criminal liability where an offence is to be considered as a minor offence (*de minimis* offence); 13) extending the scope of application of the measure of suspension of criminal proceedings with probation for the defendant provided for in Article 168-bis of the Criminal Code.

With regard to the overarching goal of speeding up criminal proceedings, it is worth mentioning that the Minister of Justice has established a technical-scientific Committee to monitor the efficiency of criminal justice, the reasonable duration of proceedings and judicial statistics. The Committee acts as the advisory and support body for the periodic assessment of accomplished objectives in expediting and simplifying criminal proceedings.

<u>As to measures aimed at ensuring access to justice for vulnerable persons and to prevent gender-based and domestic violence,</u> the following newly introduced provisions and measures are worth mentioning.

With reference to the effectiveness of the protection that can be ensured to vulnerable people, there has been a number of recent legislative innovations characterized by both simplification and procedural safeguards for the most vulnerable groups (such as minors or more vulnerable persons in intra-family relations).

The supranational calls for action, the decisions of the ECtHR, the study conducted by the Commission on feminicide and on all forms of gender-based violence have helped to build the backbone of a reform with a focus on the victims of violence (Legislative Decree no. 149 of 10 October 2022.The new Title IV-bis Book II of the Code of Civil Procedure: single procedure for proceedings concerning persons, minors and families. Section I Chapter III: special provisions on domestic or gender-based violence).

It is particularly worth highlighting the introduction of a single procedure for proceedings concerning family matters where family mediation is implemented, unless there are allegations concerning gender-based or domestic violence.

In this regard, please refer to the newly introduced Article 473-*bis*(40), of the Code of Civil Procedure which opens - within Title IV-*bis Provisions for proceedings concerning persons, minors and families,* Chapter III (special provisions) - the section entirely focused on domestic or gender-based violence.

In short**,** in the approach of the reform, the fight against all forms of domestic and gender-based violence is carried out in terms of prevention precisely in the context of civil proceedings. The reform has intended to focus on allegations of violence so that in the preliminary stages of proceedings an immediate assessment of the risk and of the victim's will to leave the so-called cycle of violence can be made.

According to this system, it will be possible to:

- give an immediate response to allegations of violence (summary assessment with the possibility of ex officio measures);
- make an autonomous, proactive, comprehensive risk assessment by the judge;
- communicate between judicial offices (to connect civil and criminal proceedings on the same case) to allow the judge handling the case to be informed of the existence of the risk;
- adopt adequate protective measures, also in relation to minors.

The Judge is given a more central and active role through the exercise of greater ex officio powers. The aim is to ensure that the trial be handled in a way so as to avoid secondary victimization also through the exclusion of family mediation and the attempt at conciliation in case of allegation of violence; moreover, the Judge shall take all appropriate measures to protect the victim's safety, e.g. by hearing the parties at different times, especially in separation or divorce cases; in particular, as to the role of the court-appointed expert, it is expressly established that his/her auxiliary is obliged to follow methodologies recognised by the scientific community so as to raise the quality of technical assessments in sensitive cases of family conflict management.

Right from the very first steps of the proceedings, it is necessary to avoid that time can lead to underestimating the emergence of certain types of behaviour and their effects also in the family environment and against vulnerable persons who are involved in the cycle.

For this reason, the legislation helps prevent the adoption of certain measures through stereotyped formulas but promotes their adoption following the ascertainment of the validity of the allegations of violence.

The reform is also the result of good practices already operational in judicial offices and now translated into provisions.

Moreover, Italian Parliament had already introduced Article 64-*bis* of the implementing provisions of the Code of Criminal Procedure, which provides for the transmission without delay to the civil judge of a copy of the orders prohibiting personal precautionary measures or ordering their replacement or revocation, of the notice of conclusion of the preliminary investigation, of the decision ordering the dismissal of the case and of the judgement issued against one of the parties in relation to the offences under Articles 572, 609-*bis*, 609-*ter*, 609-*quater,* 609-q*uinquies*, 609-*octies*, 612-*bis* and 612-*ter* of the Criminal Code, as well as Articles 582 and 583-*quinquies* of the Criminal Code in aggravated cases pursuant to Articles 576(1) numbers 2, 5 and 5. 1, and 577(1), number 1, and (2), of the Criminal Code, for the purposes of deciding proceedings for the legal separation of spouses or cases concerning minor children or the exercise of parental responsibility. The aim of the reform pursuant to legislative decree no. 149 of 10 October 2022, in the aforementioned Section I of Chapter III (Articles 473.*bis*.40 - 473.*bis*.46), Title IV-*bis* Book II of the Code of Civil Procedure: single procedure for proceedings concerning persons, minors and families Section I Chapter III (in force since 28 February of this year), was to strengthen this communication flow by making it bidirectional.

The civil judge, during the proceedings concerning the custody of minors, may request information from the criminal judicial authority, including the investigating authority, in order to acquire complete knowledge of the family situation. The aim is to be able to promptly assess all the information useful to know the entire family history in order to protect the possible victim of violence and to adopt the measures to ensure his/her safety.

Mention should also be made of the innovations on interviewing the minor (to be carried out without delay and personally by the judge, ensuring coordination with the criminal authority and avoiding any direct contact between

the minor and the alleged perpetrator of the violence, so as to have a direct perception of what the minor has reported and to weigh all the elements that the non-verbal communication can provide, as well as requesting the specialised expertise of the court-appointed expert in the field of domestic and gender-based violence); video-recording of the preliminary investigation has also been provided for, which is effective in preventing secondary victimisation, since this means allows not to repeat the interview several times, e.g. in civil and criminal proceedings. In the same line the necessary coordination has been established between the different judicial authorities involved in the case, which are required to ascertain the same facts within their respective areas of competence, so as to prevent that the repeated interviewing of the minor, not justified by considerations about the insufficiency of the information obtained, may in turn result into phenomena of secondary victimization.

2. **Could you inform us about the state of play of the implementing legislation for the law on the High Council for the Judiciary, which was adopted on 16 June 2022?**

According to Law No. 71 of 17 June 2022, "enabling the Government to adopt a legislative decree for the reform of the justice system and for the adaptation of the military justice system and introducing provisions on legal, organisational and disciplinary matters, the eligibility and relocation of magistrates and the establishment and functioning of the High Council of the judiciary", in force since 21 June 2022, the legislative delegation should be exercised within one year from the date of entry into force. By means of an amendment to conversion Bill AS 564 (Conversion into law of Decree-Law No. 13 of 24 February 2023, laying down urgent provisions for the implementation of the NRRP and the National plan for Investments complementary to the NRRP, as well as for the implementation of cohesion policies and the common agricultural policy), the extension of the deadline for the exercise of the above-mentioned delegation to 31 December 2023 has been proposed. As of 6 April 2023, the Bill is under discussion.

8. In your written input, you inform us about the state of play of the recruitment proceedings and you inform us that figures are constantly being updated. Could you give us the most up to date information/data that you have?

Please find below data concerning the recruitment proceedings updated at December 2022.

Recruitment proceedings	**Staff hired and in service**	**Resignations**	**Total number of staff recruited**
Bando (Call) 79 - G.U. 98 del 10/12/2021	34	1	35
Bando (Call) 8.171 - G.U. 62 del 6/08/2021	6.437	1.319	7.756
Bando (Call) 3.750 - G.U. 26 del 1/04/2022	2.086	42	2.128
Bando (Call) 1.660 - G.U. 26 del 1/04/2022	1.073	25	1.098
Total	**9.630**	**1.387**	**11.017**

Therefore, 11.017 units have been recruited: 9.630 are in service while 1.387 resigned.

Anti-corruption framework

Protection of whistleblowers

It is worth mentioning that on 9 March 2023 the Council of Ministers approved the legislative decree implementing the EU Directive 2019/1937 on the protection of whistleblowers (Legislative Decree 24/2023 which entered into force on 30 March 2023). Considering that the Directive is without prejudice to the power of Member States to extend protection under national law as regards areas or acts not covered by Union Law, the Italian Parliament and Government decided to adopt one law providing common rules for both the public and the private sector and the report of different kind of breaches, relevant under national or EU law. The decree law has the goal to harmonize the already existing system with the new one.
The measures to protect the reporting person against the risk of retaliation have been reinforced and a strong duty of confidentiality has been established.
In proceedings before a court or other authority relating to a detriment suffered by the reporting person, and subject to that person establishing that he or she reported a wrongdoing or made a public disclosure and suffered a detriment, according to art. 17 of the Legislative Decree it shall be presumed that the detriment was made in retaliation for the report or the public disclosure. In such cases, it shall be for the person who has taken the detrimental measure to prove that that measure was based on duly justified grounds.
It is mandatory for the public and private sector (with more than 50 workers) to establish internal reporting channels which have to be secure in order to grant confidentiality of the identity of the reporting person. Legal entities have to designate an impartial person or department competent for receiving and analysing the reports and for the diligent follow up. The internal channel shall be preferred to the external one. However, it is possible to use the external channel if the internal one is not provided or if it does not work or when there has been no follow up by the competent internal authority. The same presumption *iuris tantum* is provided in proceedings related to the damage-compensation due to the retaliation against the reporting person.
There is a large and open catalogue of retaliation measures, including:

(a) suspension, lay-off, dismissal or equivalent measures; (b) demotion or withholding of promotion; (c) transfer of duties, change of location of place of work, reduction in wages, change in working hours; (d) withholding of training; (e) a negative performance assessment or employment reference; (f) imposition or administering of any disciplinary measure, reprimand or other penalty, including a financial penalty; (g) coercion, intimidation, harassment or ostracism; (h) discrimination, disadvantageous or unfair treatment; (i) (j) failure to convert a temporary employment contract into a permanent one, where the worker had legitimate expectations that he or she would be offered permanent employment; failure to renew, or early termination of, a temporary employment contract; (k) harm, including to the person's reputation, particularly in social media, or financial loss, including loss of business and loss of income; (l) blacklisting on the basis of a sector or industry-wide informal or formal agreement, which may entail that the person will not, in the future, find employment in the sector or industry; (m) early termination or cancellation of a contract for goods or services; (n) cancellation of a licence or permit; (o) psychiatric or medical referrals.

Also measures for the protection of persons concerned are provided by Art. 12 para 9, art. 16 para. 3 and art. 21 para. 1 lett. c) including the right to effective remedy, right to be heard, confidentiality as long as investigations are ongoing.
The authority responsible for external reporting channels and procedures is ANAC (Anti-corruption National Authority), competent for reports coming from both the public and the private sectors.
Under art. 21 penalties are applicable to natural or legal persons that: (a) hinder or attempt to hinder reporting; (b) retaliate against reporting persons; (c) bring vexatious proceedings against reporting persons; (d) breach the duty of maintaining the confidentiality of the identity of reporting persons. Proportionate and dissuasive penalties are applicable in respect of reporting persons where it is established that they knowingly reported or publicly disclosed false information, in the case that their responsibility has been established by a criminal or civil judge.

Measures to prevent fraud and corruption in the implementation of the NRRP.

By Law no. 178 of 30 December 2020 - State Budget for the financial year 2021 and multi-year budget for the three-year period 2021-2023 – the *State General Accounting Department* [Ragioneria Generale dello Stato (RGS)] was given the task of developing a special IT system with the aim of supporting the management, monitoring and reporting of the various components of the Next Generation EU. In this regard, Article 1, paragraph 1043 provides that *'The administrations and bodies which are the owners of the projects financed pursuant to paragraphs 1037 to 1050 shall be responsible for their implementation in accordance with the principle of sound financial management and with national and EU legislation, in particular regarding the prevention, detection and correction of fraud, corruption and conflicts of interests, and they shall implement the projects in compliance with the timetables for the achievement of the relevant intermediate and final targets. In order to support the management, monitoring, reporting and control activities of the Next Generation EU components, the Ministry of Economy and Finance – State General Accounting Department shall develop a specific IT system and make it available*". In compliance with this provision, the State General Accounting Department developed the ReGiS system, which represents the single modality through which all the actors involved in the implementation of the National Recovery and Resilience Plan (NRRP) can - to the extent of their competence - fulfil the obligations related to the management, monitoring, reporting and control of the measures and projects financed. The ReGiS system was structured to accommodate, *inter alia*, through an ad hoc function, the data provided for in point 2(d) of Article 22 of Regulation 2021/241, namely:

- the name of the final recipient of funds;
- the name of the contractor and of the subcontractor, where the final recipient of funds is a contracting authority in accordance with Union or national on public procurement;
- the name(s), surname(s) and date of birth of beneficial owner(s) of the recipient of funds or contractor as defined in point 6 of Article 3 of Directive (EU) 2015/849 of the European Parliament and of the Council (26);
- a list of any measures for the implementation of reforms and investment projects under the Recovery and Resilience Plan with the total amount of public funding of these measures and indicating the amount of funds paid under the Facility and other Union funds.

In the context of the implementation of the NRRP, specific reporting obligations are laid down for the Public Administrations (as well as for all the actors involved in the governance of the NRRP), also through the "Network of Antifraud contact points for the NRRP" specifically set up, with Deliberation no. 57 of 9.3.2022 of the State Accountant General of the State.

The "Network of NRRP Antifraud contact points" (Network) periodically assesses the risks of fraud, conflicts of interest and double funding and, therefore, defines "effective and proportionate" measures and actions for the prevention, detection and law enforcement action. It is chaired by the Central Service for the NRRP and is composed of an anti-fraud contact person of each Central Administration in charge of NRRP interventions and of representatives from the Guardia di Finanza (Financial Police). Other stakeholders competent in the matter (e.g. Court of Auditors, National Anti-Corruption Authority) are also invited to participate in the work of the Network, according to the matters under examination. In particular, the Network of Anti-Fraud Contact Points has the task of:

- collecting information (internal and external to the NRRP and/or of general or specific interest to the Plan itself) useful to identify the sectors most exposed to the risks of fraud/corruption, conflict of interest, double funding;
- reporting to the central Administrations in charge of interventions (and, through them, to the implementing bodies) the identified sectors so that they may carry out assessments (e.g. action plans) and define, in a more effective and efficient way, controls within their respective competence;
- collecting reports of any new risks (detected or potential) and promptly forward them to the central Administrations so that they may promptly take any improvement and/or corrective actions (e.g. amendments/additions to action plans) relevant to them or to the implementing bodies.

In carrying out its risk analysis and assessment activities, the Network promotes the adoption in Administrations of effective and clear procedures for the prevention, detection and management of cases of suspected fraud, of valid and efficient reporting mechanisms both internal to the Administration (e.g. whistleblowing - reporting/complaining about offences anonymously by employees) and external to the Administration that ensure timely reporting of cases of fraud (suspected and/or ascertained), as well as prompt and timely referral of investigations to the relevant investigative bodies, including, in cases provided for by law, the obligation to promptly inform and report cases to the competent judicial authority.

Also as a result of the work of the Network, the first important "operational" guidelines have been adopted on the "control of NRRP funds" and, more generally, on the "protection of the financial interests of the EU", namely:

- RGS Circular no. 30 of 11 August 2022 on the "*procedures for the control and reporting of NRRP measures*" *with the annexed "Guidelines for the performance of control and reporting activities of NRRP Measures pertaining to the Central Administrations and the implementing Bodies";*
- RGS Note no. 238431 of 11 October 2022 containing the annexed "*General anti-fraud strategy for the implementation of the National Recovery and Resilience Plan*".