

2024 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 Annual Rule of Law Cycle, which acts as a preventive tool, deepening multilateral dialogue and joint awareness of rule of law issues. So far, four editions of the Rule of Law Report have been published in 2020, 2021, 2022 and 2023.

The Commission would like to invite stakeholders to provide contributions to the 2024 Rule of Law Report. This survey provides information on the type of information and topics that will be covered in the 2024 Rule of Law Report, in order to allow stakeholders to provide input. More targeted input may be requested at a later stage of preparation of the 2024 Rule of Law Report, including in the context of country visits, or bilateral contacts.

The 2024 Rule of Law Report will continue to deepen the assessment under the existing four pillars, and will also follow-up on the implementation of the recommendations to Member States, that were issued as part of the 2023 Rule of Law Report. The contribution to be provided should include **(1) information on measures taken to implement the recommendations addressed to the Member State in the 2023 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 2023^[1] falling under the ‘type of information’ outlined in section II.**

The input should consist of a short summary, if possible in English, covering the areas referred to below. Legislation or other documents may be referenced with a link. Contributions should focus on significant developments since the last Rule of Law Report both as regards the legal framework and its implementation in practice.

[1] Unless the information was already submitted in the input 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:

A) Legislative developments

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

B) 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

C) 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[2])

D) 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.

Please also indicate whether the developments reported are linked to the implementation of reforms and investments under the RRP, where applicable.

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.

[2] 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 -this contribution is as 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

The IEN is the coalition of national environmental non-Governmental Organisations, eNGOs in Ireland. www.ien.ie

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)



* 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 2024 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 2024 RoL Report.pdf](#)

Please provide any relevant information on horizontal developments here

5000 character(s) maximum

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 State in the 2023 Rule of Law report, as well as

developments with regard to the points raised in the respective country chapter of the 2023 Rule of Law Report and (2) any other significant developments since January 2023[3]. Please always include a link to and reference relevant legislation/documents (in the national language and/or where available, in English). 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.

[3] 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

I. Justice System

Please provide information on measures taken to follow-up on the recommendations received in the 2023 Report regarding the justice system (if applicable)

5000 character(s) maximum

I would ask that this comment be taken into account across all elements of this submission.

The Commission will be aware that huge value and importance is placed by me on the Rule of Law Process and its engagement is most appreciated. However serious concerns were raised by myself and also the Irish Council for Civil Liberties about the extent to which resources were over-stretched at the EC level and on issues with the quality of the 2023 RoL report. Of particular concern was the failure to reflect a number of highly relevant and significant developments and issues of concern, including, but not limited to a failure to reflect any mention at all on:

- major changes proposed to rules on Judicial Review in environmental cases and an unprecedented regression in rules on access to justice;
- failures to provide for legal aid schemes fit for purpose for children and in the criminal legal aid system;
- concerns the establishment of a new Environmental Court without any consultation on the merits and demerits of this and how it should be configured;
- serious evidence of corruption and issues with Governance amongst public representatives; and
- failures to manage and report on lobbying effectively.

Further to feedback following the publication of the report, and helpful intervention by the EU Commission's representation in Ireland - a number of one to one follow-up meetings were held with representatives from Commissioner Reynders cabinet and DG- Justice and also with EC Home EC HOME, International and Horizontal Affairs - to highlight the fact the 2023 report and associated recommendations fell far short of expectations.

Therefore in coming to provide input into the 2024 report - it would be very problematic to only focus on the recommendations made in the 2023 and the associated progress, and while there are some relevant matters obviously in the recommendations made, I do not intend to confine myself here to that. I would ask also that the concerns raised in the 2023 report are taken into account in considering the overall direction of travel in Ireland on rule of law matters. The shortcomings in addressing these issues which arose in 2022 - need to be properly considered in examining 2023 - regardless of the shortfall in recommendations. Otherwise we end up with serious lacunae and a spiral of inadequate consideration running from one report to the next.

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)

5000 character(s) maximum

I wish to raise 3 issues here.

1. The EC's 2023 report quite properly made recommendations to "ensure that the reform of the appointment and promotion of judges takes into account European standards on judicial appointments". Concerns were expressed in the report on legislation then going through the Oireachtas (our Parliament), for a new Judicial Appointments Commission. It is imperative in this next report for the EC to bring serious and

increased focus to this matter for the reasons laid out below.

The Judicial Appointments Commission Bill, was finally enacted in 2023. As passed it provided no change to the basic makeup of the Commission which had been highlighted as a concern by the EC, myself and others. As enacted, the Judicial Appointments Commission, JAC, in section 9, provides for a membership of 9, comprising 4 members of the judiciary, 4 lay members and the Attorney General. (The AG is a political appointee by Government and their legal advisor.)

There are no matters where a vote is stipulated for the JAC. But it is stipulated that the AG has no vote. s9 (3) refers. But of course the AG is privy and part of any discussions and able to input into them and can exert influence.

The President of Ireland, under Art 26 of the Irish Constitution, referred the bill to the Supreme Court on specific, limited questions on the Constitutionality of certain of its provisions. The Supreme Court found the matters referred did not breach the Constitution, neutral citation [2023] IESC 34. Therefore the bill as a whole, regardless of the narrowness of the questions referred, is deemed to be Constitutional as I understand it.

Much of the argument before the Supreme Court focused on section 51 of the bill, under which the Government can appoint only a person recommended by the new commission. Counsel assigned by the court argued that the measures infringed the principle of the separation of powers. They contended that the bill divested the executive of its constitutional role in appointing judges, and that the vagueness and breadth of the powers conferred on the commission amounted to an unconstitutional delegation of the legislative functions of the Oireachtas.

Quite apart from the more fundamental issue of how Ireland appoints its judges, the narrowness of what was raised before the Supreme Court is deeply regrettable. In my submission to the 2023 RoL report I highlighted that under s13(7),(8) and (9) a Minister can appoint one, more or all of the lay appointees before establishment day of the new Commission, and can thus bypass the very limited safeguards in the bill on oversight of appointments. Also on the expiration of their term, any such appointees can be simply re-appointed again bypassing the limited scrutiny provided for other candidates. I was and remain concerned that this should have been raised as issue under Article 15 of the Constitution in respect of Judicial Independence. The JAC is responsible for defining criteria for the appointment of judges and also for proposing nominees to be considered by the Minister. So the extent to which the composition of this body is subject to serious political control, on top of the final determination on judicial appointments being made by the Government is of serious concern. This is particularly in the context of a government and AG which are clearly so averse to public accountability - a view I can provide more detail on as required.

2. A second issue for the independence of the judiciary is the extent to which the Planning and Development Bill, 2023 in changes to the rules on Judicial Review in Part 9 of the bill, proposes extensive changes limiting the discretion of judges in cases falling within the scope of the legislation. These limitations to judicial discretion are in respect of standing, scope of review, costs and remedies, and raise serious EU law issues including under Article 47 of the Charter of Fundamental Rights, and Art 52 on the proportionality of the response, the public participation Directive 2003/35/EC, and the Aarhus Convention as an integral part of the EU legal order. This will now encompass decisions, acts and omissions of the Government, Ministers, the Planning Regulator, Regional Planning Authorities and others in addition to Planning Authorities.

3. Thirdly, the Government, without any prior public consultation, established what is referred to as an Environmental Court, albeit this is really a special list within the High Court. Meaning no disrespect to the current set of judges on the list, the fact that there can be a limited number of judges hearing cases of a particular type (currently just 3 judges) in circumstances where the Government is driving extensive legislative changes to JR with a clear political agenda set on restricting access to justice on such cases – this is a very dangerous situation, where the pool of judges can be limited and appeal under the new

legislation is restricted also.

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)

5000 character(s) maximum

Promotion of judges and prosecutors (incl. judicial review)

5000 character(s) maximum

Allocation of cases in courts

5000 character(s) maximum

There are a number of points to be made here and I will confine myself to the matter of environmental cases and Judicial Review where I am most familiar.

1. The establishment of the Environmental Court referred to above, which is effectively an expansion of the scope of cases heard in a previous commercial planning list - is a development with both positive and negative dimensions. It is of serious concern that there was no consultation on the establishment of an environmental court and what that could and should mean in an Irish context, and what was needed to support its effective implementation. While it is appreciated that EU Environmental law is complex and that there are benefits to having expertise and experience on such matters in the judges hearing such cases, particularly given the ongoing serious under-resourcing of our judiciary and the extent to which they rely on Counsel for the parties to the proceedings, there are also potential obvious downsides, which hardly need to be set out here of such an approach as has been taken in Ireland.

The scope of cases which fall now to be considered by this list, has been significantly expanded - and such cases will fall to be determined only by the judges on that list, rather than by the normal process of allocation within the High Court for Judicial Review.

2. For what will invariably be a large element contingent of the cases which will fall within that list arising from Planning Legislation, there will also be limitations on right of appeal if proposals are enacted in new legislation published late last year - the Planning and Development Bill, 2023. So the opportunities for a further set of eyes are also limited.

3. Serious concerns have been raised by the legal profession, eNGOs, Civil Society Organisations and Academics and indeed others within the development sector that the extensive changes proposed in this bill to this fundamentally important area of legislation risk massively increasing the burden on the Courts - and indeed on the judges in this new list to whom the cases which will invariably arise, including with extensive satellite litigation will all be subject to a potentially very serious bottle neck. The issue of allocation of cases amongst the wider judiciary will not be able to solve this in the context. This restriction in allocation could therefore result in delays in access to justice, given the contentious changes proposed which are likely to increase litigation in this area.

4. Finally, I would add that I am unclear as to how cases are allocated amongst the judges in this environmental court list also - so I cannot at present comment on that.

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)

5000 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)

5000 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

5000 character(s) maximum

Independence/autonomy of the prosecution service

5000 character(s) maximum

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

5000 character(s) maximum

There is a very sensitive, urgent and important issue to be raised here, which requires the Commissions most immediate focus, given how it has operated to compromise the availability of an independent Bar or a significant cohort of it in a particular area of law.

The former Attorney General, AG, when AG, convened a Working Group of lawyers expert and experienced in Planning and Environmental Law, to feed into a review of the current Planning and Development Act, 2000 to inform a new version of the legislation. The significance of this legislation cannot be understated. It governs land use, and decisions on most physical interventions in Ireland, as planning is generally needed for most developments. It also covers a significant amount of enforcement on development, and is responsible for transposing over 12 EU Directives, and at least 2 international Conventions, including the Aarhus Convention which is integral part of the EU legal order.

The work of this group was conducted entirely out of the public sight. No final report or findings were published on foot of this supposed "review". Instead the Government simply published a draft bill, and then published a further version of the bill of over 700 pages, all without any detailed rationale or supporting assessment of the strengths and weaknesses of the system justifying the extensive changes proposed. This bill is now before the Oireachtas.

Serious questions on the legality of a number of the provisions in the bill have been raised from authoritative sources. But it is clear now, that those involved in the Working Group are being prevented and are not able to comment on the bill other than to say what it says. But they cannot comment on its legality or on the policy choices made.

I can speak more in confidence to the Commission. It's clear from responses indicating they cannot

comment or engage in any examination of the bill because of their involvement. It seems the current AG is vigorously enforcing a code of silence on the bill. This gagging appears to be regardless of whether advice given may or may not have been contrary to what has ended up in the bill, or whether they were consulted on what's now in the bill.

It is important to reflect on the power to choose the lawyers acting on important cases for the State, and the role of the AG in the Judicial Appointments Commission in the process for decisions to elevate lawyers to the bench.

The working group included a huge contingent of lawyers expert and experienced in an area of law. A very large cohort have effectively been taken out of circulation and gagged from comment or in answering any questions about the bill.

The pressure seems to be particularly intense in this phase of the bill now that it is before the legislature. This is of serious concern given members of the legislature will be seeking input on parts of the bill. This is key to preparing considered questions on the legislation, and in preparing informed amendments, and in considering the validity of representations being made to them on the bill, including from the public, whose interests they are supposed to be serving.

This has operated to effectively compromise the independence of a significant contingent of the legal profession on a specific area of the law at a really crucial juncture, and their availability to advise.

I appreciate fully the bounds and importance of client confidentiality for the legal profession - but the issue here seems different. That the AG clearly and deliberately included a huge cohort of the relevant professionals in his working group, is not in itself an issue. The concern arises where it is clear that they are now precluded from commenting on the bill during the legislative process which is supposed to be concerned with getting the legislation right, at a time when the availability of multiple experienced and expert members of an independent bar is so important.

I am also aware of the dubious practice of simply contaminating a lawyer so they can't act for the other side. This approach has effectively been executed here on a macro scale, and has in effect operated to significantly compromise the availability of an independent Bar and Law Society, or a significant cohort of it. I cannot emphasise how problematic and how concerning this is given the profound economic, societal and environmental consequences of this bill - including on Ireland's observance and compliance with EU law obligations.

It is very important that the Commission bring real focus to this matter early and as soon as possible, including before and during the country visits and discussions, as the legislation is moving to the critical Dáil Select Committee stage in February with a deadline for amendments for that phase already on January 24th. After Committee stage there will be Report stage with an in practice more limited possibility for amendments. I am available to discuss this matter further as needed.

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

5000 character(s) maximum

The issues raised in respect of the Judicial Appointments Commission Act 2023, earlier should be taken as read here.

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)

This area is very relevant for the 2024 report given very concerning new legislative proposals and issues with the EC's recommendations.

It is well understood that costs of litigation in Ireland are very high. But there is a concern that the Commission's blanket highlevel recommendation to address legal costs is not helpful and potentially counter productive if it is made without associated more considered caveats and/or recommendations to ensure the quality of justice is not compromised. In summary, it is essential that recommendations require reforms are delivered which makes it feasible to deliver on a lower cost regime, without impacting on the quality of justice being administered, or on the quality of the legal professionals and the quality of their engagement.

The Civil Legal Aid Scheme has been a disaster particularly for children in the system, despite the efforts of the judges, legal practitioners and other professionals engaged in that system. The report of the Chief Justice's Civil Legal Aid Review can testify to this objectively and factually. So not resourcing and supporting the Courts and setting entirely unfair and non-commercial rates for lawyers, results in 'yellow-pack' i.e poor justice, in which children suffer when at their most vulnerable. If we can't manage to deliver justice through cost focused changes - what hope for the environment or other sectors?

It is also important to ensure the reforms don't compromising the sustainability of the practice of law for lawyers. On October 3rd 2023, the lawyers in the Criminal Legal Aid system withdrew their services as under the legal aid scheme they are not paid a sustainable rate to defend clients in a country which believes in innocent until proven guilty and which is bound by i.a. the EU Charter of fundamental rights, and Human Rights Conventions.

This capacity of lawyers to engage at an appropriate level of expertise and effort, is particularly important in the area of environmental law which involves complex factual matrices and complex and rapidly evolving law and jurisprudence. So it is essential to be well represented if the interests of justice and environmental protection are to be served in line with the values of the EU as provided for in the Treaty of European Union and the Treaty of the Functioning of the EU

The former Chief Justice has eloquently pointed out in numerous addresses and in judgments whilst on the bench - key factors which feed into high litigation costs in Ireland. These include the ongoing failure to adequately fund and resource the judiciary, and the adversarial system. This means that significant reliance and burden is placed on the lawyers acting for the Parties, and hence on the costs borne by parties to proceedings.

By striking comparison, the EU Court of Justice is supported by independent legal experts, Advocate Generals and their Referendaires, and can and does execute a more inquisitorial approach.

However the Planning and Development Bill, 2023 now before the Oireachtas proposes to entirely replace the existing special cost rules in environmental cases, which were introduced belatedly to comply with EU law, and also to facilitate ratification by Ireland of the Aarhus Convention.

The current rules while not perfect were appropriate to Ireland, and were reflected on favourably in the Commissions Notice on Access to Justice in environmental matters. But following a positive interpretation on the scope of these rules from the Irish Supreme Court in Nov 2022 in Heather Hill - the Government decided to change the system entirely and replace it with a legal costs aid system. This means they effectively get to determine who can or can't afford to hold them to account in the Courts, on certain environmental cases. They will set the overall pot of money available in the scheme, and it will be subject to the vagaries of the exchequer and determined by political priorities. They will also set the rates lawyers will get paid and the profile or payments for cases and the duration of cases, so they can determine the extent of effort lawyers

can put into a case, and how unattractive this area of law becomes.

They also determine the eligibility criteria for any financial assistance and the factors which can result in you unpredictably forfeiting some or all of that. It is non-credible that the means tests for this aid would be configured more generously than those in other areas, where all but the most disadvantaged are not eligible. Yet with Irish legal costs this means litigation will be inaccessible for most when seeking to hold public authorities to account.

The cost changes are in principle entirely unacceptable. Most of the key details will be determined in secondary legislation away from any meaningful Oireachtas scrutiny.

The changes are disproportionate & are compounded by other changes impacting on i.a standing, scope of review, fairness of procedures and remedies

Resources of the judiciary (human/financial/material)

(Material resources refer e.g. to court buildings and other facilities. Financial resources include salaries of staff in courts and prosecution offices.)

5000 character(s) maximum

I do not intend to respond in detail here as I expect others more immersed in this area will respond more thoroughly than I can. But I would simply flag the under-resourcing of the judiciary remains a serious concern, not just in terms of the numbers of judges per head of capita compared to other Member States - but also in the level of support and resources available to judges and the Court system.

I was unable to fit it in to the response to the last question - but I am unclear why there are still issues with access to judgments in the Irish language.

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

5000 character(s) maximum

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, procedural rules, access to judgments online)

5000 character(s) maximum

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)

5000 character(s) maximum

Despite significant advances in use of IT during Covid - there are still major deficits in the IT systems and management of information around the operation of the courts and it is not clear that any significant progress has been made on this.

This is very problematic as Government are arguing delays arising from Judicial Review of Planning and Environmental decisions mean they need to reform laws on access to justice. However they fail to provide evidence of this and interrogating the system to show why and where delays occur is difficult for externals to undertake or even to interrogate the nature of the parties in proceedings and the duration of the proceedings, including the causes for adjournments and reschedules which we understand are very frequently driven by the State Parties. It is therefore particularly egregious for the public's rights on access to justice to be compromised when the fault for the delays lies elsewhere and cases could have been progressed more readily.

Data on the duration of cases is also important to informing decisions on the number of judges needed, and analysis on areas where cases are arising can help inform consideration on where reforms are needed.

Government also argues that cases are too often taken on a frivolous or vexatious basis - but won't substantiate this. Interrogating the system to prove this is not the case is very onerous.

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

5000 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

5000 character(s) maximum

To the best of my knowledge there is still no system implemented which gives meaningful information on the length of proceedings, and which breaks it down to a granular level so factors leading to delays or distortions can be properly understood.

Other - please specify

5000 character(s) maximum

I am conscious of the positive comments from a number of legal practitioners about the positive effect of Practice Directions made in the Commercial and Planning List - now the Environmental Court list. While sometimes the pace and number of changes could be hard to keep pace with - what has been particularly refreshing is the manner in which the Judge in charge of the List consults on the Practice Directions. I am also personally conscious of some suggestions made during those consultations being taken on board for example I highlighted the need to consider environmental significance as a factor in prioritising cases - not just commercial significance, and also highlighted a number of further Acts and Directives which should clearly fall within the scope of the Courts.

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 2023 Report regarding the anti-corruption framework (if applicable)

5000 character(s) maximum

I would highlight my opening comments at the start of this consultation response on deficits in the consideration of relevant matters in the 2023 report. This included significant issues on corruption, and failures and regressive developments in the frameworks intended to prevent corruption.

Key issues were the failure of the Office of the Planning Regulator, OPR, to react to red-flags on the number of decisions of An Bord Pleanála, ABP being struck down by the Courts and the increase in the scale of its litigation costs. ABP is the body at the Apex of our Planning system responsible i.a. for appeals from Local Authorities across the country, and is the decision maker of first instance for decisions on major strategic infrastructure and strategic housing developments.

It was obvious there was something seriously wrong with the decision-making within ABP - and yet despite the OPR having powers under the Planning Act to conduct an investigation - it entirely failed to do so, until the situation had become deeply damaging and leaks emerged in the media alleging serious conduct issues by senior members of the Board who were subsequently prosecuted and convicted. It was particularly concerning as the OPR were established on foot of recommendations in the Mahon tribunal an investigation into serious corruption in Planning in Ireland. The regulator established to be a watchdog, entirely failed here to read the signs and react appropriately to them.

It is of serious concern that the powers of the OPR are now to be increased under the new Planning and Development Bill 2023, and that the Government are proposing further changes to JR rules in that bill intended to make the ability to hold the OPR to account much more difficult.

It is also notable that the two bodies intended to provide for independence in our Planning system both had two officials at their head, who had walked out of their job in the Government Department responsible for Planning, straight into their new role: one in the OPR and the other in ABP. There is a total failure to operate a system which creates any meaningful separation between public office and key roles and subsequent private engagements.

Another example in 2023, is the former Attorney General left office to work for a Developer who had previously named him as a Respondent. He also in office, drove legislative changes on rules on standings very closely linked to issues that Developer raised in litigation against an unincorporated civil society organisation seeking to challenge one of their Developments. I would be happy to expand on this.

I also flagged the extent to which changes made at the end of 2022 have led to the reversal of 3 decades of policy intended to keep ABP free from political interference. This including limiting the influence on appointments of ordinary members of the Board of ABP who are responsible for major decisions on planning. No change has been made in 2023 which lessens the concerns here. Also without implying any issue with the individuals involved - the Government has also continued to use these new powers to appoint without any oversight its hand picked interim chairs of ABP - with the second interim chair still in office. They also delayed the initiation of the "normal" process to provide for a Chair.

Legislation on lobbying enacted and another bill still underway still fail to ensure bodies responsible for major decisions on development – the EPA and ABP are included in the lobbying register. This is incredible in the context of the scandals in ABP in the last years. Also there has been a carve out of Port Authorities

from the register. This is extraordinary given the vast sums of money involved in Port Development and the interests of fossil fuel companies and offshore renewables, which dwarf the monies involved in development in Ireland in circumstances where Planning and Development has been associated with corruption.

Further issues were highlighted on extensive litany of failure to disclose interests by Public Representatives in line with legislative requirements, and or to use influence, which resulted in multiple resignations of the individuals involved when these matters were brought to light by the media - most notably "The Ditch". This continues in 2023.

The standards in Public Office has maintained a list of recommendations in its annual report on which there has been little if any progress. I was alarmed to see in its latest 2022 report it omitted recommendations given what seems to be a very vague process and commitments on future legislation <https://www.sipo.ie/reports-and-publications/annual-reports/SIPOC-AR-2022-Final-for-Web.pdf#page=7>

Concerns have also been raised on how SIPO itself complies with requirements on electoral law as it appears to have refused to allow inspection of details on donations made to Leo Varadkar, now Taoiseach. See <https://www.ontheditch.com/sipo-blocks-access-varadkar/>

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 and with foreign authorities. Indicate any relevant measure taken to effectively and timely cooperate with OLAF and EPPO (where applicable)

5000 character(s) maximum

Please refer to opening comments above on the Anti-Corruption Framework

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

5000 character(s) maximum

Please refer to opening comments above on the Anti-Corruption Framework

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

5000 character(s) maximum

The area of Offshore renewables is potentially going to be an area of major financial interest in Ireland. Ireland while considered to be a small country is one of the EU's largest when its marine territory is taken into account. It is potentially very suitable for the expansion of offshore renewable energy, and is not just focused on domestic requirements - but also in meeting a very substantial percentage of the EU's end requirements. Clearly decarbonisation of energy is important in the context of climate change and given increasing geo-political world events, and the need for energy security. However the legality of what is being done and proposed must also be of concern.

Of key concern is how Ireland is going about this. There are serious concerns with its failures to implement long outstanding requirements on environmental protection for marine under the EU Marine Strategy Framework Directive, and provision of Marine Protected Areas is being continually put on the long finger - while the seas are being carved up to facilitate development.

Other key legal requirements to protect marine species - those requiring the strictest levels of protection under EU law - regardless of where the animal is, and which protect each occurrence of the animal and its breeding and resting place - have been totally inadequately implemented in Irish waters - particularly the Exclusive Economic Zone. This creates huge issues for cetaceans who are key not just to climate action and sequestration in number of complex ways - but also to atmospheric regulation - contributing significantly to the atmosphere we and other species need to exist. Yet they are being put at serious risk in Irish waters which are very important at EU and global level for these species, because of the risks from surveys for ORE using various sound based surveying techniques - eg seismic which can prove fatal to these species. A very clear de-regulatory agenda is being driven in Ireland and also certain key decisions are being made in ways which means there is no public consultation and they are very difficult to challenge via Judicial Review. Multiple limitations on the lobbying register, and exclusion of certain bodies like the new Maritime Regulatory Agency Body and An Bord Pleanála and the Port Authorities are entirely inappropriate and leave us vulnerable to corruption and other issues in decisions on this important and hugely valuable space.

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)

5000 character(s) maximum

Please refer to opening comments above on the Anti-Corruption Framework. The provisions introduced on Board appointments at the end of 2022 continue to be of serious concern and as indicated in an article I wrote for a national newspaper - there is no barrier to revolving doors from the private sector - straight into senior roles in the body at the apex of our Planning system - An Bord Pleanála. There is also a complete failure to provide for any cooling off or decontamination period between significant public office and a job in the private sector. A classic example of this is the former Attorney General left office and is now engaged as a consultant by a Developer, where the links in terms of legislative changes driven by the AG when in office and the interests of that Developer have raised serious concerns. see <https://www.ontheditch.com/attorney-general-property-giant/>

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)

5000 character(s) maximum

Please refer to opening comments above on the Anti-Corruption Framework including on inadequacies in lobbying registers and legislation, and ongoing issues on failures to declare assets and interests and political financing. 2023 saw reports on failures within all 3 major political parties of members failing to declare interests. These failures included senior ministers including Pascal Donohoe Minister for Public Expenditure and Reform and the Taoiseach, Leo Varadkar. see the following links for some details - more information available as needed.

Further consideration may be warranted on the matter of the Aib B and B lobbying issue noted below given legislation enacted in respect of Air BnB which failed to observe requirements to engage in advance with the EU Commission, and which then had to be quite extraordinarily un-commenced. More details available on request.

<https://www.ontheditch.com/varadkar-donor-lobbied/>

<https://www.businesspost.ie/news/sipo-clears-paschal-donohoe-for-failing-to-declare-michael-stone-donations/>

Rules and measures to prevent and address conflicts of interest in the public sector. Please specify the features and scope of their application (e.g. categories of officials concerned, types of checks and corrective measures depending on the category of officials concerned)

5000 character(s) maximum

Please refer to opening comments above on the Anti-Corruption Framework - issues in this space were ongoing in 2023 or at least coming to light in 2023 as there is sometimes a lag with the availability of information. But in summary there appears to be an ongoing issue with implementing basic recommendations of SIPO as noted above and concerns now at it entirely dropping recommendations from its latest report - as highlighted on page 7 here: <https://www.sipo.ie/reports-and-publications/annual-reports/SIPOC-AR-2022-Final-for-Web.pdf#page=7>

I will be honest and indicate I have not had an opportunity to examine the adequacy of SIPO's former recommendations - at this juncture - but will endeavour to do so before the country visits.

If available to you, for the three preceding questions, you are also invited to provide figures on their application, such as number of detected breaches/irregularities of the various rules in place and the follow-up given (investigations, sanctions, etc.).

Measures in place to ensure whistleblower protection and encourage reporting of corruption, including the number of reports received and the follow-up given

5000 character(s) maximum

I will defer to the input of others on the limitations and inadequacies of whistleblower legislation - but can revert further if necessary. I would be conscious of serious inadequacies in protecting whistleblowers who come forward in the environmental sphere and who are in the public service and do not feel they can raise issues internally. Pursuing issues and trying to protect them while helping to address the issues can be very problematic.

I must also flag concerns on how the interest of funders is linked to advocacy agendas and work of NGOs and CSOs. I am particularly concerned for some NGOs on how the charities regulation has been used to curtail their advocacy, and how this Government is indicating that Government policy and public policy are one and the same - when that is not necessarily the case at all.

Sectors with high-risks of corruption in your Member State:

- Measures taken/envisaged for monitoring and preventing corruption and conflict of interest in public procurement
- List other sectors with high risks of corruption and the relevant measures taken/envisaged for monitoring and preventing corruption and conflict of interest in these sectors (e.g. healthcare, citizen /residence investor schemes, urban planning, 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)

5000 character(s) maximum

Planning and Development has always been seen and been an issue where corruption and conflict of interest has been of concern in Ireland. The issues with the manner of appointment of key resources in An Bord Pleanala should be taken as read here. It remains to be seen how further changes proposed to An Bord Pleanala will develop - as these are before the Oireachtas in the Planning and Development Bill. They would first need to be enacted and commenced - but do not operate at present to allay fears on recent changes enacted and commenced.

Very significantly on the horizon in terms of fear of corruption is offshore renewable energy. The area of Offshore renewables is potentially going to be an area of major financial interest in Ireland. Ireland while considered to be a small country is one of the EU's largest when its marine territory is taken into account. It is potentially very suitable for the expansion of offshore renewable energy, and is not just focused on domestic requirements - but also in meeting a very substantial percentage of the EU's end requirements. Clearly decarbonisation of energy is important in the context of climate change and given increasing geo-political world events, and the need for energy security. However the legality of what is being done and proposed must also be of concern.

Of key concern is how Ireland is going about this. There are serious concerns with its failures to implement long outstanding requirements on environmental protection for marine under the EU Marine Strategy Framework Directive, and provision of Marine Protected Areas is being continually put on the long finger - while the seas are being carved up to facilitate development.

Other key legal requirements to protect marine species - those requiring the strictest levels of protection under EU law - regardless of where the animal is, and which protect each occurrence of the animal and its breeding and resting place - have been totally inadequately implemented in Irish waters - particularly the Exclusive Economic Zone. This creates huge issues for cetaceans who are key not just to climate action and sequestration in number of complex ways - but also to atmospheric regulation - contributing significantly to the atmosphere we and other species need to exist. Yet they are being put at serious risk in Irish waters which are very important at an EU and global level for these species, because of the risks from surveys for ORE using various sound based surveying techniques - eg seismic which can prove fatal to these species. A very clear de-regulatory agenda is being driven in Ireland and also certain key decisions are being made in ways which means there is no public consultation and they are very difficult to challenge via Judicial Review. Multiple limitations on the lobbying register, and exclusion of certain bodies like the new Maritime Regulatory Agency Body and An Bord Pleanala and the Port Authorities are entirely inappropriate and leave us vulnerable to corruption and other issues in decisions on this important and hugely valuable space.

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

5000 character(s) maximum

Ireland continues to have an inadequate response to be able to deal meaningfully with SLAPP. This is of concern - not just given the trauma and unfairness to those subject to the SLAPP - but it means the effective policing by the public and exercise of rights in terms of participation and access to justice is compromised with the whole system suffering as a result.

Key to oversight of many of these issues is transparency of information - and Ireland continues to be a laggard in this regard. Very particularly also in terms of specific requests for access to environmental information Ireland was found to be in breach of the Aarhus Convention in respect of the the timeliness of appeals to the Office of the Commissioner for Environmental Information, OCEI and Court decisions and directions on such matters. The Aarhus Convention Compliance Committee, ACCC made its finding in communication ACCC/C/2016/141 in November 2020. Progress on responding to these findings has been seriously inadequate with no meaningful analysis of the issues causing the delays or in proposing a meaningful timeframe or mechanism to decide on appeals in a timely way with adequate and effective remedies - all key characteristics required under Article 9(4) of the Convention. Note the EU has provide for Directive 2003/42/EC in respect of the Member States obligations. I would draw the EC's attention to the submission by Right To Know and myself on January 15th 2024 on the lack of progress made on this matter. They will be uploaded in time to the uploaded to here:<https://unece.org/env/pp/cc/decision-vii8i-concerning-ireland>

Without a credible and timely appeal process - the whole system of access to environmental information is undermined. Further - Ireland has failed to provide for any meaningful evaluation of the adequacy of the measures, legislative regulatory and other measures in addressing and meeting its obligations. These are serious failures in a meachnism which is intended to help inform the public when it needs to engage, facilitate if being able to participate effectively and to leverage access to justice appropriately and effectively. If public authorities can act and conduct their business safe in the knowledge that it is hard to access information on what they are doing and not doing this is not a health situation and environment in which to manage corruption and other failures of governance.

C. Repressive measures

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

5000 character(s) maximum

Revelations on Prime Time Investigates in late 2023 - highlighted concerns on how the threat of an appeal on a planning decision could be used to extract payment or other benefit from a developer who was anxious to avoid the delay associated with an appeal on their development. Clearly such conduct would be of major concern. However it was and remains of serious concern that the Developers involved - were open to the bribery and the subversion of the system, to remove a decision from the appeal body, and also did not appear to be prepared or willing or to have pursued provisions in s,138 of the Planning and Development Act to have such a mischievous appeal struck out, or why they did not seek to do so.

Further it remains unclear what if any criminal investigations are underway on such matters as there are a number of existing provisions which could be used to prosecute such activities where appropriate.

What is now of serious concern is that while the vast majority of people engage in the Planning system for the good, making submissions and observations and appeals at their own expense and at great personal cost often in terms of their time - the programme will be used to drive a knee-jerk reaction and to introduce measures which will make it more difficult for the ordinary person to execute their participatory and access to justice rights.

Data on the number of investigations, prosecutions, final judgments and application of sanctions for corruption offences (differentiated by corruption offence if possible) including for legal persons and high level and complex corruption cases) and their transparency, including as regards to the implementation of EU funds

5000 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)

5000 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

5000 character(s) maximum

Other - please specify

5000 character(s) maximum

III. Media pluralism and media freedom

Please provide information on measures taken to follow-up on the recommendations received in the 2023 Report regarding media pluralism and media freedom (if applicable)

5000 character(s) maximum

A. Media authorities and bodies

(Cf. Article 30 of Directive 2018/1808)

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

5000 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

5000 character(s) maximum

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

5000 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)

5000 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

5000 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

5000 character(s) maximum

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

Rules and practices guaranteeing journalists' independence and safety, including as regards protection of journalistic sources and communications, referring also, if applicable, to follow-up given to alerts lodged with the Council of Europe's Platform to promote the protection of journalism and safety of journalists

5000 character(s) maximum

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

5000 character(s) maximum

Access to information and public documents by public at large and journalists (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)

5000 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

5000 character(s) maximum

Other - please specify

5000 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 2023 Report regarding the system of checks and balances (if applicable)

5000 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 (including consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process both in the preparatory and the parliamentary phase

[1] This includes also the consultation of social partners

5000 character(s) maximum

As indicated in the submission to the previous report - issues with how this Government advances legislation continue to be of major concern. As noted at the start of this consultation response there was inadequate consideration of these matters in the 2023 report and associated recommendations.

In the last year the basis for legislative changes is a major concern and continued issues with how legislation is advanced.

The Draft Planning and Development Bill was published in January 2023. This was a total re-write of the current Planning and Development Act 2000 and was supposed to be the result of a review by the Attorney General of the current Act of 2000 which had been significantly and continuously amended, particularly by this Government.

However no "review" or assessment of what works well or badly or any rationale for the changes proposed was ever published. We were only presented with a draft bill. This was subject to a pre-legislative scrutiny, with 9 sessions of around 3 hours in length of hearings of evidence from a range of stakeholders on a bill whose contents alone ran to over 28 pages and was over 700 pages in length. The Oireachtas Committee did their best but could not hope to cover the bill thoroughly. They produced a report with an unprecedented amount of recommendations - over 150 on the bill.

In November the next version - the Planning and Development Bill 2023 was published and is now going through the Oireachtas. The Government sought to commence the second stage debate within 7 days of publishing the bill where no Deputies could realistically have established an informed view of the bill and their basic positions on it. The conceded to delaying the start of the debate by one day.

The Explanatory memorandum is seriously inadequate as has been highlighted by Deputies in terms of requirements it should address in order for the bill to be published and it is incorrect in places so can't be relied upon

No regulatory impact assessment, no review of planning legislation or the system, no rationale or explanation of the changes or justification for the major restrictions on rights proposed - particularly in respect of access to justice rights has been provided. There is nothing to evidence the proportionality of the response consistent with the obligations under Article 52 of the EU Charter of Fundamental Rights as outlined by the CJEU in C-664/15 Protect Natur, para 90, and the case law cited therein on Puškár, C 73/16 para 61-71.

A major and unprecedented regression on access to justice rights is proposed. Please note the comments made earlier on the section on Justice and legal aid for my concerns on the changes proposed in this bill to existing rules implemented to comply with our EU law requirements on access to justice, including under the Public Participation Directive 2003/35/EC and to facilitate Ireland ratifying the Aarhus Convention. These new rules mean the Government has effective control over who can and can't afford to go to Court to challenge them on the decisions, acts and failures or those of a range of public authorities.

The current rules while not perfect were appropriate to Ireland, and were reflected on favourably in the Commissions Notice on Access to Justice in environmental matters. But following a positive interpretation on the scope of these rules from the Irish Supreme Court in Nov 2022 in Heather Hill - the Government decided to change the system entirely and replace it with a legal costs aid system. This means they effectively get to determine who can or can't afford to hold them to account in the Courts, on certain environmental cases. They will set the overall pot of money available in the scheme, and it will be subject to the vagaries of the exchequer and determined by political priorities. They will also set the rates lawyers will get paid and the profile or payments for cases and the duration of cases, so they can determine the extent of effort lawyers can put into a case, and how unattractive this area of law becomes.

They also determine the eligibility criteria for any financial assistance and the factors which can result in you unpredictably forfeiting some or all of that. It is non-credible that the means tests for this aid would be configured more generously than those in other areas, where all but the most disadvantaged are not eligible. Yet with Irish legal costs this means litigation will be inaccessible for most when seeking to hold public authorities to account.

The cost changes are in principle entirely unacceptable. Most of the key details will be determined in secondary legislation away from any meaningful Oireachtas scrutiny.

The changes are disproportionate & are compounded by other changes impacting on i.a standing, scope of

review, fairness of procedures and remedies

This is an area where the EU Commissions next RoL activity and report must focus

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)

5000 character(s) maximum

The Government continues to use its majority to bend rules to minimise the scrutiny the Oireachtas has of legislation. It waits until a bill has completed in one house and then suspends standing orders to significantly change the scope of legislation adding major changes completely different to the original bill. Eg marine changes and planning changes in a bill on Archaeological and Historic heritage. I also have evidence which I can share of how the Government was engaging with Developers on these changes months before they "rushed" these changes through.

Rules and application of states of emergency (or analogous regimes), including judicial review and parliamentary oversight

5000 character(s) maximum

Please see comments above on why Judicial Review on environmental matters is now the number one priority. It was on top of DG - ENVI's agenda in the last package meeting with the Irish authorities and with also in the meeting with eNGOs. This legislation is now before the Oireachtas and while recognising the autonomy of the Member States it would be very short sighted if concerns were not to be flagged on the direction of travel. We are in a time of what the IPCC has described as interdependent climate and biodiversity crises - so if we fail to enable environmental decisions to be held to account - we do so at our peril.

Regime for constitutional review of laws

5000 character(s) maximum

There is too limited a window to review the constitutionality of laws passed by the Oireachtas and to allow for input on concerns - as was evidenced in the recent review of the Judicial appointments commission bill. Further details available

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#>)

5000 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

5000 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)

5000 character(s) maximum

A communication on this is now before the ACCC

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)

5000 character(s) maximum

Rules and practices related to the application by all courts, including constitutional jurisdictions, of the preliminary ruling procedure (Art. 267 TFEU)

5000 character(s) maximum

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

5000 character(s) maximum

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)

5000 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

5000 character(s) maximum

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)

5000 character(s) maximum

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

5000 character(s) maximum

E. Initiatives to foster a rule of law culture

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

5000 character(s) maximum

Other - please specify

5000 character(s) maximum

Run out of time - please engage in country visit

Contact

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

