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## **COMMISSION STAFF WORKING DOCUMENT**

### **2023 Rule of Law Report Country Chapter on the rule of law situation in Ireland**

*Accompanying the document*

#### **COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS**

### **2023 Rule of Law Report**

#### **The rule of law situation in the European Union**

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## ABSTRACT

Reforms aimed at enhancing the independence and quality of the Irish justice system continue. Parliament held discussions on the Judicial Appointment Commission Bill. However, the envisaged composition of the Judicial Appointment Commission continues to raise concerns. The legislative provisions enabling the making of complaints relating to alleged judicial misconduct were commenced. While an analysis of approaches to reducing litigation costs is pending publication, no further steps have been taken. Several reports were adopted relating to aspects of the quality of justice such as the review of the Civil Legal Aid Scheme and obstacles to legal careers. The Government announced a significant increase in the number of judges. Strategies aimed at enhancing the digitalisation of justice also began to be operationalised. The efficiency of justice remains a challenge, and a system to regularly evaluate court performance based on defined indicators is lacking.

Ireland continues to have a comprehensive framework for both the prevention and repression of corruption, and a low level of perceived corruption. Several planned improvements have been postponed a number of times. After some delays, the permanent Advisory Council on Economic Crime and Corruption started preparing a new multi-annual anti-corruption strategy. A draft law on police reform allocates more independence to the external organisation, which investigates integrity in the police. A comprehensive overview of the ethics framework was conducted, while drafting, discussion and adoption of relevant legislation remain outstanding. A draft law to strengthen the framework on lobbying is being discussed in Parliament. Some steps were taken to strengthen the asset disclosure rules and the monitoring, and enforcement capacity of the Standards in Public Office Commission remains the same, despite handling an increased number of complaints and requests for advice. A new law on whistleblower protection entered into force.

Ireland continues to offer a high degree of media freedom and pluralism. The Government concluded a major overhaul of the Irish media law and enacted the Online Safety and Media Regulation Act, which updates the rules for audiovisual media services and establishes a new regulatory framework for online safety. The law also partially transposes the revised Audiovisual Media Services Directive and establishes a new media regulator. Challenges remain in relation to the transparency of the allocation of state advertising as specific rules regulating the matter are still missing. The Government committed to examining options for reform the TV licence fee system with a view to provide public service media with adequate funding. The reform of the defamation law remains under preparation. The national police, together with media stakeholders, established a Media Engagement Group to discuss threats and violence against journalists and ensure a coordinated response.

Regarding institutional issues related to checks and balances, the legislative process continued to be marked by the use of motions to shorten the time allocated to debate legislation, which raises concerns. The recently established Electoral Commission will shortly initiate a review of the Electoral Act, which will aim to address, among other matters, existing concerns by civil society on legal obstacles related to access to funding. Initiatives were taken aimed at encouraging the participation of the public and civil society in policy making, such as Citizen's Assemblies and the first National Civic Forum.

## **RECOMMENDATIONS**

Overall, concerning the recommendations in the 2022 Rule of Law Report, Ireland has made:

- No progress on ensuring that the reform of the appointment and promotion of judges, as regards the composition of the Judicial Appointment Commission, is taking into account European standards on judicial appointments, as no significant changes have been introduced to the envisaged composition of the Judicial Appointments Commission.
- No progress on actions aimed at reducing litigation costs to ensure effective access to justice, taking into account European standards on disproportionate costs of litigation and their impact on access to courts.
- Some progress on strengthening the existing ethics framework, including on codes of conduct, revolving doors and on asset declarations in particular as regards the monitoring and enforcement capacity of the Standards in Public Office Commission, significant progress on lobbying.
- Some progress on continuing the reform of the Defamation Act to improve the professional environment for journalists taking into account European standards on the protection of journalists.
- Some progress on taking measures to address legal obstacles related to access to funding for civil society organisations.

On this basis, and considering other developments that took place in the period of reference, it is recommended to Ireland to:

- Ensure that the reform of the appointment and promotion of judges, as regards the composition of the Judicial Appointment Commission, is taking into account European standards on judicial appointments.
- Continue actions aimed at reducing litigation costs to ensure effective access to justice, taking into account European standards on disproportionate costs of litigation and their impact on access to courts.
- Strengthen and digitalise the existing ethics framework, on asset declarations and lobbying, including the monitoring and enforcement capacity of the Standards in Public Office Commission.
- Advance with the reform of the Defamation Act to improve the professional environment for journalists taking into account European standards on the protection of journalists.
- Take measures to address legal obstacles related to access to funding for civil society organisations, as part of the reform of the Electoral Act.

## I. JUSTICE SYSTEM

Ireland is a common law jurisdiction, whose judiciary is divided into a civil and a criminal branch. The court system comprises a court of final appeal (the Supreme Court), a Court of Appeal, and courts of first instance which include a High Court with full jurisdiction in all criminal and civil matters and courts of limited jurisdiction: the Circuit Court and the District Court organised on a geographical basis. The Special Criminal Courts<sup>1</sup> are non-jury courts and deal with paramilitary, subversive and organised crime cases. Moreover, a number of specialised tribunals<sup>2</sup> operate in different areas. A Judicial Council<sup>3</sup> was established in 2019. While Ireland does not have a constitutional court, the Courts are empowered to interpret and uphold the Constitution. Judicial appointments are made by the President of Ireland, acting on the advice of the Government. The Judicial Appointments Advisory Board (JAAB) is tasked with the selection of suitable candidates for appointment. The prosecution service is not part of the judicial branch. The Attorney General is the legal adviser to the Government. The legal profession has two types of lawyers – solicitors, represented by the Law Society, and barristers, largely represented by the Bar of Ireland. The Legal Services Regulatory Authority (LSRA), an independent body established in 2016, is Ireland’s national statutory regulator for both branches of the legal profession.

### **Independence**

**The level of perceived judicial independence in Ireland continues to be high among the general public and is now high among companies.** Overall, 73% of the general population and 72% of companies perceive the level of independence of courts and judges to be ‘fairly or very good’ in 2023<sup>4</sup>. According to data in the 2023 EU Justice Scoreboard, the level has remained consistently high for the general public since 2016 (which was 75% and remains at

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<sup>1</sup> The Offences Against the State Act 1939 provides for the establishment of Special Criminal Courts. A Special Criminal Court now known as Special Criminal Court No. 1 is operating since 1972. Special Criminal Court No. 2 was established and is operating since 2016. A Special Criminal Court sits with three Judges and no jury. The Government appoints a panel of High Court, Circuit Court and District Court Judges to sit in the Special Criminal Courts. There are currently nineteen judges on the panel. Cases involving terrorism and organised crime offences are automatically brought before a Special Criminal Court for trial. Other offences are brought before or sent for trial when the Director of Public Prosecutions certifies that the ordinary Courts are inadequate to secure the effective administration of justice and the preservation of public peace and order. An appeal against a conviction or sentence by the Special Criminal Courts can be brought to the Court of Appeal.

<sup>2</sup> Including a Labour Court, which has sole appellate jurisdiction in all disputes under employment rights enactments. While the Labour Court is not a court of law, when exercising this jurisdiction the Labour Court is involved in the administration of justice. The Court also carries a jurisdiction under the Industrial Relations Acts 1946 – 2015. In exercise of that jurisdiction it operates as an industrial relations tribunal, hearing both sides in a case and then issuing a Recommendation setting out its opinion on the dispute and the terms on which it should be settled. Recommendations made by the Court concerning the investigation of disputes under the Industrial Relations Acts 1946 – 2015 are not binding on the parties concerned. The Court’s determinations under the Employment Rights enactments are legally binding.

<sup>3</sup> In addition to promoting and maintaining public confidence in the judiciary and the administration of justice, the main functions of the Judicial Council are to consider complaints in relation to judicial misconduct, to ensure the continuous education and training of judges and to draft guidelines on certain issues including personal injuries’ damages.

<sup>4</sup> Figures 49 and 51, 2023 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

the same level as in 2022 (73%). The perceived judicial independence among companies has slightly decreased in comparison with 2022 (77%), as well as with 2016 (79%).

**There has been no progress on the reform of the appointment and promotion of judges, as the Judicial Appointments Commission Bill has been discussed in Parliament without significant changes to the composition of the Commission.** The 2022 Rule of Law Report recommended to Ireland to “ensure that the reform of the appointment and promotion of judges, as regards the composition of the Judicial Appointment Commission, takes into account European standards on judicial appointments”<sup>5</sup>. As reflected in the 2022 Report<sup>6</sup>, the Government tabled a draft law in Parliament in April 2022 on the appointment and promotion of judges providing for the establishment of a Judicial Appointments Commission. The Commission would be chaired by the Chief Justice and would have three judicial members<sup>7</sup> and four lay members<sup>8</sup>, as well as the Attorney General in a non-voting capacity<sup>9</sup>. This system better limits the discretion of the Government compared to both the current system of a list of seven candidates<sup>10</sup> and the system envisaged in the General Scheme<sup>11</sup> of five unranked candidates. As stated in the 2022 Rule of Law Report<sup>12</sup> the composition of the envisaged Commission does not provide for a clear majority of judges chosen by their peers. Some stakeholders<sup>13</sup>, including the Chief Justice himself<sup>14</sup>, have raised concerns on the composition of the Commission, including the fact that the Attorney General would sit on the Commission in an *ex-officio* non-voting capacity. The draft law was passed by the Lower House of Parliament in July 2022 and is currently at Report Stage before the Upper House. Since the tabling of the draft law, no significant changes have been introduced to the envisaged

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<sup>5</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 2. Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 46-48 – “The authority taking decisions on the selection and career of judges should be independent of the executive and legislative powers. With a view to guaranteeing its independence, at least half of the members of the authority should be judges chosen by their peers. However, where the constitutional or other legal provisions prescribe that the head of state, the government or the legislative power take decisions concerning the selection and career of judges, an independent and competent authority drawn in substantial part from the judiciary (without prejudice to the rules applicable to councils for the judiciary contained in Chapter IV) should be authorised to make recommendations or express opinions which the relevant appointing authority follows in practice. The membership of the independent authorities referred to in paragraphs 46 and 47 should ensure the widest possible representation. Their procedures should be transparent with reasons for decisions being made available to applicants on request. An unsuccessful candidate should have the right to challenge the decision, or at least the procedure under which the decision was made”.

<sup>6</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 4.

<sup>7</sup> Two judges nominated by the Judicial Council (one having been a practising solicitor and one having been a practising barrister), one court president (being the president of the court in respect of which the Commission is to recommend persons for appointment).

<sup>8</sup> All will be selected in open competition by the Public Appointments Service.

<sup>9</sup> This will lead to a total of eight voting members – four judicial and four lay persons.

<sup>10</sup> Section 16 of the Courts and Court Officers Act 1995.

<sup>11</sup> General Scheme of the Judicial Appointments Commission Bill 2020. Before a draft law (a Bill) is finalised, a ‘General Scheme’ of the Bill may be published, and this is often called the heads of the Bill.

<sup>12</sup> 2022 Rule of Law Report, country chapter on the rule of law situation in Ireland, p. 4.

<sup>13</sup> Contribution from the Supreme Court of Ireland for the 2023 Rule of Law Report, p. 11; Contribution from Law Society of Ireland for the 2023 Rule of Law Report, p. 12; Contribution from the Bar of Ireland for the 2023 Rule of Law Report, p. 11; Contribution from the Irish Council for Civil Liberties for the 2023 Rule of Law Report, pp. 8-9.

<sup>14</sup> Speech by Mr. Justice Donal O’Donnell, Chief Justice, to the Irish Association of Law Teachers, King’s Inn, 24 May 2022.

composition of the Judicial Appointments Commission, and therefore there has been no progress on the implementation of the recommendation made in the 2022 Rule of Law Report.

**The Judicial Conduct Committee finalised the process for submitting complaints relating to alleged judicial misconduct, enabling the commencement of the relevant legislative provisions.** On 3 October 2022, the remaining provisions of the Judicial Council Act entered into force. As a result, complaints relating to alleged judicial misconduct can now be made to the Registrar to the Judicial Conduct Committee, who determines whether the complaint is admissible<sup>15</sup>. If either the Registrar or the review committee decides to admit the complaint, the Judicial Conduct Committee follows the procedures outlined in relation to informal resolution or establishing a Panel of Inquiry. However, Parliament remains in charge of deciding on the removal of judges from office and retains a margin of discretion in that regard<sup>16</sup>. As reflected in the 2022 Rule of Law Report<sup>17</sup>, this could raise concerns about the potential politicisation of the process, even if this process has so far never been engaged<sup>18</sup>.

## Quality

**While the economic analysis of models or approaches to reducing litigation costs is pending publication, no further steps have been taken.** The 2022 Rule of Law Report recommended to Ireland to “continue actions aimed at reducing litigation costs to ensure effective access to justice, taking into account European standards on disproportionate costs of litigation and their impact on access to courts”<sup>19</sup>. The high level of litigation costs in Ireland is considered as a source of concern<sup>20</sup>. The economic analysis of models or approaches to reducing litigation costs, announced in December 2021, is being finalised and its findings subject to legal assessment of potential options. Therefore, there has been no progress on the implementation of the recommendation made in the 2022 Rule of Law Report.

**An Independent Group aimed at reviewing the Civil Legal Aid Scheme has been established.** In June 2022, an Independent Review Group was appointed by the Minister of Justice to undertake a comprehensive review of the Civil Legal Aid Scheme in Ireland<sup>21</sup>. The current system has been criticised by stakeholders for being prohibitive and a barrier to access to justice<sup>22</sup>. The Review Group has been charged with the task of examining the current scheme’s flexibility and responsiveness to meet the legal needs of beneficiaries of civil legal aid, as well as the current operation of the scheme, the categories of civil law which are and should be covered by it, how the scheme is delivered, and how it relates to other forms of public legal assistance. Regarding criminal legal aid, work continues on the preparation of a General Scheme of a Criminal Legal Aid Bill.

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<sup>15</sup> Input from Ireland for the 2023 Rule of Law Report, p. 10.

<sup>16</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 5.

<sup>17</sup> Ibid.

<sup>18</sup> Venice Commission opinion (CDL-AD(2010)004-e, para. 70.

<sup>19</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 2.

<sup>20</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, pp. 6-7.

<sup>21</sup> Input from Ireland for the 2023 Rule of Law Report, p. 8.

<sup>22</sup> Contribution from the Irish Council for Civil Liberties for the 2023 Rule of Law Report, p. 11; Contribution from Law Society of Ireland for the 2023 Rule of Law Report, p. 16; IHREC 2021, Access to Justice Concerns as 80% Believe Poorer People Get Worse Legal Outcomes; CEDAW 2017, Concluding observations on the combined sixth and seventh periodic reports of Ireland.

**The Government has announced a significant increase in the number of judges following the recommendations of the report of the Judicial Planning Working Group.** According to the 2023 EU Justice Scoreboard<sup>23</sup>, Ireland remains the EU Member State with the lowest number of judges per inhabitant. Moreover, stakeholders have signalled that in addition to the current workload, future legislation such as the Family Court Bill would expand the jurisdiction of the District Court, so further resources may be needed<sup>24</sup>. In 2021, a Judicial Planning Working Group was set up to consider the number and types of judges required to ensure the efficient administration of justice over the next five years in the first instance, and also with a view to the longer term. The Working Group has completed its work and published its report on 24 February 2023<sup>25</sup>. The report was informed by the findings of an OECD report<sup>26</sup> commissioned by the Irish Government to provide key input to the work of the Working Group. The report recommended increasing the number of judges by 44 additional judges by the end of 2024, and to carry out a review in early 2025<sup>27</sup>. Consequently, the report also recommended to ensure that adequate resources in terms of clerical and other support staff are provided to the Courts Service<sup>28</sup>. The establishment of a strategic approach to human resource management has been also recommended<sup>29</sup>. However, the report has not touched upon the issue of establishing an appropriate structure for discussion of questions concerning constitutional safeguards of the judiciary in connection with employment conditions, which is a pending recommendation by the Group of States against Corruption (GRECO)<sup>30</sup>. According to European standards, it is advisable that associations of judges be provided with a possibility to consider and comment on intended legislation in matters connected with the status of judges and the administration of courts<sup>31</sup>. Following the publication of the report, the Government announced the appointment of 24 new judges in 2023<sup>32</sup>, with the appointment of 20 additional new judges following the implementation of further reforms<sup>33</sup>. Moreover, the Government has also announced the preparation of an implementation plan in relation to all the recommendations of the report.

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<sup>23</sup> Figure 35, 2023 EU Justice Scoreboard.

<sup>24</sup> Contribution from the Bar of Ireland for the 2023 Rule of Law Report, p. 9; information provided by the Law Society in the context of the country visit to Ireland.

<sup>25</sup> Department of Justice 2023, Report of the Judicial Planning Working Group.

<sup>26</sup> OECD (2023), Modernising Staffing and Court Management Practices in Ireland: Towards a More Responsive and Resilient Justice System. This report recommended considering increasing the number of permanent judges at all court levels and providing further flexible work options, as well as reviewing the numbers and necessary capacities of support staff.

<sup>27</sup> Department of Justice 2023, Report of the Judicial Planning Working Group, p. 71.

<sup>28</sup> Ibid, p. 78.

<sup>29</sup> Ibid, p. 96.

<sup>30</sup> GRECO Fourth Evaluation Round – Evaluation Report, para. 137. The Fourth Evaluation Round reflected that the constitutional protection providing that judges were exempt from a pay reduction which applied to other public officials was revoked and amended. In this context, GRECO recommended that an appropriate structure be established within the framework of which questions concerning constitutional safeguards of the judiciary in connection with employment conditions are to be examined. In its latest report published in July 2022 (GRECO Fourth Evaluation Round – Second Compliance Report, para. 21-26.), GRECO concluded that the recommendation remained to be implemented.

<sup>31</sup> CCJE Opinion No. 23 (2020) The role of associations of judges in supporting judicial independence.

<sup>32</sup> As the Judicial Appointments Commission Bill has not yet been enacted, these 24 appointments will all take place under the current Judicial Appointments Advisory board process.

<sup>33</sup> Department of Justice 2023, Significant increase in judicial resources to improve access to justice announced by Minister Harris.

**The Government has taken initial steps to operationalise strategies aimed at enhancing the digitalisation of justice.** The Implementation Plan arising from the Review of the Administration of Civil Justice<sup>34</sup>, published in May 2022, sets out the approach and timescales to use e-litigation technology to capture case management information and case flow data. Moreover, the ICT Strategy 2021-2024 and the Data Strategy 2021-2024 foresee the adoption of a unified case management system and a unified data model will occur over a number of years. The migration of High Court civil matters into this new system/model will occur in 2023. The Government has also committed to apply this technology platform to other jurisdictions over subsequent years. The 2023 EU Justice Scoreboard has shown progress in other areas as well, as for instance it is now possible to initiate proceedings and file claims online for some cases, including small claims, e-licensing, legal costs adjudication, personal insolvency, and leave to appeal to the Supreme Court<sup>35</sup>.

**The Group to review the Offences Against the State Act published its report recommending to repeal the Acts in their entirety.** The Group to review the Offences Against the State Acts, set up in February 2021, published on 21 June 2023 its final report<sup>36</sup>. The majority opinion of the Group recommends to repeal the Offences Against the State Acts in their entirety, while keeping some elements in replaced legislation, including the operation of a new non-jury court. The Government is currently analysing the report and exploring policy options. The United Nations and civil society had called for the immediate abolition of the Special Criminal Court<sup>37</sup> or, alternatively, to strengthen the procedure of the Court to ensure respect of the right to fair trial<sup>38</sup>.

## Efficiency

**There are concerns relating to the length of proceedings and a system to regularly evaluate the court performance based on defined indicators is still lacking.** According to data available on annual reports from the Courts Service, the average length of proceedings in the High Court in 2021 was 797 days, an increase of 137 days in comparison with 2020<sup>39</sup>. Moreover, the average length of proceedings for criminal cases regarding summary offences also increased in 2021 in all instances<sup>40</sup>. The length of proceedings at the Court of Appeal has decreased for civil cases (from 579 days in 2020 to 529 days in 2021), while it has increased for criminal cases (from 371 days in 2020 to 420 days in 2021)<sup>41</sup>. The average length of proceedings in the Supreme Court has significantly increased and remains very high (from 2513 days in 2020 to 3946 days in 2021)<sup>42</sup>. Moreover, according to data of the 2023 EU Justice Scoreboard, the clearance rate for non-criminal cases was 62% in 2021, the lowest of the EU<sup>43</sup>.

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<sup>34</sup> Department of Justice 2022, Implementation Plan on Civil Justice Efficiencies and Reform Measures.

<sup>35</sup> Figure 45, 2023 EU Justice Scoreboard.

<sup>36</sup> Department of Justice 2023, Offences Against the State Act - Independent Review Group Reports.

<sup>37</sup> The Court was established in 1972 to deal with terrorism and organised crime cases.

<sup>38</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 7; UN Human Rights Committee (2014), Concluding observations on the fourth periodic report of Ireland; IHREC 2022, Annual Report 2021, p. 33; Contribution from the Irish Council for Civil Liberties for the 2023 Rule of Law Report, p. 10-11.

<sup>39</sup> Courts Service, 2022. Annual Report 2021, p. 107.

<sup>40</sup> Ibid., p. 108.

<sup>41</sup> Ibid., p. 108.

<sup>42</sup> Ibid., p. 109.

<sup>43</sup> Figure 11, 2023 EU Justice Scoreboard.



Changes to Rules of Court have been implemented to encourage compliance with time limits<sup>44</sup>. The 2022 Rule of Law Report noted that in Ireland there is no system to regularly evaluate the court performance based on defined indicators<sup>45</sup>. Moreover, a recent OECD study reflected that data are not collected or used for the purposes of case and court management, but rather only for annual reports<sup>46</sup>. The report of the Judicial Planning Working Group has also recommended that the Courts Service needs to adopt, as a priority, a comprehensive system to collect data and monitor performance measures<sup>47</sup>. In this context, the Courts Service has initiated discussions to explore actions aimed at increasing the compilation of data on the length of proceedings<sup>48</sup>. It would be important that data on the length of proceedings is systematically recorded in line with the methodology of the Council of Europe and the European Commission for the efficiency of justice<sup>49</sup>.

**A draft law setting up a compensation scheme for cases of excessive length of court proceedings was tabled.** On 27 February 2023, the Government tabled a draft law establishing a compensation scheme for cases of excessive length of court proceedings<sup>50</sup>. As noted in the 2022 Rule of Law Report<sup>51</sup>, legislation establishing a compensation scheme to award damages in the event of protracted court proceedings is a long-pending requirement by a European Court of Human Rights ('ECtHR') judgment from 2010<sup>52</sup>. The draft law provides for the establishment of an independent assessment process to assess claims for breach of the right to the conclusion of proceedings within a reasonable time and, where appropriate, an award of compensation<sup>53</sup>.

## **II. ANTI-CORRUPTION FRAMEWORK**

The responsibility for fighting and preventing corruption in Ireland fall under the control of several public authorities. The national police, specifically, the Garda National Economic Crime Bureau (GNECB)<sup>54</sup>, investigates and prevents possible criminal acts of corruption. The Garda Anti-Corruption Unit (GACU) is responsible for promoting integrity as well as detecting and investigating corruption within the national police. The Garda Síochána Ombudsman Commission investigates cases of misconduct of the national police affecting the public interest and complaints from third parties regarding integrity in the national police. Within the GNECB, the national police has a distinct Anti-Bribery and Corruption Unit (ABCU), responsible for policing foreign bribery and corruption cases. The ABCU monitors foreign corruption cases for Irish involvement. The Corporate Enforcement Authority (CEA), that has replaced the Office of the Director of Corporate Enforcement, retains both investigative and enforcement

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<sup>44</sup> Contribution from Law Society of Ireland for the 2023 Rule of Law Report, p. 18; Contribution from the Bar of Ireland for the 2023 Rule of Law Report, p. 18.

<sup>45</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 8.

<sup>46</sup> OECD (2023), *Modernising Staffing and Court Management Practices in Ireland: Towards a More Responsive and Resilient Justice System*, p. 210.

<sup>47</sup> Department of Justice 2023, *Report of the Judicial Planning Working Group*.

<sup>48</sup> Information received from the Courts Service in the context of the country visit to Ireland.

<sup>49</sup> CEPEJ data feed the EU Justice Scoreboard.

<sup>50</sup> *Court Proceedings (Delays) Bill 2023*.

<sup>51</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 8.

<sup>52</sup> Judgment of the Grand Chamber of the European Court of Human Rights of 10 September 2010, *McFarlane v. Ireland*, 31333/06.

<sup>53</sup> Compensation will be determined by reference to the jurisprudence of the ECtHR and will be in line with the concept of "just satisfaction" under Article 41 of the European Convention on Human Rights.

<sup>54</sup> Specialist bureau that investigates fraud-related crime involving complex issues of criminal law or procedure.

powers, and it carries out its functions under the framework of the Companies Act 2014<sup>55</sup>. The authority to prosecute lies with the Office of the Director of Public Prosecutions (ODPP). The Standards in Public Office Commission (SIPO) continues overseeing the integrity framework for public officials including conflict of interests, lobbying and party financing where it also provides advice to office holders<sup>56</sup>. The purpose of the Advisory Council is to coordinate and lead the delivery of a whole-of-government approach to economic crime and corruption, as well as to act as a “centre of excellence” for research and analysis, awareness-raising and training<sup>57</sup>.

**The perception of public sector corruption among experts and business executives is that the level of corruption in the public sector remains relatively low.** In the 2022 Corruption Perceptions Index by Transparency International, Ireland scores 77/100 and ranks 6<sup>th</sup> in the European Union and 10<sup>th</sup> globally<sup>58</sup>. This perception has improved over the past five years<sup>59</sup>. The 2023 Special Eurobarometer on Corruption shows that 59% of respondents consider corruption widespread in their country (EU average 70%) and 17% of respondents feel personally affected by corruption in their daily lives (EU average 24%)<sup>60</sup>. As regards businesses, 28% of companies consider that corruption is widespread (EU average 65%) and 7% consider that corruption is a problem when doing business (EU average 35%)<sup>61</sup>. Furthermore, 32% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 32%)<sup>62</sup>, while 26% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 30%)<sup>63</sup>.

**The permanent Advisory Council against Economic Crime and Corruption has been tasked with drafting a multi-annual strategy to tackle corruption.** After some delays<sup>64</sup>, the Advisory Council was established in May 2022 and tasked to coordinate and lead the delivery

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<sup>55</sup> The Companies (Corporate Enforcement Authority) Act 2021 established the Corporate Enforcement Authority (CEA), which replaces the Office of the Director of Corporate Enforcement (ODCE) and assumes its role in the investigation and enforcement of company law offences.

<sup>56</sup> Including: the Ethics in Public Office Acts 1995, which set out standards of conduct for public officials, elected and appointed; the Electoral Act 1997, which regulates political financing, including political donations and election expenses; The Oireachtas (Ministerial and Parliamentary Activities) (Amendment) Act 2014, which regulates expenditure of public funds to political parties and independents; and the Regulation of Lobbying Act 2015, which makes the lobbying of public officials more transparent.

<sup>57</sup> The Advisory Council was established in May 2022 and is chaired by former Director of Public Prosecutions James Hamilton.

<sup>58</sup> Transparency International (2023), Corruption Perceptions Index 2022. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

<sup>59</sup> In 2018 the score was 73, while, in 2022, the score is 77. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last 5 years.

<sup>60</sup> Special Eurobarometer 534 on Corruption (2023). The Eurobarometer data on citizens’ corruption perception and experience is updated every year. The previous data set is the Special Eurobarometer 523 (2022).

<sup>61</sup> Flash Eurobarometer 524 on Businesses’ attitudes towards corruption in the EU (2023). The Eurobarometer data on business attitudes towards corruption as is updated every year. The previous data set is the Flash Eurobarometer 507 (2022).

<sup>62</sup> Special Eurobarometer 534 on Corruption (2023).

<sup>63</sup> Flash Eurobarometer 524 on Businesses’ attitudes towards corruption in the EU (2023).

<sup>64</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 10; 2022 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, pp. 9-10.

of a whole-of-government approach to economic crime and corruption. The Council is composed by a chairman and six members from the business and financial sector, academia and civil society. It is supported by a secretariat from the Ministry of Justice<sup>65</sup>. However, civil society organisations focusing on integrity and anti-corruption are not currently included in the Council, which has been criticised<sup>66</sup>. The Advisory Council has started working on a multi-annual National Strategy to Combat Economic Crime and Corruption<sup>67</sup>. In 2023, the Advisory Council will perform a public consultation to gather public input for the strategy, after which the drafting should start with the aim to send a draft to the Government by the end of the year<sup>68</sup>.

**The Government has proposed further changes related to criminal procedure rules, including provisions regarding police regulation.** In addition to the new Criminal Procedure Act 2021<sup>69</sup>, which entered into force in February 2022<sup>70</sup>, the Government has presented a new Policing, Security and Community Safety Bill<sup>71</sup>. The aim of the Bill is to assist in ensuring the rule of law and supporting anticorruption by modernising the oversight of the policing service in Ireland via a reformed Policing and Community Safety Authority and a reconstituted framework for Police complaints and investigations<sup>72</sup>. The target date for implementation is January 2024<sup>73</sup>. If enacted, the Bill would repeal the Garda Síochána Act 2005 (as amended) in its entirety<sup>74</sup>. The Competition Amendment Act was signed into law on 29 June 2022, making bid rigging in public procurement procedures a specific criminal offence<sup>75</sup>.

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<sup>65</sup> Department of Justice (2022), Former Director of Public Prosecution to chair new Advisory Council against Economic Crime and Corruption, Minister McEntee announces.

<sup>66</sup> Information received from Transparency International in the context of the country visit to Ireland and publicly on the Transparency International Ireland website (Letter to Minister Helen McEntee on the Advisory Council on Economic Crime and Corruption (2022)). The 2022 Rule of Law report already referred to the inclusion of civil society representatives in the composition of the Council, alongside with business and financial sectors, and academia (pp. 9-10). Additionally, two of the six ordinary members of the Advisory Council against Economic Crime and Corruption represent civil society. All the members were appointed following an open call for expressions of interest process. One of the civil society representatives appointed in May 2022 was the then-General Secretary of the Irish Congress of Trade Unions, Patricia King. Ms King stepped down from her role at ICTU and on the Council early in 2023 and a call for expressions of interest was launched in March 2023, with a new civil society representative to be appointed in the coming months.

<sup>67</sup> Input from Ireland for the 2023 Rule of Law Report, p. 17.

<sup>68</sup> Information received from the Advisory Council in the context of the country visit to Ireland.

<sup>69</sup> Irish Parliament (2021), Criminal Procedure Act 2021.

<sup>70</sup> Ibid.

<sup>71</sup> Department of Justice (2022), draft law Policing, Security and Community Safety Bill.

<sup>72</sup> Written contribution from the Ministry of Justice following the country visit in Ireland.

<sup>73</sup> Input from Ireland for the 2023 Rule of Law Report.

<sup>74</sup> Department of Justice (2022), Press release: Landmark Policing, Security and Community Safety Bill marks a new departure for policing in Ireland. As reported in the 2022 Rule of Law Report p. 11, a high-level group within the Department of Justice was instructed to review the prosecution role attributed to the national police. As a result, the 2018 Commission on the Future of Policing in Ireland (CoFPI) issued a report, which recommended that the national police no longer prosecute cases on behalf of the ODPP at District Court level. A High-Level Review Group (HLRG) was established in September 2020, tasked specifically with reviewing the role of An Garda Síochána in the public prosecution system. Since the final report of the HLRG was not completed at the time of publication of the Bill, the recommendation was not included in the Policing, Security and Community Safety Bill.

<sup>75</sup> Input from Ireland for the 2023 Rule of Law Report, p. 17; Department of Justice (2021), Hamilton Review Group Implementation Plan, p. 16. The Act fulfills recommendations 17 and 18 from the Hamilton Review. The Flash Eurobarometer on Businesses' attitudes towards corruption in the EU shows that 2% of companies in Ireland (EU average 26%) think that corruption has prevented them from winning a public tender or a public procurement contract in practice in the last three years. This is 24 percentage points below the EU average.

**Cooperation within and between police and prosecution is smooth, although challenges have been raised regarding lack of resources.** The investigation of corruption offences is a shared task within the national police, including the GNECB and its specialised ABCU. The current capacity of the ABCU is below the planned staffing, but a recruitment competition is ongoing<sup>76</sup>. While financial resources for the GNECB have increased<sup>77</sup>, the total number of police staff available for investigating corruption related offences has decreased. The decrease is due to a series of internal shifts, secondments, promotions and retirements, although competitions are ongoing<sup>78</sup>. The current low number of filled positions hampers the GNECB's ability to pro-actively act on investigations<sup>79</sup>. On breaches of company law, the cooperation between the Garda Síochána and the Corporate Enforcement Authority (CEA) is developed through a Memorandum of Understanding, which second police officers to CEA<sup>80</sup>. GNECB underlined a particular difficulty in collaborating with CEA on information sharing and exchanges because of privacy constraints<sup>81</sup>. The prosecution of corruption offences remains under the control of the Office of the Director of Public Prosecutions (ODPP) and its Special Financial Crime Unit that deals with cases of high complexity<sup>82</sup>. The Forum of senior representatives to facilitate greater inter-agency co-ordination, collaboration and information sharing meets regularly to discuss improvements in cooperation and reports to the Advisory Council<sup>83</sup>. The capacity of the prosecution services has been reinforced. Nevertheless, given the need for an initial training before joining the service, the preparation will take time and not all necessary tools or expertise, such as on forensic accounting, are at present sufficiently available<sup>84</sup>. Cooperation with European Public Prosecutor's Office remains difficult, with no solution found to allow cooperation between Irish authorities and the EPPO. The Member States participating in the EPPO have notified the EPPO as a competent authority for the purposes of EU instruments of mutual recognition and judicial cooperation, pursuant to Article 105(3) of the EPPO Regulation, yet such notifications are not sufficient to allow Irish authorities to cooperate with the EPPO. The Irish authorities have stated that they are working on a solution in the Irish internal legal system, but such solution has not yet been found<sup>85</sup>. In

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<sup>76</sup> Input from Ireland for the 2023 Rule of Law Report, p. 26.

<sup>77</sup> Input from Ireland for the 2023 Rule of Law Report, pp. 15-16.

<sup>78</sup> Input from Ireland for the 2022 Rule of Law Report, pp. 15-16; Input from Ireland for the 2023 Rule of Law Report, pp. 15-16, 26-27; Information received from the Ministry of Justice in the context of the country visit to Ireland.

<sup>79</sup> Information received from the Office of the Director of Public Prosecutions Office in the context of the country visit to Ireland.

<sup>80</sup> The CEA has also the autonomy to hire its own staff to ensure appropriate expertise to achieve its functions: this involves particularly digital forensic and legal expertise.

<sup>81</sup> Information received from the GNECB in the context of the country visit to Ireland. Additionally, the Government underlined that section 944P of the Companies Act 2014 permits the sharing of confidential information in statutorily prescribed situations. Moreover 944P(4) states that "Nothing in subsection (1) shall prevent the disclosure of information to any member of the Garda Síochána if that information, in the opinion of the Authority, may relate to the commission of an offence other than an offence under this Act". Conversely, Section 944Q of the Companies Act permits the disclosure of information by An Garda Síochána to the CEA where that section applies (Input from Ireland for the 2023 Rule of Law Report).

<sup>82</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, pp. 11-12. The staff of the Special Financial Unit has been increased from 3 to 6 since the 2022 Rule of Law Report.

<sup>83</sup> Information received from the Office of the Director of Public Prosecutions Office in the context of the country visit to Ireland.

<sup>84</sup> Information received from the Office of the Director of Public Prosecutions Office in the context of the country visit to Ireland.

<sup>85</sup> Contribution from the EPPO for the 2023 Rule of Law Report. Ireland has informed the EPPO that it intends to submit draft legislation, which would allow cooperation with the EPPO, to its Parliament. Based on the

the absence of a legal instrument relating to cooperation in criminal matters and surrender between the EPPO and the non-participating Member States<sup>86</sup>, Ireland is working on a unilateral solution. The relevant criminal justice legislation [– the Criminal Justice (Miscellaneous Provisions) Bill –] is expected to be in place in Q3 2023<sup>87</sup>.

**The police are working to strengthen the prevention of corruption among their staff.** The national police have a dedicated anti-corruption unit, the GACU, to investigate and prevent corruption inside the police. Currently, the GACU is following up on the recommendations of the Garda Síochána Inspectorate Report to better counter the threat of internal corruption within the police, with several actions stretching until the end of 2024<sup>88</sup>. The GACU stressed that their most important responsibility was to create trust among police officers, that any report on misconduct would be taken seriously, to prevent fear of repercussions and to ensure police officers feel confident to report misconducts<sup>89</sup>. External complaints about integrity related issues within the police can also be reported to the Garda Ombudsman. The aforementioned draft law on police reform proposed by the Government in 2022 would rename and reform the current Garda Ombudsman body, as well as aim to increase the independence of the Garda Ombudsman itself<sup>90</sup>.

**Difficulties in investigating foreign bribery remain.** The ABCU, established in March 2017 as part of the GNECB, underlines the difficulty in investigating foreign bribery because of lack of cooperation with third countries through mutual legal assistance<sup>91</sup>. The ODPP signalled that Ireland, which lacks legislation on plea deals linked to foreign bribery, has many companies, operating in Ireland, that are also active in the United States or the United Kingdom, in countries that do have the possibilities of plea deals, so self-reporting of foreign bribery predominantly take place there<sup>92</sup>.

**Some progress has been made in relation to the strengthening of the ethics framework with a completion of a comprehensive review with recommendations for improvement; however, the actual drafting, discussion and adoption of relevant legislation remain**

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information available to the EPPO it seems that the contemplated approach would mean that Ireland would still not recognise the EPPO as a competent authority for the EU legal instruments referred to in Article 105(3) of the EPPO Regulation but would mirror only some of the cooperation procedures foreseen in the EU law on the matter.

<sup>86</sup> In December 2020, all Member States (including the non-participating ones) endorsed a document proposing an interpretation of the existing EU instruments of judicial cooperation that allows EPPO to rely on such instruments when cooperating with non-participating MS, based on the notification of the EPPO as a competent authority by the participating Member States. While Ireland has always expressed its preference for the conclusion of a legal instrument regulating cooperation in criminal matters between the EPPO and the non-participating Member States, the Commission has sustained that there is no need for such an *ad hoc* new instrument.

<sup>87</sup> Input from Ireland for the 2023 Rule of Law Report.

<sup>88</sup> Department of Justice (2022), Garda Síochána Inspectorate Report ‘Countering the Threat of Internal Corruption’ Implementation Plan September 2022.

<sup>89</sup> Information received from the GACU in the context of the country visit to Ireland; Department of Justice (2022), Garda Síochána Inspectorate Report ‘Countering the Threat of Internal Corruption’ Implementation Plan September 2022, p. 26.

<sup>90</sup> Department of Justice (2022), Press release: Landmark Policing, Security and Community Safety Bill marks a new departure for policing in Ireland.

<sup>91</sup> Information received from the Anti-Bribery & Corruption Unit in the context of the country visit to Ireland.

<sup>92</sup> Information received from the Office of the Director of Public Prosecutions Office in the context of the country visit to Ireland.

**outstanding.** The 2022 Rule of Law Report recommended to Ireland to “strengthen the existing ethics framework, including on codes of conduct, asset declarations, revolving doors and lobbying, and in particular as regards the monitoring and enforcement capacity of the Standards in Public Office Commission”<sup>93</sup>. On 7 February 2023, Ireland presented a review study of the existing statutory framework for Ethics in Public Office<sup>94</sup>. This review gives a comprehensive overview of the existing integrity framework in Ireland and makes recommendations for improvement. The review includes many existing recommendations already highlighted by previous national reviews or international organisations reports<sup>95</sup>, such as: replacing the existing ethics framework with a uniform and consolidated values-based normative framework, a recommendation which was already made in GRECO’s Fourth Round Evaluation Report in 2014<sup>96</sup>; including new statutory prohibitions in an ethics law, which are outstanding recommendations of the Mahon Tribunal<sup>97</sup> and the 2020 Hamilton report<sup>98</sup>; and the strengthening of the powers of investigation, sanctioning and enforcement of the SIPO. The 2015 Public Sector Standards Bill, which was never adopted in Parliament, will be the starting point for new legislative proposals<sup>99</sup>. Although the review study forms a solid basis to enact the necessary changes, actual drafting, discussion and adoption of legislation in relation to the ethics framework remains outstanding, as noted already last year. Therefore, there has been some progress on the implementation of the recommendation made in the 2022 Rule of Law Report.

**There has been some progress to strengthen asset declarations provisions.** The 2022 Rule of Law Report recommended to Ireland to “strengthen the [...] asset declarations”<sup>100</sup>. Rules on asset and interest declarations apply to public office holders<sup>101</sup>, members of Parliament and civil servants under the Ethics Acts<sup>102</sup>. However, only members of Parliament are required to publicly disclose their interests and present annual statements to SIPO<sup>103</sup>. As reported in the 2021 and 2022 Rule of Law Reports<sup>104</sup>, the material scope of declarations remains limited,

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<sup>93</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 2.

<sup>94</sup> Department of Public Expenditure and Reform (2022), Review of Ireland’s Statutory Framework for Ethics in Public Office.

<sup>95</sup> Information received from Transparency International in the context of the country visit to Ireland.

<sup>96</sup> GRECO (2014), Fourth Evaluation Round, p. 46.

<sup>97</sup> Mahon, Faherty and Keys (2012), Tribunal of Inquiry into Certain Planning Matters and Payments, pp. 2594-2595. The parliament can appoint a Tribunal of Inquiry to investigate urgent matters of public importance. The Mahon Tribunal investigated existing legislation in the areas of conflict of interest, ethics in public office, political finance, planning, local government, the investigation and prosecution of corruption, transparency of corporate bodies and the powers of tribunals, and was established in 1997 to investigate allegations of corrupt payments to politicians regarding political decisions.

<sup>98</sup> Department of Justice (2020), Review of structures and strategies to prevent, investigate and penalise economic crime and corruption; Report of the Review Group, pp. 118-119.

<sup>99</sup> Input from Ireland for the 2023 Rule of Law Report, p. 22.

<sup>100</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 2.

<sup>101</sup> Input from Ireland for the 2022 Rule of Law Report, p. 25. Office holders are required to provide a written statement of interests and additional interest including those of spouses and relatives to SIPO, but these are exempt from publication. This term includes Ministers, Ministers of State, Taoiseach, Tánaiste, a member who is Attorney General, and Chairman and Deputy of both Houses and chair of a House Committee.

<sup>102</sup> The Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001 are cited together as the Ethics Acts. The Minister for Public Expenditure and Reform has responsibility for these Acts.

<sup>103</sup> Input from Ireland for the 2022 Rule of Law Report, p. 25.

<sup>104</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 14; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 12; GRECO (2022), Fourth Evaluation Round - Second Interim Compliance Report, p. 9.

although new provisions might be adopted in the future on declaration of liabilities<sup>105</sup>. The Review of Ireland’s Statutory Framework for Ethics in Public Office underscores this situation<sup>106</sup>, including the strengthening of the powers of enforcement of SIPO<sup>107</sup>. Additionally, the digitalisation of the asset and interest disclosures would not only ensure a more user-friendly way of filing declarations but would also ensure an easier use by SIPO and civil society. At the moment, there is no legal obstacle to start the digitalisation process<sup>108</sup>. The Government underlines that progress on strengthening asset declaration provisions, recommended as part of the Review of the statutory framework mentioned above, also depends on the discussion and adoption of legislative reform, which is currently being prepared<sup>109</sup>. SIPO perceives an increased workload, both in terms of complaints<sup>110</sup> about breaches and requests for advice. In order to properly meet the growing demand, additional resources would be needed<sup>111</sup>. Therefore, some progress was made on the implementation of the recommendation made in the 2022 Rule of Law Report.

**Regulation on political party financing remains applicable, although a comprehensive review of the system is needed.** Political party financing is regulated under the Electoral Act<sup>112</sup>. The provision remains applicable without changes, although some issues have been reported with regards to the recording of election expenses<sup>113</sup>. A comprehensive review of the framework would therefore be needed, in order to address the need for modernisation and digitalisation of data collection. The Government has expressed willingness to carry out a comprehensive review of the Electoral Act 1997, now that an Electoral Commission has been

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<sup>105</sup> The Standards in Public Office (Amendment) Bill 2023 (No. 16 of 2023) was initiated on 23 of February 2023 and it is currently in the second stage in the Lower House. Under part 2 (Registerable Interests), it proposes to amend paragraph 1 of the Second Schedule to the Act of 1995, by the insertion of the following subsection after subsection (3): “(3A) any liability of the public official concerned in excess of €50,000 (other than a charge on the private home)”.

<sup>106</sup> Department of Public Expenditure and Reform (2022), Review of Ireland’s Statutory Framework for Ethics in Public Office, pp. 52-53.

<sup>107</sup> Department of Public Expenditure and Reform (2022), Review of Ireland’s Statutory Framework for Ethics in Public Office, p. 59.

<sup>108</sup> Information received from the the Standards in Public Office Commission and Transparency International in the context of the country visit to Ireland.

<sup>109</sup> Input from Ireland for the 2023 Rule of Law Report.

<sup>110</sup> Department of Public Expenditure and Reform (2022), Review of Ireland’s Statutory Framework for Ethics in Public Office, p. 14.

<sup>111</sup> Information received from the Standards in Public Office Commission in the context of the country visit to Ireland; Department of Public Expenditure and Reform (2022), Review of Ireland’s Statutory Framework for Ethics in Public Office, p. 42.

<sup>112</sup> Electoral Act 1997. Information received from the Ministry for Housing, Local Government and Heritage in the context of the country visit to Ireland. The Department of Housing, Local Government and Heritage suggests the opportunity of a comprehensive review of the party financing framework, also in light of the need to cover new tools, notably digital fundraising.

<sup>113</sup> In January 2023, a significant political party criticised the Minister for Public Expenditure over his failure to properly record 2016 election expenses (particularly his failure to include a payment-in-kind donation he received for services, which was admitted by the Minister at the Parliament). Later on, in February 2023, Irish media reported that SIPO was also questioning financial declarations of the mentioned party, which was also confirmed by the party’s Leader itself. The importance of an adequate ethic laws in relation to election expenses and campaign donations was also recently underlined by Transparency International Ireland in their website.

established<sup>114</sup>. SIPO oversees the integrity framework for public officials including party financing<sup>115</sup>.

**Significant progress was made to strengthen the existing framework on lobbying, as amendments to the current legislation are pending in Parliament.** The 2022 Rule of Law Report recommended to Ireland to “strengthen the existing ethics framework, including on [...] lobbying”<sup>116</sup>. The Regulation of Lobbying (Amendment) Bill 2022 (the Bill) was tabled by the Government on 22 September 2022. The draft law then completed the Lower House Final Stage on 1 March 2023 and the Upper House Final Stage on 17 May 2023. Currently, it is due for return to the Lower House in June 2023 to approve amendments made in the Upper House. The draft law will amend the Regulation of Lobbying Act 2015 and aims to build on the existing legislative foundation to further strengthen Ireland’s lobbying laws. In particular, the purpose of the draft law is to extend provisions to lobbying activity by certain representative and issue-based bodies and to lobbying conducted by non-remunerated office-holders of other representative and issue-based bodies. Moreover, the draft law slightly amends the information required to appear in the register. The draft law would create a system of administrative financial sanctions which can be imposed for some relevant contraventions, including for a breach of the cooling-off provision.<sup>117</sup> The cooling-off provision would still only apply to lobbying however, and not include a cooling-off period for designated public officials<sup>118</sup>. Therefore, significant progress was made on the implementation of the recommendation made in the 2022 Rule of Law Report.

**Legislation transposing the Whistleblowers Directive has entered into force.** The Protected Disclosures (Amendment) Act 2022 was signed into law on 21 July 2022 and came into force on 1 January 2023. This law aims to transpose the EU Whistleblowers’ Directive<sup>119</sup>. The Government has increased financial support to Transparency International Ireland to operate a “Speak Up” helpline and a legal advice centre that offers information and advice to support

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<sup>114</sup> See Section IV. Other institutional issues related to checks and balances. The Minister of State for Heritage and Electoral Reform has stated that the Government is committed to a comprehensive review of the Electoral Act 1997 by the Electoral Commission, when established, with a view to making recommendations to address, among other matters, the concerns raised by civil society in connection with the wide-ranging definition of “political purposes” as set out in section 22(2)(aa) of the Electoral Act 1997. Written contribution from the Ministry for Housing, Local Government and Heritage in the context of the country visit in Ireland. The Standards in Public Office Commission, which oversees the administration of legislation governing political financing, including political donations and election expenses, has not yet announced new initiatives related to a review of the political party financing framework this year.

<sup>115</sup> The Electoral Act 1997 regulates political financing, including political donations and election expenses; The Oireachtas (Ministerial and Parliamentary Activities) (Amendment) Act 2014 regulates expenditure of public funds to political parties and independents.

<sup>116</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 2.

<sup>117</sup> Input from Ireland for the 2023 Rule of Law Report, pp. 20-21; Regulation of Lobbying (Amendment) Bill 2022 Bill Digest.

<sup>118</sup> Regulation of Lobbying (Amendment) Bill 2022 Bill Digest, pp. 19-23. The Regulation of Lobbying Act 2015 provides that certain designated public officials (DPOs) are subject to a “cooling-off” period (Ministers and Ministers of State, special advisers and prescribed public servants), while others DPOs for the purposes of the lobbying registration requirements are not covered by this provision.

<sup>119</sup> Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.



whistleblowers. Transparency International has also been nominated to receive protected disclosures from Garda personnel, including on suspected corruption<sup>120</sup>.

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

In Ireland, the legal framework concerning media pluralism is in the Constitution, which requires the State to guarantee the exercise of fundamental rights, including freedom of expression and freedom of the press<sup>121</sup>. The Government has adopted the Online Safety and Media Regulation Act 2022 (the OSMR Act), which partially transposed the Audiovisual Media Services Directive<sup>122</sup> and resulted in a major overhaul of the Irish media law, including the establishment of a new independent media regulator<sup>123</sup>. Primary legislation provides safeguards for the independence of the public service media<sup>124</sup>. The Government has been carrying out a review of the Freedom of Information Act (FOI) with the purpose of strengthening the right of access to information.

**A new media authority with extensive regulatory functions has been established.** The recently commenced OSMR Act provides for the establishment of a new multi-person media regulatory authority, known as *Coimisiún na Meán* (the Media Commission), which replaced the Broadcasting Authority of Ireland (BAI)<sup>125</sup>. The Media Commission possesses extensive regulatory functions which include, among others, regulating broadcasting, video on-demand, and video-sharing platform services, acting as licencing authority for radio and television, and will be designated as the Digital Service Coordinator under the Digital Services Act<sup>126</sup>. The Media Commission is also responsible for the oversight and implementation of the new regulatory framework for online safety established by the OSMR Act. To this end, it is empowered to adopt and assess compliance with binding online safety codes governing the standards and practices that online services will have to follow when tackling the availability of harmful online content<sup>127</sup>. The independence of the Media Commission is ensured through a set of legal safeguards that the OSMR Act provides in relation to the procedures for the appointment and dismissal of the members of the Media Commission<sup>128</sup>. In order to fulfil its new wider functions, fund its activity, and ensure its independence, the Media Commission is expected to be entirely self-financing and has the power to impose a levy on the services

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<sup>120</sup> Information received from the police in the context of the country visit.

<sup>121</sup> Constitution of Ireland, Article 40, para. 6.1. Ireland ranks 2nd in the 2023 Reporters without Borders World Press Freedom Index compared to 6th in the previous year.

<sup>122</sup> On 19 May 2022, the Commission decided to refer Ireland to the Court of Justice of the European Union over its failure to transpose the Directive by 19 September 2020. The infringement procedure is still ongoing, INFR 2020/0531.

<sup>123</sup> Online Safety and Media Regulation Act 2022.

<sup>124</sup> According to European Parliament's Flash Eurobarometer: News & Media Survey 2022, 59% of respondents in Ireland stated that they trust public TV and radio stations, above the EU average of 49%.

<sup>125</sup> Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (2023), Press Release - New media regulator, Coimisiún na Meán, formally established.

<sup>126</sup> Regulation (EU) 2022/2065 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act)

<sup>127</sup> Online Safety and Media Regulation Act 2022, Part 11.

<sup>128</sup> The Online Safety and Media Regulation Act 2022 regulates the operations of the Media Commission and provides for rules regulating the appointment and removal of Commissioners, Online Safety and Media Regulation Act 2022, Part 3. Notably, in case of removal, the Government has to notify the Commissioner in writing of the decision and the reasons for the removal, in accordance with, Section 12(10) (a) and (b) of the Online Safety and Media Regulation Act 2022.

regulated under the OSMR Act<sup>129</sup>. However, some stakeholders have expressed concerns in relation to the adequacy of the resources with respect to the broad functions that the Media Commission will be carrying out under the new regulatory framework<sup>130</sup>.

**The system of self-regulatory bodies operating in the press sector remains effective.** In Ireland, the news media sector can rely upon a well-established self-regulatory framework based on the operation of the Office of the Press Ombudsman and the Press Council of Ireland. They oversee compliance with the professional and ethical standards embodied in the relevant Code of Practice by their members, which comprise the totality of daily and Sunday newspapers published in Ireland, the majority of local newspapers, as well as Irish magazines and online-only news publications<sup>131</sup>. In 2022, the Office of the Press Ombudsman analysed 19 complaints<sup>132</sup>. The fact that, over 15 years of operation, more than 5 000 complaints have been submitted, with an average of 400 a year, signals that the public considers the system as an effective way to ensure compliance with professional and ethical standards in the Irish press<sup>133</sup>.

**The law ensures the independence of the public service media, while work is ongoing on the reform of the public funding framework.** In Ireland there are two public service media, *Raidió Teilifís Éireann* (RTÉ) and the Irish language public broadcaster TG4. They hold significant audience shares, accounting together for 29% of linear broadcasting viewing, with RTÉ representing the largest accessed online and offline source in Ireland for news and current affairs<sup>134</sup>. Although there is no evidence of direct political interference in editorial activities of the public service broadcasters<sup>135</sup> and the appointment process also involves a cross-parliamentary committee, the involvement of the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media and of the Government in the appointment of the public service media boards, as also referred to in the 2022 Rule of Law Report, is considered as a risk factor

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<sup>129</sup> Online Safety and Media Regulation Act 2022, amending section 21; additionally, on an interim basis, the Government has allocated exchequer funding of EUR 7.5 million in 2023 to support the Media Commission in the early stages of its establishment, Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (2022), Press Release - Ministers Martin and Chambers announce details of Budget 2023 for the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media. According to Government estimates, the operation of the Media Commission will rely on a budget ranging between EUR 14.5 and 14.8 million and on a staff of around 150, information received by the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media in the context of the country visit to Ireland.

<sup>130</sup> Contribution from the Irish Council for Civil Liberties for the 2023 Rule of Law Report, p. 36; National Union of Journalists (2022), NUJ urges rethink on “giant Media Commission” watchdog, as confirmed by information received in the context of the country visit to Ireland from the National Union Journalists and the Irish Council for Civil Liberties.

<sup>131</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 16; Press Council of Ireland (2022), Annual Report 2021.

<sup>132</sup> Information is available on the Press Council of Ireland and Office of the Press Ombudsman website: <https://www.presscouncil.ie/office-of-the-press-ombudsman/outcome-of-complaints/decided-by-the-press-ombudsman>.

<sup>133</sup> Committee on Public Petitions (2022), Annual Reports of the Press Council of Ireland and Office of the Press Ombudsman: Press Ombudsman.

<sup>134</sup> 2023 Media Pluralism Monitor, country report for Ireland, p. 7; in 2022, RTÉ reached an average of 89% of Irish adults per week, information received in the context of the country visit to Ireland from RTÉ.

<sup>135</sup> 2023 Media Pluralism Monitor, country report for Ireland, p. 20. In October 2022, RTÉ declined an invite of the parliamentary committee on media to discuss its editorial decisions in relation to the coverage of particular issues, Irish Examiner (2022), Politicians to question RTÉ on decision making; Contribution from the Irish Council for Civil Liberties for the 2023 Rule of Law Report, p. 34, as confirmed by information received in the context of the country visit to Ireland from RTÉ.

for the independence of the public service broadcasters<sup>136</sup>. Such risk is nevertheless counterbalanced by the rules whereby the removal of a member of the management board has to be approved by each House of the Parliament<sup>137</sup>. RTÉ's editorial independence is further strengthened through standards and best practices of editorial integrity and independence, agreed and respected across all the outlet, including the management and the editorial staff<sup>138</sup>. Irish law also requires the public service broadcasters to comply with safeguards ensuring the plurality of information and opinions<sup>139</sup>. The Government has also committed to examining the options for a reform of the TV licence-fee system with a view to provide the public service media with more secure and adequate funding<sup>140</sup>.

**A searchable database financially supported by the media regulator ensures the access to information on media ownership.** Since 2020, the Media Commission has been funding the Mediaownership.ie database, an online database providing ownership information of Irish-owned media outlets<sup>141</sup>. The database, which is publicly accessible, is developed and managed by the Dublin City University's School of Communications and facilitates, in practice, also the access to information about beneficial owners<sup>142</sup>. Nevertheless, given the fact that the Mediaownership.ie database currently covers only a small number of online outlets, which in Ireland have become the main consulted sources, the 2023 MPM considers the transparency of media ownership at medium risk<sup>143</sup>. As regards media concentrations, a specific media market scrutiny procedure requires the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media

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<sup>136</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 17; 2023 Media Pluralism Monitor, country report for Ireland, p. 20; 2022 Media Pluralism Monitor, country report for Ireland, p. 13; Broadcasting Act 2009, Section 81.

<sup>137</sup> Broadcasting Act 2009, Section 84.

<sup>138</sup> RTÉ (2020), Journalism Guidelines 2020, as confirmed by information received in the context of the country visit to Ireland from RTÉ.

<sup>139</sup> The Irish law requires public service broadcasters to ensure that their programming is responsible to the interests and concerns of the whole community, that it reflects the cultural diversity informing the Irish society, and upholds the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression, Broadcasting Act 2009, Sections 114 and 118. In addition, RTÉ has also adopted a Diversity and Inclusion Charter, which expresses the outlet's commitment to develop and implement policies aimed at increasing social inclusiveness and fostering the presence and representation of minority voices within its organisation as well as in relation to the content offered, RTÉ (2018), Diversity and Inclusion Charter, as confirmed by RTÉ in the context of the country visit in Ireland.

<sup>140</sup> The MPM 2023 considers the current funding system of RTÉ as highly problematic, since the television licence fee, unchanged since 2008, fails to provide RTÉ with a level of financing that can be considered as adequate to properly fulfil its public service remit, 2023 Media Pluralism Monitor, country report for Ireland, p. 21. A Technical Working Group has been set up by the Government to examine options for the revision of the TV licence fee system and it is due to report to the Department of Media at the end of the first quarter of 2023, Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (2022), Press Release - Minister Catherine Martin announces new action plan for the implementation of the Future of Media Commission Recommendations. See also The Irish Times (2023), Government promises to reform TV licence fee by third quarter of 2024; RTÉ (2022), Government to 'overhaul' TV licence system, as confirmed by information received in the context of the country visit to Ireland from the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media.

<sup>141</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 14; 2023 Media Pluralism Monitor, country report for Ireland, p. 15. The Online Safety and Media Regulation Act 2022 also stipulates that the new Media Commission shall endeavour to ensure diversity and transparency in the control of communications media operating in the State, Online Safety and Media Regulation Act 2022, Part 3, amending section 7 paragraph (3)(b).

<sup>142</sup> 2023 Media Pluralism Monitor, country report for Ireland, p. 15. The database is available here: [Media Ownership Ireland](#).

<sup>143</sup> 2023 Media Pluralism Monitor, country report for Ireland, p. 15.

to assess the impact of media mergers on the plurality of media in Ireland. In particular, Minister may refer a merger to the Media Commission for a second phase examination. The Minister can block a media merger when this second examination considers it to be contrary to the public interest in protecting plurality of the media in the State<sup>144</sup>.

**Stakeholders have called for more clarity in the allocation of state advertising.** As described in the 2020 and 2022 Rule of Law Reports, Ireland does not have in place specific rules regulating the placement of state advertising in media<sup>145</sup>. Since the 2022 Rule of Law Report, there have been no changes in the legal framework concerning the allocation of state advertising. Although the evidence collected at this stage does not suggest that the Government expenditure gives rise to uneven or unfair treatment of media in relation to state advertising<sup>146</sup>, some stakeholders have stressed the need of greater clarity on the decision-making process concerning the allocation of state advertising. In particular, stakeholders pointed to the risk of potential conflict of interests stemming from recourse to third-party agencies to place public bodies' advertisements, when such agencies are owned and controlled by companies that are also significant players in the regional newspaper markets<sup>147</sup>.

**The legal framework for access to information is being revised.** Since the 2022 Rule of Law Report, there have been no major developments with respect to the ongoing revision of the Freedom of Information Act 2014 (FOI Act), which aims to enhance and modernise the legal framework regulating the right of access to information<sup>148</sup>. During the public consultation stage, which closed in September 2022, around 2400 responses were received and are now under consideration of the Minister, with the view to produce a final report with findings and recommendations in the course of 2023<sup>149</sup>. According to a progress update report published in December 2022<sup>150</sup>, slightly over four out of every five requests of access to documents annually submitted under the FOI Act were granted in full or in part in the years following the introduction of the 2014 FOI Act, with only few requesters dissatisfied and asking for a review of the decision<sup>151</sup>. Although a customer satisfaction survey reported that 60% of requesters

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<sup>144</sup> Competition and Consumer Protection Act 2014, Sections 28D-28G.

<sup>145</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 12; 2022 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 17.

<sup>146</sup> 2023 Media Pluralism Monitor, country report for Ireland, p. 20; 2022 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p.17, as confirmed by information received in the context of the country visit to Ireland from the Broadcasting Authority of Ireland.

<sup>147</sup> Contribution from the Irish Council for Civil Liberties for the 2023 Rule of Law Report, p. 34; Joint Committee on Tourism, Culture, Arts, Sport and Media (2022), Joint Committee on Tourism, Culture, Arts, Sport and Media debate - Thursday, 24 November 2022, as confirmed by information received in the context of the country visit to Ireland from the National Union of Journalists.

<sup>148</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 18.

<sup>149</sup> Department of Public Expenditure, NDP Delivery and Reform (2022), Press release - Minister McGrath updates Government on the Review of the Freedom of Information Act; Input from Ireland for the 2023 Rule of Law Report, p. 32.

<sup>150</sup> Department of Public Expenditure, NDP Delivery and Reform (2022), FOI Review Update for Stakeholders, p. 7.

<sup>151</sup> Annually, internal reviews and independent reviews were sought respectively for 3% and 1% of the requests, Department of Public Expenditure, NDP Delivery and Reform (2022), FOI Review Update for Stakeholders, p. 7. When dissatisfied with the outcome of a request of access, requesters can rely on a two-level system of review. Notably, at a first stage they can ask for an internal review at higher level in the body concerned by the request, while at a second stage, an independent review can be sought before the Information Commissioner, Freedom of Information Act 2014, Sections 21 and 22.

were satisfied with the handling of their requests<sup>152</sup>, the evidence emerging from the ongoing review also points to the need to adjust some aspects of the framework in order to foster its efficiency and consistency. In particular, the preliminary findings point to the need for a more coherent approach to information governance and access, a more collaborative approach to release information, and improvements in the request process, notably with respect to timeframes and extensions and a more active engagement with requesters<sup>153</sup>. Moreover, some stakeholders have pointed out to the need to address certain shortcomings of the mechanism in some reported instances, such as the excessively high costs of accessing information held by the Government, the existing restrictions on access to information across the criminal justice system, and the need to increase the accessibility to public information for marginalised groups<sup>154</sup>.

**Rising challenges that journalists face in the performance of their work are aimed to be addressed with new initiatives.** First, civil society organisations and journalists' associations have reported a deteriorating trend of the professional environment for journalists<sup>155</sup>. In 2022 the Mapping Media Freedom platform registered three incidents in Ireland, the highest number since 2017, whereas two new incidents have been already reported since January 2023<sup>156</sup>. There is also a particular concern as regards the increase of cases of online abuses, especially targeting female journalists, which sometimes also translate in physical harassment, as well as the increase in the recourse to strategic lawsuits against public participation (or SLAPPs) against media organisations<sup>157</sup>. In 2022, the National Union of Journalists and other media organisations established together with the national police the Media Engagement Group with

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<sup>152</sup> Department of Public Expenditure, NDP Delivery and Reform (2022), FOI Review Update for Stakeholders, p. 9.

<sup>153</sup> Ibid, pp. 12-13.

<sup>154</sup> Contribution from the Irish Council for Civil Liberties for the 2023 Rule of Law Report, pp. 41-42; Irish Penal Reform Trust (2021), Progress in the Penal System – The need for transparency, pp. 4, 11, and 13; Contribution from the Law Society of Ireland for the 2023 Rule of Law Report, p. 20. Similarly, the 2023 MPM report scores the protection of the right to information as medium risk due to weaknesses related to limited economic and staff resourcing that affect the implementation of the FOI Act, 2023 Media Pluralism Monitor, country report for Ireland, p. 13.

<sup>155</sup> Contribution from the Irish Council for Civil Liberties for the 2023 Rule of Law Report, p. 36, as confirmed by information received in the context of the country visit to Ireland from the National Union of Journalists, RTÉ, and the Irish Council for Civil Liberties.

<sup>156</sup> In particular, while three incidents were reported in 2017, only one incident was reported in 2018. For the years 2021, 2020 and 2019 two incidents were reported annually, Mapping Media Freedom, Ireland country profile.

<sup>157</sup> Contribution from the Irish Council for Civil Liberties for the 2023 Rule of Law Report, p. 37; An RTÉ journalist referred to cases of physical and online harassment she experienced during her work, Irish Examiner (2019), You have very good English for a Nigerian girl!: RTÉ journalist, 23, subjected to racism; two journalists of The Irish Times were the target of abuses and smear campaigns on social media for their coverage of an alleged assault at a migrant camp, Coalition For Women In Journalism (2023), Ireland: Attempt To Smear Kitty Holland Following Report On Migrant Camps – CFWIJ Calls On Social Media Companies To Act; a crowd of people physically and verbally harassed a camera operator and other news photographers of RTÉ, The Journal (2022), RTÉ 'in contact' with *gardai* over staff safety as video shows crowd confronting cameraman; anti-vaccine and far-right groups have been targeting RTÉ and its staff in several occasions over the past few years, The Journal (2021), Adrenochrome: why was a QAnon conspiracy drug name-checked at Dublin's anti-lockdown protest? and The Journal (2021), Arrests amid major Garda presence as anti-lockdown events take place in Dublin.

a view to discuss threats and violence against journalists and monitor journalists' safety<sup>158</sup>. The Media Engagement Group is chaired by the senior leadership of the national police and includes representatives from the media sector, the Department of Justice, and the Department of Tourism, Culture, Arts, Gaeltacht, Sports and Media. It is intended to work as a direct reporting system to the police on which journalists that experience physical or online abuses can rely, also in cases where such incidents do not escalate to the level of formal complaints that require criminal investigation<sup>159</sup>. Second, the Government has also pledged to establish a new Media Fund in 2023 primarily intended to support, on a platform-neutral basis, public-interest media content<sup>160</sup>. On this basis, two new schemes<sup>161</sup>, managed by the Media Commission, will be prioritised for implementation with the aim of promoting the provision of additional public service content, and supporting independent journalism, freedom of expression and local democracy<sup>162</sup>.

**Some progress has been made to improve the professional environment for journalists, as a General Scheme of the Defamation (Amendment) Bill has been published.** The 2022 Rule of Law Report recommended to Ireland to “continue the reform of the Defamation Act to improve the professional environment for journalists taking into account European standards on the protection of journalists”<sup>163</sup>. The shortcomings of the defamation regime in Ireland have been a long-standing issue<sup>164</sup>. In particular, the absence of measures designed to counter SLAPP cases and the lack of safeguards in relation to the unpredictably high costs that might occur in the context of defamation lawsuits<sup>165</sup> has been often mentioned by journalists and

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<sup>158</sup> Contribution from the Irish Council for Civil Liberties for the 2023 Rule of Law Report, p. 37, as confirmed by information received in the context of the country visit to Ireland from the National Union of Journalists and RTÉ.

<sup>159</sup> Input from Ireland for the 2023 Rule of Law Report, p. 31, as confirmed by information in the context of the country visit to Ireland received from the the Department of Tourism, Culture, Arts, Gaeltacht, Sports and Media, the National Union of Journalists and RTÉ.

<sup>160</sup> Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (2022), Press Release - Ministers Martin and Chambers announce details of Budget 2023 for the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media.

<sup>161</sup> The two schemes, which were recommended by the Future of Media Commission, established by the Government in September 2020 and tasked with developing recommendations aimed to ensure the sustainability and resilience of the Irish media landscape, are the Courts Reporting Scheme, aimed at supporting journalism focused on the coverage of court proceedings and Local Democracy Reporting Scheme, aimed at supporting journalism focused on the coverage of matters pertaining to the activities of local institutions and local authorities, The Future of Media Commission (2022), Report of the Future of Media Commission, pp. 170-173.

<sup>162</sup> Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (2022), Press Release - Ministers Martin and Chambers announce details of Budget 2023 for the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media, as confirmed by information received in the context of the country visit to Ireland from the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media, the Broadcasting Authority of Ireland, and the National Union of Journalists.

<sup>163</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 2.

<sup>164</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, pp. 18- 19; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p.15; 2020 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 13; 2022 Media Pluralism Monitor, country report for Ireland, p.10.

<sup>165</sup> The current defamation laws do not provide for any limit or cap to the award of damages in defamation cases, which can therefore open the door to theoretically limitless damages payments, 2022 Media Pluralism Monitor, country report for Ireland, p. 8; Contribution from the Law Society of Ireland for the 2023 Rule of Law Report p. 23, as confirmed by information received in the context of the country visit to Ireland from RTÉ and the National Union of Journalists. On the other hand, some stakeholders welcomed the exclusion of a cap on damages as guidance in relation to damages was set out in recent Supreme Court judgments, in

other media stakeholders as an issue generating a chilling effect over freedom of information and the journalistic work<sup>166</sup>. In March 2023, the Government published the General Scheme of the Defamation (Amendment) Bill with a view to present a full bill before the Parliament by the end of 2023<sup>167</sup>. The General Scheme takes into account several recommendations formulated in the Report on the Review of the Defamation Act published in March 2022 by the Irish Department of Justice<sup>168</sup>. In particular, it abolishes the use of juries in High Court defamation cases with a view to reduce the risks of disproportionate and unpredictable damages awards and introduces rules to counteract SLAPPs<sup>169</sup>. Considering these developments, there has been some progress in relation to the recommendation made in the 2022 Rule of Law Report.

#### **IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES**

Ireland has a bicameral parliamentary system: Parliament comprises a Lower House, and an Upper House. Government Ministers and members of Parliament have the right of legislative initiative. Constitutional review is carried out by the High Court with a right of appeal to the Court of Appeal and the Supreme Court. The Irish Human Rights and Equality Commission (IHREC) is Ireland's National Human Rights and Equality Institution. The Offices of the Ombudsman and Information Commissioner are independent both by law and in practice. Other relevant institutions in the system of checks and balances are the Ombudsman for the Defence Forces, the Ombudsman for Children's Office and the National Disability Authority.

**The use of the so-called 'guillotine motions' to shorten the time allocated to debate legislative proposals and motions has continued.** As referred in previous Rule of Law Reports<sup>170</sup>, the legislative process has been characterised, since the beginning of the pandemic, by the use of the so-called 'guillotine motions'. In 2022, 56 such motions were prepared in the Lower House in relation to the bills that were passed and enacted and of those, 27 motions were used in order to shorten the debate<sup>171</sup>. In the Upper House, 38 motions were prepared and

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particular *McDonagh v Sunday Newspapers* (where the Supreme Court set out a proportionality test) and *Higgins v Irish Aviation Authority* (where the Supreme Court set out guidelines in relation to the amount of damages that should be awarded based on the seriousness of the defamation, including a suggested maximum of EUR 300 000 (except in exceptional cases)), Law Society of Ireland (2023), General Scheme of the Defamation (Amendment) Bill – Submission to the Joint Oireachtas on Justice.

<sup>166</sup> 2022 Media Pluralism Monitor, country report for Ireland, p. 21; Reporter without Borders (2022), Ireland Country Section available on <https://rsf.org/en/country/ireland>; Contribution from the Irish Council for Civil Liberties for the 2023 Rule of Law Report, p. 37, as confirmed by information received in the context of the country visit to Ireland from RTÉ and the National Union of Journalists.

<sup>167</sup> Department of Justice (2023), Press Release – Minister Harris publishes draft legislation to reform Ireland's defamation laws.

<sup>168</sup> Department of Justice (2022), Report on the Review of the Defamation Act 2009.

<sup>169</sup> Draft General Scheme – Defamation (Amendment) Bill. Although the measures included in the General Scheme have been overall welcomed, some stakeholders have nevertheless regretted the non-inclusion of a cap on damages. Similarly, there has been criticism for the non-inclusion of a general "serious harm" test, which under the General Scheme only applies in cases involving bodies corporate, public authorities and retailers. In particular, such test requires claimants to show that the alleged defamation was likely to cause serious harm to their reputation, contributing to reducing the number of unwarranted or vexatious defamation lawsuits, International Press Institute (2023), Ireland: How the wealthy and powerful abuse legal system to silence reporting; The Irish Times (2023), The Irish Times view on defamation reform: time to act; NewsBrands Ireland (2023), NewsBrands Ireland welcomes today's publication of draft legislation to reform Ireland's Defamation Laws.

<sup>170</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, pp. 16-17.

<sup>171</sup> Input from Ireland for the 2023 Rule of Law Report, p. 36.

seven motions were moved<sup>172</sup>. The Speaker of the Lower House has criticised this practice and its significant increase since 2020<sup>173</sup>. Moreover, civil society has also raised concerns regarding the continued rushing of legislation at the end of parliamentary terms<sup>174</sup>, as also expressed by the President of Ireland in July 2021<sup>175</sup> and reiterated in December 2022<sup>176</sup>.

**The Irish Human Rights and Equality Commission has received additional funding.** As announced in the 2022 Rule of Law Report<sup>177</sup>, the Government has provided additional funding to IHREC following its accreditation with A status by the UN Global Alliance of National Human Rights Institutions (GANHRI). IHREC has continued its activities, focusing on the protection of rights of persons facing barriers to justice, influencing legislation and policy, engaging with organisations to address discrimination and human rights abuses, and raising awareness on human rights and equality issues<sup>178</sup>. According to IHREC, there has been an increase of parliamentary citations of their recommendations and a high-level and consistent media presence at national level of the activities carried out by the Commission<sup>179</sup>.

**On 1 January 2023, Ireland had two leading judgments of the European Court of Human Rights pending implementation, the same number as the previous year<sup>180</sup>.** At that time, Ireland's rate of leading judgments from the past 10 years that remain pending was at 50% (compared to 33% in 2022) and the average time that the judgments had been pending implementation was 10 years and 7 months (compared to 9 years and 7 months in 2022<sup>181</sup>). The latter is affected by the length of non-implementation of the two judgments which have been pending for over 8 years<sup>182</sup>. On 15 June 2023, the number of leading judgments pending implementation remains two<sup>183</sup>.

**There has been some progress to address concerns on funding of NGOs, as an Electoral Commission has been established and charged to review legal provisions.** The 2022 Rule of Law Report recommended to Ireland to “take measures to address legal obstacles related to access to funding for civil society organisations”<sup>184</sup>. Civic space in Ireland remains open<sup>185</sup>. As

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<sup>172</sup> Ibid.

<sup>173</sup> Contribution from the Irish Council for Civil Liberties for the 2023 Rule of Law Report, p. 45.

<sup>174</sup> Contribution from the Irish Council for Civil Liberties for the 2023 Rule of Law Report, p. 46.

<sup>175</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 19.

<sup>176</sup> Contribution from the Irish Council for Civil Liberties for the 2023 Rule of Law Report, p. 46.

<sup>177</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 20.

<sup>178</sup> IHREC 2022, Annual Report 2021, p. 11.

<sup>179</sup> IHREC 2022, Annual Report 2021, p. 7.

<sup>180</sup> The adoption of necessary execution measures for a judgment by the European Court of Human Rights is supervised by the Committee of Ministers of the Council of Europe. It is the Committee's practice to group cases against a State requiring similar execution measures, particularly general measures, and examine them jointly. The first case in the group is designated as the leading case as regards the supervision of the general measures and repetitive cases within the group can be closed when it is assessed that all possible individual measures needed to provide redress to the applicant have been taken.

<sup>181</sup> All figures are calculated by the European Implementation Network and are based on the number of cases that are considered pending at the annual cut-off date of 1 January 2023. See the Contribution from the European Implementation Network for the 2023 Rule of Law Report, p. 4.

<sup>182</sup> Judgments of the European Court of Human Rights of 10 September 2010, *McFarlane v. Ireland*, 31333/06, and of 28 January 2014, *O'Keefe v. Ireland*, 35810/09.

<sup>183</sup> Data according to the online database of the Council of Europe (HUDOC-EXEC).

<sup>184</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 2.

<sup>185</sup> Rating by CIVICUS; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.



referred in the 2022 Rule of Law Report<sup>186</sup>, civil society organisations have raised concerns about the impact of the prohibitions under the Electoral Act to receive donations above a certain threshold for ‘political purposes’ or from foreign donors<sup>187</sup>. In February 2023, an Electoral Commission was established and started its functions. The Commission will shortly commence a comprehensive review of the Electoral Act to address, alongside other matters, the issues raised by civil society organisations<sup>188</sup>. The results of this review and the way how the legal obstacles related to access to funding for civil society organisations will be addressed are yet to be seen. The Electoral Commission has not yet produced its findings, therefore there has been some progress in relation to the recommendation made in the 2022 Rule of Law Report.

**Initiatives were taken aimed at encouraging the participation of the public and civil society in policy making.** A Citizens’ Assembly, which brings together citizens to discuss and consider important legal and policy issues, subsequently makes recommendations and reports back to Parliament. In 2022, two Citizen’s Assemblies took place<sup>189</sup>. One reflected on “how to respond to the loss of biodiversity” and “a directly elected mayor for Dublin”, while another Citizens’ Assembly on drugs use started in April 2023. Moreover, in November 2022 the first National Civic Forum for formal dialogue between Government and the Community and Voluntary sector was held<sup>190</sup>. The Forum focused on how to further improve policymaking and programming and how to make these more participative and open. The Forum also reflected on the future and what types of organisations should be included<sup>191</sup>.

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<sup>186</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 20.

<sup>187</sup> Under the Electoral Act 1997, donations may be received by third parties up to a limit of EUR 2500 from a donor in any given calendar year. SIPO has interpreted the relevant legislation as also comprising certain activities carried out by civil society organisations, such as advocacy work including outside electoral periods.

<sup>188</sup> Input from Ireland for the 2023 Rule of Law Report, p. 34.

<sup>189</sup> Citizens’ Information 2023, Citizen’s Assembly.

<sup>190</sup> Input from Ireland for the 2023 Rule of Law Report, p. 45.

<sup>191</sup> Ibid.

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

\* The list of contributions received in the context of the consultation for the 2023 Rule of Law report can be found at [https://commission.europa.eu/publications/2023-rule-law-report-targeted-stakeholder-consultation\\_en](https://commission.europa.eu/publications/2023-rule-law-report-targeted-stakeholder-consultation_en).

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## **Annex II: Country visit to Ireland**

The Commission services held virtual meetings in February 2023 with:

- Advisory Council on Economic Crime and Corruption
- Association of Judges of Ireland (AJI)
- Bar of Ireland
- Broadcasting Authority of Ireland
- Corporate Enforcement Authority (CEA)
- Courts Service
- Department of Justice
- FLAC-Free Legal Advice Centres
- Garda Anti-Corruption Unit (GACU)
- Garda Economic Crime Bureau
- Houses of the Oireachtas Service (Parliament Service)
- Irish Council for Civil Liberties
- Irish Environmental Network
- Irish Human Rights and Equality Commission
- Irish Network Against Racism
- Irish Penal Reform Trust
- Irish Traveller Movement
- Irish Small and Medium Enterprises Association (ISME)
- Law Society of Ireland
- Legal Services Regulatory Authority
- Mercy Law Resource Centre
- National Union of Journalists
- Office of the Director of Public Prosecution
- Representatives of the Judiciary
- RTÉ Ireland's National Television and Radio Broadcaster
- Standards in Public Office Commission (SIPO)
- Transparency International

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

- ALDA (European Association for Local Democracy)
- Amnesty International
- Civil Liberties Union for Europe
- Civil Society Europe
- Culture Action Europe
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Free Press Unlimited

- Front Line Defenders
- ILGA Europe
- International Commission of Jurists
- International Federation for Human Rights (FIDH)
- International Planned Parenthood Federation European Network
- International Press Institute
- JEF Europe
- Osservatorio Balcani e Caucaso Transeuropa
- Philea
- Reporters Without Borders
- SOLIDAR
- Transparency International EU