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2022 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**

2022 Rule of Law Report The rule of law situation in the European Union

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ABSTRACT

Reforms of the Irish justice system have continued. A new draft law on judicial appointments and promotions, which proposes to establish a Judicial Appointments Commission, was tabled in Parliament. The draft law limits the level of discretion of the Government in the appointment procedure, however the fact that the proposed Commission does not consist of a clear majority of judges chosen by their peers raises concerns. The Judicial Council adopted guidelines for the judiciary on conduct and ethics, where the role and discretion retained by Parliament on the removal of judges could raise concerns about the potential politicisation of the process. The Attorney General introduced a scheme to provide legal representation to judges in case of misconduct, which is a positive development to strengthen judicial independence. Additional judicial posts have been filled in the High Court, while the number of judges per inhabitant remains low. High litigation costs and shortcomings within the legal aid system continue to raise concerns, however, work is ongoing to address those challenges. The digitalisation of justice has progressed with the adoption of ICT and Data Strategies. Work on the review of the Offences Against the State Act relating to the Special Criminal Court has continued. A draft law establishing a compensation scheme for cases of excessive length of court proceedings has been proposed.

Ireland continues to review its national anti-corruption structure and strategy. The development of the multi-annual National Strategy and Action Plan to Combat Economic Crime and Corruption has been affected by delays in establishing a permanent Advisory Council. A new criminal procedural act entered in force in 2021 and should make dealing with complex offences – including corruption – more efficient, but further reforms are needed to strengthen the fight against corruption. A review of the ethics legislative framework has started and includes addressing weaknesses in the asset disclosure legislation. The review also aims at reinforcing the capacity of the Standards in Public Office Commission, which currently lacks any enforcement powers in most areas related to its mandate. Legislation on whistleblowing is being discussed in Parliament and is expected to be approved during the first half of 2022. As regards prosecution and investigation of corruption, cooperation between relevant authorities is good. In addition, resources in the prosecution of corruption begun to be reinforced, while the number of cases detected and investigated continues to increase.

Ireland is finalising a legislative overhaul of its media law undertaken in the context of transposing the revised Audiovisual Media Services Directive. Authorities have taken steps to mitigate the financial burden on media outlets caused by the pandemic and public information campaigns on the COVID-19 pandemic have played a role in supporting the viability of media outlets. Although recent figures show an even split of state advertising spending across national and regional media outlets, the lack of specific rules regarding the allocation of state advertising funds hinders the transparency of the process. The professional environment for journalists is largely safe and the ongoing reform of the defamation rules is expected to have a positive impact on the work of journalists.

Following discussions related to the consideration of new bills, new working methods have been adopted to improve the management of business in Parliament. The Irish Human Rights and Equality Commission has been re-accredited A status and received further funding. Ireland has a vibrant and diverse civil society, but a reform on the Electoral Act has not addressed concerns regarding legal obstacles for the funding of Civil Society Organisations.

RECOMMENDATIONS

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 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.
- Continue 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.

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 Courts¹ are non-jury courts and deal with paramilitary, subversive and organised crime cases. Moreover, a number of specialised tribunals² operate in different areas. A Judicial Council³ was established in 2019. 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, 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 very high among companies. Overall, 73% of the general population and 77% of companies perceive the level of independence of courts and judges to be ‘fairly or very good’ in 2022⁴. According to data in the 2022 EU Justice Scoreboard, the level has remained consistently high for the general public and very high for companies since 2016. The perceived judicial independence among the general public remains at the same level than in 2021. The perceived judicial independence among companies has slightly increased since 2021 (76%), but is lower in comparison with 2016 (79%).

¹ 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.

² 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.

³ 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.

⁴ Figures 50 and 52, 2022 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 composition of the envisaged Judicial Appointments Commission proposed in the Judicial Appointments Bill raises some concerns. On 8 April 2022, the Government tabled a draft law in Parliament on the appointment and promotion of judges⁵. It provides for the establishment of a Judicial Appointments Commission composed of nine members to replace the current JAAB⁶. The Commission would be chaired by the Chief Justice and would have three judicial members⁷ and four lay members⁸, as well as the Attorney General in a non-voting capacity. This will lead to a total of eight voting members – four judicial and four lay persons. The draft law has incorporated some provisions following the consultations with stakeholders, such as unifying the procedure for appointments and promotions. The draft law also includes additional guarantees to limit the level of discretion of the Government in the appointment procedure. In particular, the draft law provides that the Commission would present three candidates to the Government, and two additional recommendations for a second and additional vacancies. In addition, the Government shall, in nominating a person for appointment or election to a judicial office, consider for nomination only those persons who have been recommended by the Commission. Therefore, this system better limits the discretion of the Government compared to both the current system of a list of seven candidates⁹ and the system envisaged in the General Scheme¹⁰ of five unranked candidates. However, as already reflected in the 2021 Rule of Law Report¹¹, the composition of the envisaged Commission¹² does not provide for a clear majority of judges chosen by their peers¹³. In addition, the fact that the Attorney General would sit on the Commission in an ex-officio non-voting capacity was considered a concern by stakeholders¹⁴. It is important that the final reform approved in Parliament guarantees judicial independence, in line with EU law and taking into account European standards¹⁵.

⁵ Judicial Appointments Commission Bill 2022.

⁶ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 3. The JAAB is made up of the five court presidents, the Attorney General, a representative from both the Law Society and the Bar Council, and three lay members appointed by the Minister for Justice.

⁷ 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).

⁸ All will be selected in open competition by the Public Appointments Service.

⁹ Section 16 of the Courts and Court Officers Act 1995.

¹⁰ 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.

¹¹ 2021 Rule of Law Report, country chapter on the rule of law situation in Ireland, p. 4.

¹² However, the composition of the envisaged Commission can be considered as an improvement compared to the composition foreseen in the draft law tabled in 2017 (which lapsed with the end of the previous parliamentary term) and which had a lay majority and a lay chairperson.

¹³ Venice Commission, CDL-AD(2020)006, para.19.

¹⁴ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 4. The Human Rights and Equality Commission and the Law Society raised concerns as regards the independence of the Commission from the Government, as the Attorney General is also the Government’s chief legal advisor and sits at cabinet meetings.

In this context, the Government of Ireland has pointed out that the Attorney General is a constitutional Office Holder who has a particular role in upholding the independence of the Judiciary, and the draft law, in all its elements, including in particular those relating to the composition of the Commission and notably its inclusion of a substantial number of judges and an equal number of lay persons, was drafted on the basis of careful legal considerations and will serve to strongly underpin the independence of the Judicial Appointments Commission.

¹⁵ Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, paras 46- 47. The European Court of Justice has, in the context of judicial appointments made by the executive branch with the involvement of a Judicial Appointments Committee, indicated that for such Committee to contribute to

The Judicial Council has adopted conduct and ethics guidelines for judges. On 4 February 2022, the Judicial Council approved guidelines on conduct and ethics¹⁶ for the judiciary. The guidelines had been prepared by the Judicial Conduct Committee of the Judicial Council and were approved unanimously by the 167 members of the Council. The guidelines are structured in line with the principles of the 2002 United Nations Judicial Group on Strengthening Judicial Integrity, the so-called ‘Bangalore Principles’: judicial independence, impartiality, integrity, equality, propriety, competence and diligence, and equality. They provide the framework for a detailed judicial misconduct complaints procedure as outlined in the Judicial Council Act 2019. However, Parliament remains in charge of deciding on the removal of judges from office and retains its margin of discretion in that regard¹⁷. As reflected in the 2021 Rule of Law Report¹⁸, this could raise concerns about the potential politicisation of the process, even if this process has so far never been engaged¹⁹.

A scheme has been set up offering the possibility of legal representation by the Chief State Solicitor to judges in case of misconduct. In February 2022, the Attorney General introduced a protocol to specify the procedure and arrangements for the provision of legal representation to a judge in respect of a complaint before the Judicial Conduct Committee. The protocol was introduced to safeguard the independence of the judiciary and to ensure judges have available legal representation in relation to any allegations of judicial misconduct. The protocol indicates that in case of complaints, judges shall be entitled to legal representation by the Office of the Chief State Solicitor²⁰; in particular, a panel of six senior and six junior counsels is set up for the implementation of the protocol. All costs related to such legal representation shall be borne by the Office of the Chief State Solicitor. Judges remain free to seek legal representation outside the arrangements of the protocol. The European Association of Judges has considered this scheme to have a positive impact on the independence of judges in Ireland²¹.

The regime of incompatibilities of the Attorney General could be further strengthened. Under the Irish Constitution²², the Attorney General is the legal adviser to the Government but is not a member of Government²³. There are no rules in place related to temporary employment of the Attorney General which may be incompatible with the exercise of their functions. However, some legal guarantees exist. With the permission of the Government, it may be that a newly appointed Attorney General has existing legal commitments that must be completed in order to discharge professional obligations²⁴. In addition, the Attorney General is subject to a legal requirement to publicly disclose material conflicts of interest and to verify that taxes

making the process more objective, it should be sufficiently independent of the legislative and executive and of the authority to which it is required to deliver a judicial appointment proposal. Judgment of the Court of Justice of 20 April 2021, *Repubblika*, case C-896/19, para. 66.

¹⁶ Judicial Council 2022, Guidelines for the judiciary on conduct and ethics.

¹⁷ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 6.

¹⁸ *Ibid.*

¹⁹ Venice Commission opinion (CDL-AD(2010)004-e, para. 70.

²⁰ The Chief State Solicitor's Office (CSSO) is a constituent element of the Office of the Attorney General. The CSSO provides litigation, advisory and conveyancing services to Government Departments and Offices and to certain other State agencies. The CSSO also provides solicitor services at Tribunals and Commissions of Inquiry and represents Ireland at the Court of Justice of the European Union.

²¹ Contribution from the European Association of Judges for the 2022 Rule of Law Report, p. 21.

²² Constitution of Ireland, Article 30.

²³ The Attorney General has limited prosecution responsibilities. Those responsibilities are mostly held by the Director of Public Prosecutions. According to the Ministers and Secretaries Act 1924, section 6(2), an Attorney General may also be elected to be a member of the Parliament.

²⁴ In practice this has arisen in only a small number of cases.

are compliant. The Attorney General has also to comply with Prevention of Corruption legislation and has ongoing ethical and professional obligations as a practising (court advocate) barrister. Traditionally, Attorneys General have been practising court advocates (barristers) prior to appointment and in instances where a conflict of interest or a perceived conflict of interest arises in relating to existing State legal files or new files that arise during the term of office of an Attorney General (for example, where an Attorney General may have prior to appointment advised a person involved in litigation against the State), the practice is for Attorneys General to recuse themselves from the relevant file. Though long-established, these situations related to the regime of incompatibilities of the Attorney General may affect perceptions of their independence.

Quality

The number of judges in the High Court has been increased, while the number of judges per inhabitant in Ireland remains low. In November 2021, Parliament approved a proposal by the Government²⁵ to fill five additional posts in the High Court²⁶. However, the President of the High Court has stated that even more judges are needed to deal with the backlog of cases caused by the pandemic²⁷. In addition, the number of judges per inhabitant remains the lowest of the EU²⁸. The report of the Judicial Planning Working Group set up by the Government²⁹ to consider the number and type of judges required to ensure the efficient administration of justice over the next 5 years is expected to be published in October 2022. Moreover, the Government requested the OECD to undertake an independent research to make a comparative analysis of the number of judges with other OECD countries. The findings of this research will be used as an evidential base to support the deliberations of the Working Group recommendations.

The Government continues to work to address existing concerns in relation to litigation costs and the legal aid system. Following a review of the Administration of Civil Justice in 2020³⁰, concerns have remained in relation to the litigation costs in Ireland³¹. The Minister for Justice stated in October 2021 that legal costs in Ireland are prohibitive and act as a barrier to people exercising their rights before the courts³². The lack of predictability of costs is particularly problematic for victimless claims, such as environmental claims³³, where litigants are not aiming to gain an economic benefit from their legal action, but act in the public interest. It has been pointed out³⁴ that the issue is also aggravated due to the limited range of possibilities for alternative dispute resolution in Ireland³⁵. A Working Group on costs of litigation is carrying out an economic analysis of models or approaches to reducing litigation costs and it

²⁵ Civil Law (Miscellaneous Provisions) Act 2021.

²⁶ Input from Ireland for the 2022 Rule of Law Report, p. 11.

²⁷ Contribution from Law Society of Ireland for the 2022 Rule of Law Report, p. 12. The President of the High Court has stated that at least 17 additional posts are needed.

²⁸ Figure 36, 2022 EU Justice Scoreboard.

²⁹ The Working Group is independently chaired and comprises representatives from the Departments of Justice, Public Expenditure and Reform and An Taoiseach, the Courts Service and the Office of the Attorney General.

³⁰ Review Group Report on the Administration of Civil Justice, Chairperson: The Hon. Mr. Justice Peter Kelly, Former President of the High Court.

³¹ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 7.

³² Chief Justice's Working Group on Access to Justice Conference 1st and 2nd October 2021.

³³ European Commission (2019), The Environmental Implementation Review 2019, Country Report Ireland. The review recommended Ireland to ensure that individuals and environmental NGOs can bring environmental challenges without facing prohibitive costs, including in nature and air quality cases.

³⁴ Information received from ISME in the context of the country visit to Ireland.

³⁵ Figure 29, 2022 EU Justice Scoreboard.

is expected to publish its findings in June 2022. This is important, as European standards provide that disproportionate high costs can limit the access to a court of citizens³⁶. In relation to legal aid, the Civil Legal Aid Bill 2021³⁷ is progressing through Parliament. In addition, a General Scheme of a Criminal Legal Aid Bill is being prepared, which aims to transfer the administration of the Criminal Legal Aid Scheme to the Legal Aid Board. Stakeholders have raised concerns that cuts on legal aid fees imposed since 2008 are still in force, discouraging barristers from pursuing a career at the Bar in criminal practice, threatening the criminal justice system³⁸.

The development of digital solutions, as planned in new digital justice strategies, will enhance the digitalisation of justice, including the use of digital technology by courts. In October 2021, the Courts Service³⁹ published the ICT Strategy 2021-2024⁴⁰. The strategy identifies 6 key themes and 42 actions, targeting improvements in areas such as court technology and digital case management, as well as desktop and infrastructure enhancements, ICT security and resilience, and ICT governance. The ICT Strategy was complemented in December 2021 with a Data Strategy⁴¹, aimed at strengthening existing data governance and data security processes. These strategies may contribute to remedy existing gaps in the digitalisation of justice. In particular, Ireland scores below the EU average on the use of digital technology by courts⁴², electronic communication tools in courts⁴³, digital solutions to conduct and follow court proceedings in criminal cases⁴⁴ and procedural rules that allow digital technology in court cases⁴⁵. It is also important that the digitalisation of the Irish justice system allows for the gathering of data on the length of proceedings.

Work on the review of the Offences Against the State Acts continues. The Group to review the Offences Against the State Acts, set up in February 2021, has continued its work. The Group was set up following calls from the United Nations and civil society for considering either the abolition of the Special Criminal Court, which was established in 1972 to deal with terrorism and organised crime cases, or to strengthen the procedure of the Court to ensure respect of the right to fair trial⁴⁶. The Group submitted an interim report to the Minister for Justice in August 2021⁴⁷.

³⁶ Judgments of the European Court of Human Rights of 28 October 1998, *Ait-Mouhoub v. France*, 22924/93, paras. 57-58, and of 15 February 2000, *Garcia Manibardo v. Spain*, 38695/97, paras. 38-45.

³⁷ Civil Legal Aid (Exclusion of Value of Free or Partly Free Board) (Amendment) Bill 2021.

³⁸ Written contribution from the Irish Council for Civil Liberties in the context of the country visit, p. 4; information received by the Bar of Ireland in the context of the country visit to Ireland.

³⁹ The Courts Service is responsible for the administration and management of the courts in Ireland. Its primary functions are to manage the courts, support the judges, provide information on the courts system to the public and provide court buildings and facilities for court users. The Courts Service has no role in relation to the administration of justice which is a matter for the courts and the judiciary.

⁴⁰ Courts Service 2021, ICT Strategy 2021-2024.

⁴¹ Courts Service 2021, Data Strategy 2021-2024.

⁴² Figure 43, 2022 EU Justice Scoreboard.

⁴³ Figure 44, 2022 EU Justice Scoreboard.

⁴⁴ Figure 47, 2022 EU Justice Scoreboard.

⁴⁵ Figure 42, 2022 EU Justice Scoreboard.

⁴⁶ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 8.

⁴⁷ Review of the Offences Against the State Acts 1939 to 1998, August 2021. Three-month report to the Minister for Justice.

Efficiency

The length of court proceedings is not systemically assessed. There is no system to regularly evaluate the court performance based on defined indicators. Therefore, there is no information on the length of proceedings provided in the Justice Scoreboard⁴⁸, with the exception of the rate of resolving litigious civil and commercial cases, which is one of the lowest in the EU⁴⁹. Some information is available in annual reports from the Court Service. Those reports show that the average length of proceedings in the High Court in 2020 was 660 days, a decrease of around 125 days from 2019⁵⁰. However, the average length of proceedings for criminal cases regarding summary offences slightly increased (by around 33 days in comparison with 2019)⁵¹. The length of proceedings at the Court of Appeal has significantly decreased both for civil cases (from 1220 days in 2019 to 579 days in 2020) and criminal cases (from 705 days in 2019 to 371 days in 2020)⁵². The average length of proceedings in the Supreme Court has also decreased, but remains very high (2513 days in 2020). It would be important that data on the length of proceedings is systematically recorded in line with the methodology of the Council of Europe European Commission for the efficiency of justice⁵³.

The Government has proposed a compensation scheme for cases of excessive length of court proceedings. 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 2010⁵⁴. The Government approved the General Scheme establishing a compensation scheme for cases of excessive length of court proceedings⁵⁵ on 21 July 2021. Its main aim is to provide for the establishment of an independent Assessment Board to assess claims for delay in court proceedings at first instance and to award compensation, if appropriate. The General Scheme also provides for the procedures to be followed by the Board and the criteria by which claims and compensation are to be assessed, by reference to the criteria and principles applied by the European Court of Human Rights in delay cases.

II. ANTI-CORRUPTION FRAMEWORK

The responsibility to fight against and prevent corruption in Ireland falls under the control of several public authorities. The national police (*An Garda Síochána*), specifically, the Garda National Economic Crime Bureau (GNECB)⁵⁶, investigates and prevents corruption. The GNECB has a specialised Anti-Bribery & Corruption Unit that oversees the investigation of bribery and corruption at national level. Within the national police, the Garda Anti-Corruption Unit (GACU) is responsible for promoting integrity as well as detecting and investigating corruption. The Garda Síochána Ombudsman Commission (GSOC) investigates cases of

⁴⁸ Figures 6, 7, 8, 9 and 10, 2022 EU Justice Scoreboard.

⁴⁹ Figure 11, 2022 EU Justice Scoreboard. Data obtained from CEPEJ study. Only 62% of the incoming cases were resolved in 2020. The number of resolved cases in Ireland is expected to be underreported due to the methodology.

⁵⁰ Courts Service, 2021. Annual Report 2020, p. 105.

⁵¹ Ibid.

⁵² Courts Service, 2021. Annual Report 2020, p. 106.

⁵³ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 8. CEPEJ data feed the EU Justice Scoreboard.

⁵⁴ Judgment of the Grand Chamber of the European Court of Human Rights of 10 September 2010, *McFarlane v. Ireland*, 31333/06.

⁵⁵ General Scheme of the European Convention on Human Rights (Delay in Court Proceedings) Bill.

⁵⁶ Specialist bureau that investigates fraud-related crime involving complex issues of criminal law or procedure.

misconduct of the national police affecting the public interest⁵⁷. The Standards in Public Office Commission (SIPO) continues overseeing the integrity framework for public officials including conflicts of interest, lobbying and party financing where it also provides advice to office holders⁵⁸.

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 2021 Corruption Perceptions Index by Transparency International, Ireland scores 74/100 and ranks 6th in the European Union and 13th globally⁵⁹. This perception has been relatively stable⁶⁰ over the past 5 years. The 2022 Special Eurobarometer on Corruption shows that 59% of respondents consider corruption widespread in their country (EU average 68%) and 16% of respondents feel personally affected by corruption in their daily lives (EU average 24%)⁶¹. As regards businesses, 28% of companies consider that corruption is widespread (EU average 63%) and 7% consider that that corruption is a problem when doing business (EU average 34%)⁶². Furthermore, 32% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 34%)⁶³, while 26% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 29%)⁶⁴.

The Government’s plan to review the national anti-corruption structure and strategy is progressing slowly. Following up on the so-called 2020 “Hamilton review”⁶⁵, the Government published a plan for implementing the review’s recommendations⁶⁶. One of the commitments was the establishment of a permanent Advisory Council, which was set-up with some delay in May 2022⁶⁷. The Council will be composed of a Chairperson and six representatives from the

⁵⁷ More information: <https://www.gardaombudsman.ie/>

⁵⁸ 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.

⁵⁹ Transparency International (2022), Corruption Perceptions Index 2021, pp. 2-3. 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).

⁶⁰ In 2017 the score was 74, while, in 2021, the score is 74. 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.

⁶¹ Special Eurobarometer 523 on Corruption (2022). The Eurobarometer data on citizens’ corruption perception and experience is updated every second year. The previous data set is the Special Eurobarometer 502 (2020).

⁶² Flash Eurobarometer 507 on Businesses’ attitudes towards corruption in the EU (2022). The Eurobarometer data on business attitudes towards corruption as is updated every second year. The previous data set is the Flash Eurobarometer 482 (2019).

⁶³ Special Eurobarometer 523 on Corruption (2022).

⁶⁴ Flash Eurobarometer 507 on Businesses’ attitudes towards corruption in the EU (2022).

⁶⁵ Department of Justice (2020), Review of structures and strategies to prevent, investigate and penalise economic crime and corruption Report of the Review Group.

⁶⁶ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p 10; Department of Justice (2021), A Review of Structures and Strategies to Prevent, Investigate and Penalise Economic Crime and Corruption. An Implementation Plan April 2021.

⁶⁷ James Hamilton, who chaired the Hamilton Review, was announced as chair of the new advisory council. See Ministry of Justice, Minister McEntee announces former Director of Public Prosecutions to chair new Advisory Council against Economic Crime and Corruption; Input from Ireland for the 2022 Rule of Law

business and financial sectors, academia and civil society. The Advisory Council will be responsible for the strategic and policy response to corruption and for coordinating the draft of the anti-corruption strategy⁶⁸. Its delayed establishment has adversely affected the development of the multi-annual National Strategy and Action Plan to Combat Economic Crime and Corruption. Once the Advisory Council becomes operational, the drafting of the strategy will start. The draft is expected to be ready in 2023⁶⁹. Additionally, a permanent forum of senior representatives from various investigative agencies, established in June 2021⁷⁰, contributes to the operationalisation of the strategic approach to fight corruption, enhancing cooperation and providing a channel for information exchange⁷¹. The forum provides investigators of corruption with access to joint training programmes⁷² and is currently collecting information to identify legislative gaps related to the sharing of information, among other legislative proposals⁷³. Further reforms envisaged in the implementation plan, such as the revision of the ethics framework in public office or the resourcing of specialised bodies, are still pending, with so far no further steps being noted.

While there is a comprehensive criminal legal framework addressing corruption and bribery, further reforms could strengthen the fight against corruption. The 2018 Criminal Justice Act provides for the criminalisation of an extensive range of corruption-related offences, including foreign bribery, and establishes deterrent sanctions including sentences of up to 10 years and unlimited fines upon final conviction⁷⁴. Following the Hamilton review⁷⁵, the Department of Justice has continued working on the implementation of the legislative priorities highlighted in last year's Rule of Law Report⁷⁶. The new Criminal Procedure Act 2021⁷⁷ entered into force in February 2022⁷⁸. The Act introduces preliminary trial hearings to

Report p. 18, and Written contribution received by the Department of Justice in the context of the country visit to Ireland.

⁶⁸ Department of Justice (2021), A Review of Structures and Strategies to Prevent, Investigate and Penalise Economic Crime and Corruption Implementation Plan, April 2021 and Ministry of Justice, Minister McEntee announces former Director of Public Prosecutions to chair new Advisory Council against Economic Crime and Corruption.

⁶⁹ Input from Ireland for the 2022 Rule of Law Report, p. 18, and Written contribution received by the Department of Justice in the context of the country visit to Ireland.

⁷⁰ The Forum gathers senior representatives from various investigative agencies including: GNECB, Central Bank of Ireland (CBI), Competition and Consumer Protection Commission (CCPC), Office of The Director of Corporate Enforcement (ODCE), Office of the Director of Public Prosecutions (ODPP), and SIPO See: Department of Justice (2021), A Review of Structures and Strategies to Prevent, Investigate and Penalise Economic Crime and Corruption Implementation Plan, April 2021, p. 3.

⁷¹ Department of Justice (2021), A Review of Structures and Strategies to Prevent, Investigate and Penalise Economic Crime and Corruption Implementation Plan, April 2021, p. 3.

⁷² Department of Justice (2021), A Review of Structures and Strategies to Prevent, Investigate and Penalise Economic Crime and Corruption Implementation Plan, April 2021, p. 3.

⁷³ Following the legislative recommendations included in the Government implementation plan, the Forum is responsible together with the Department of Justice for conducting a comprehensive review of any legislation necessary to facilitate the optimal exchange of information and intelligence between investigative agencies to ensure the necessary clarity on the respective roles and powers of agency personnel under a Joint Agency Task Force model and in relation to Memoranda of Understanding. See written contribution received by the Department of Justice in the context of the country visit to Ireland.

⁷⁴ Criminal Justice (Corruption Offences) Act 2018.

⁷⁵ Department of Justice (2021), Hamilton Review Group Implementation Plan.

⁷⁶ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 10.

⁷⁷ Irish Parliament (2021), Criminal Procedure Act 2021.

⁷⁸ Criminal Procedure Act 2021.

prepare the parties ahead of trials⁷⁹, and aims to bring efficiency to processes dealing with complex criminal offences such as white-collar crimes⁸⁰. Also, some key legislative revisions planned by the Government⁸¹, still remain unaddressed and require further attention⁸². These relate to the inclusion of bid-rigging offences in competition law and public procurement rules, and to the reinforcement of the ethics framework to address the issue of misconduct of former members of Parliament and public office holders⁸³.

Cooperation within and between police and prosecution has proven effective in investigating and prosecuting corruption. The investigation of corruption offences is a shared task within the national police, including the GNECB and its specialised Anti-Bribery & Corruption Unit. In addition, Ireland has recently established a dedicated anti-corruption unit within the national police, the GACU, to investigate and prevent corruption inside the police, but no cases of wrongdoing have been reported yet⁸⁴. The GACU is led by a Chief Superintendent who has two Detective Superintendents and 23 police officers of other ranks reporting to her⁸⁵. This special unit includes an integrity section to encourage ethical behaviour and professionalism across the national police⁸⁶. 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 complexity⁸⁷. However, the national police can exercise prosecution powers for summary trial in the District Court delegated from the ODPP for certain low-level offences, including theft, handling and forgery offences. This does not include corruption offences⁸⁸. In these cases, it is for the national police to deliberate on the prosecution, subject to parameters and legal guarantees set out in General Directives

⁷⁹ Issues that can be dealt with at the preliminary trial hearings include disclosure, availability of witnesses, necessity of particular practical measures or technological equipment, length of the trial, severance of Indictments, additional jurors, agreement of evidence, special measures for vulnerable witnesses, admissibility of evidence.

⁸⁰ Department of Justice (2022), Press Release - Pre-trial hearings can take place from today under Act commenced by Minister McEntee. Updating this legislation was notably a recommendation of the Hamilton Review. Notably, 'the Bill has the potential to significantly enhance the ability of the relevant prosecutorial bodies to effectively prosecute economic crimes and corruption as well as to enhance the efficiency of criminal trials generally'. See Department of Justice (2020), Review of structures and strategies to prevent, investigate and penalise economic crime and corruption Report of the Review Group, pp. 34-35.

⁸¹ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 10. Further, the amended General Scheme of An Garda Síochána (Powers) Bill was published in June 2021. Once in force, the Bill will introduce a single power of arrest and will allow the police to require a person to provide passwords for access to electronic devices when carrying out a search warrant. However, the bill has been heavily criticised by stakeholders and members of Parliament, and it remains unclear if it will be proceeded in Parliament.

⁸² The implementation plan envisaged for recommendations 16 and 17 to be dealt with within 2021 and for recommendation 12 to seek government approval in Q2 2022. See Department of Justice (2021), Hamilton Review Group Implementation Plan

⁸³ Recommendation 16 calls to 'Amend competition law to create a specific offence of bid-rigging or, in the alternative, specify bid-rigging as an offence as a form of market sharing'; and recommendation 17 calls to 'introduce legislation to enable the collection, collation and analysis of all public procurement data to detect and deter bid-rigging'. See Department of Justice (2021), Hamilton Review Group Implementation Plan.

⁸⁴ Information received from the Police in the context of the country visit to Ireland.

⁸⁵ Irish National Police and Security service (2021), An Garda Síochána Introduces Anti-Corruption Policies to Keep People Safe.

⁸⁶ Input from Ireland for the 2022 Rule of Law Report, p. 31.

⁸⁷ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, pp. 10-11.

⁸⁸ An offence under section 4 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 (the Act of 2001) (theft) where the property appropriated does not exceed EUR 7 000 in value.

issued by the DPP to of the police.⁸⁹ A high-level group within the Department of Justice is currently reviewing the prosecution role attributed to the national police⁹⁰, following a 2018 recommendation from the Commission on the Future of Policing to remove any prosecution power from the police⁹¹.

Resources assigned to the investigation and prosecution of corruption have increased; meanwhile the number of cases detected and investigated continues to grow. The Government has acted upon the critical resources situation within the Prosecutor's Office⁹² as the workload continued to increase in 2021⁹³. The ODPP has confirmed the increase of staff with 35 new posts, bringing the total to 260⁹⁴. This allocation is for the entire Office and not limited to corruption offences. Not all posts have been filled or assigned yet⁹⁵. Currently, there are three legal staff in the Special Financial Crime Unit of the Prosecutors Office. This Unit's purpose is to handle a small number of strategically important financial cases, including some corruption cases.⁹⁶ While there has been an increase in staff in the police, with 22 new staff members assigned to the GNECB since last year, resources remain insufficient to effectively handle corruption cases⁹⁷. The national police is currently developing a strategic long-term plan for resourcing the GNECB, but it remains unclear if its specialised Anti-Bribery & Corruption Unit will be allocated additional staff⁹⁸.

The Government is reviewing the ethics legislative framework with the intention to present a legislative proposal for reform by the end of this year. Rules on conflicts of interest national vs. local government level are not harmonised in Ireland⁹⁹. As reported last year, a legislative priority for the Government¹⁰⁰ is the consolidation and strengthening of the legal framework to prevent conflicts of interest in public office¹⁰¹. The Minister for Public Expenditure and Reform is currently assessing the results of the public consultation, which

⁸⁹ For instance, the national police is encouraged to seek direction from the ODPP in such cases where the matter raises unusual questions or is of public interest. The relevant offences and parameters of the delegation are set out in General Directives issued by the ODPP and available on the ODPP website <https://www.dppireland.ie/publication-category/general-directive-for-garda/>. The main current General Directive is General Directive No. 3.

⁹⁰ The Department of Justice set up the High Level Review Group to consider the role of An Garda Síochána in the public prosecution system and is currently working on a study which is expected to be completed in Q1 2022. Irish Parliament (2022), Question of Mary Lou McDonald to the Minister for Justice.

⁹¹ Commission on the Future of Policing in Ireland (2018), *The Future of Policing in Ireland*.

⁹² Department of Justice (2021), *A Review of Structures and Strategies to Prevent, Investigate and Penalise Economic Crime and Corruption Implementation Plan*, April 2021.

⁹³ Office of the Director of Public Prosecutions (2021), *Department of Public Expenditure and Reform, Annual Report 2020*, p. 5.

⁹⁴ Office of the Director of Public Prosecutions (2021), *Department of Public Expenditure and Reform, Annual Report 2020*, p. 5.

⁹⁵ Information received from ODPP in the context of the country visit to Ireland.

⁹⁶ Information received from ODPP in the context of the country visit to Ireland.

⁹⁷ Information received from GNECB in the context of the country visit to Ireland and Department of Justice (2021), *Hamilton Review Group Implementation Plan: A Review of Structures and Strategies to Prevent, Investigate and Penalise Economic Crime and Corruption*, April 2021.

⁹⁸ Input from Ireland for the 2022 Rule of Law Report, p. 15.

⁹⁹ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 12.

¹⁰⁰ As mentioned by the Irish Minister for Public Expenditure and Reform in the Irish Legal News: 'My goal, is to reform the legislation to create a clear and unambiguous ethical framework that supports public governance' (22 December 2021). See Irish Legal News (2021), *Review of Ethics Legislation Consultation extended*.

¹⁰¹ Input from Ireland for the 2022 Rule of Law Report, p. 20 and Department of Justice (2021), *A Review of Structures and Strategies to Prevent, Investigate and Penalise Economic Crime and Corruption Implementation Plan*, April 2021.

closed in January 2022¹⁰². The outcome of the consultation highlights the need for harmonised ethics rules and raises concerns regarding the limited investigative capacity and lack of enforcement powers of the Standards in Public Office Commission (SIPO)¹⁰³. The review aims to consolidate the integrity regime for public officials. Its point of departure is the draft 2015 Public Sector Standards Bill¹⁰⁴, which could not be agreed before the dissolution of the Parliament in 2020¹⁰⁵. The review also aims to provide legal solutions to cases of misconduct in public office, particularly by former members of Parliament¹⁰⁶. While the outcome of the review will be available during the course of summer 2022, the Government will not present the reform proposal until later this year¹⁰⁷. The current integrity framework provides a legislative basis for codes of conduct for office holders, civil servants, and members of Parliament¹⁰⁸. However, separate integrity regimes at national and local level generate confusion as to what ethic requirements should apply to public officials¹⁰⁹. The SIPO continues monitoring the codes and providing ethics trainings but lacks enforcement powers¹¹⁰. SIPO's investigations in case of misconduct are accessible to the public and followed by an assessment report and press release¹¹¹.

¹⁰² Input from Ireland for the 2022 Rule of Law Report, p. 20; Information received from GNECB in the context of the country visit to Ireland and Irish Government (2021), Ethics in Public Life - Reform and Consolidation of Ireland's Statutory Framework: 'A public consultation exercise launched in November 2021 and closed in mid-January 2022. Ten submissions were received on foot of this exercise: these include a limited number on behalf of individual citizens, as well as submissions from opposition political parties. Submissions were also received from Transparency International'.

¹⁰³ Information received from Department of Justice in the context of the country visit to Ireland.

¹⁰⁴ The 2015 Public Sector Standards Bill aimed at consolidating the statutory framework for ethics and give effect to relevant recommendations of the Mahon and Moriarty Tribunals. See also 2020 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 9.

¹⁰⁵ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p.10; Public Sector Standards Bill 2015.

¹⁰⁶ Input from Ireland for the 2022 Rule of Law Report, p. 20 and Department of Justice (2021), A Review of Structures and Strategies to Prevent, Investigate and Penalise Economic Crime and Corruption Implementation Plan, April 2021.

¹⁰⁷ Input from Ireland for the 2022 Rule of Law Report, p. 20.

¹⁰⁸ The Code of Conduct for Office Holders (as prescribed under the Ethics Acts) includes Ministers of Government, the Attorney General and Ministers of State. See <https://www.sipo.ie/acts-and-codes/codes-of-conduct/office-holders/index.xml> The Civil Service Code of Standards and Behaviour includes Secretaries General and Special Advisers. See <https://www.sipo.ie/acts-and-codes/codes-of-conduct/> The Codes of Conduct for Oireachtas Members covers members of Parliament. See <https://www.sipo.ie/acts-and-codes/codes-of-conduct/>

¹⁰⁹ Irish Government (2021), Ethics in Public Life - Reform and Consolidation of Ireland's Statutory Framework, p. 9.

¹¹⁰ SIPO considers that the current ethics legislation should be re-considered in its entirety to provide for a more robust regulatory framework. In particular, SIPO considers that the legislation governing its work should be strengthened in order to give it powers to impose sanctions as opposed to being limited to making recommendations. See Department of Justice (2021), A Review of Structures and Strategies to Prevent, Investigate and Penalise Economic Crime and Corruption Implementation Plan, April 2021, p. 3 and Standards in Public Office Commission (2021), 2020 Annual Report, p. 13. In addition, the outgoing Head of Ethics and Lobbying Regulation said in media that 'the biggest challenge she had faced in her seven-year term at the Standards in Public Office Commission (SIPO) was the view that ethics was "a once-a-year, fill-in-a-form" exercise'. See Independent (2022), No gifts of more than €100 and no hiring family members when you are a politician or senior public official, says ethics boss.

¹¹¹ All these reports of investigations are accessible at SIPO's website.

Asset disclosure obligations remain incomplete and are currently being reviewed. Rules on asset and interest declarations apply to public office holders¹¹², members of Parliament and civil servants under the Ethic Acts¹¹³. However, only members of Parliament are required to publicly disclose their interests and present annual statements to SIPO¹¹⁴. As reported in several instances, the material scope of declarations remains limited, as they do not cover significant liabilities and/or financial and economic involvements¹¹⁵. As mentioned above, the Government is committed to review the ethics legislative framework, including the asset declaration regime, with work continuing during 2022, including as regards the enforcement powers of the SIPO¹¹⁶. Reform will cover systematic disclosure of actual and potential conflicts of interest¹¹⁷.

SIPO continues to investigate potential breaches of the 2015 Lobbying Act. Ireland's legal framework on lobbying provides for a comprehensive set of rules¹¹⁸. The 2015 Lobbying Act¹¹⁹ and its two statutory reviews ensure a degree of transparency in the activity of lobbying with a mandatory register for interest representatives, which consists of a public web-based system subjected to SIPO's oversight¹²⁰. The 2015 Lobbying Act also provides a one-year cooling off period. However, there are currently no enforcement provisions associated with the post-employment restrictions¹²¹. The third statutory review of the Act is legally required to start by 1 September 2022¹²², SIPO has indicated it could repeat some recommendations, including introducing sanctions for breaches of the Act with penalties of up to EUR 15.000 and a prohibition to lobby for 2 years¹²³. As reported last year, SIPO has a number of powers to

¹¹² 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; Input from Ireland for the 2022 Rule of Law Report, p. 25.

¹¹³ The Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001 are cited together as the Ethic Acts. The Minister for Public Expenditure and Reform has responsibility for these Acts.

¹¹⁴ Input from Ireland for the 2022 Rule of Law Report, p. 25.

¹¹⁵ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p 11-12; GRECO Fourth Evaluation Round - Second Interim Compliance Report, p. 9.

¹¹⁶ Department of Justice (2021), Hamilton Review Group Implementation Plan.

¹¹⁷ Irish Government (2021), Ethics in Public Life - Reform and Consolidation of Ireland's Statutory Framework, p. 10.

¹¹⁸ Including a definition of lobbying, a list of professional activities and sectors involved, and a targeted list of 'designated public officials' (DPOs) who are required to declare their meetings and contacts. Department of Public Expenditure and Reform (2020), Second Statutory Review of the Regulation of Lobbying Act 2015.

¹¹⁹ Irish Statute Book, Regulation of Lobbying Act, 2015.

¹²⁰ Lobbyists are required to register beforehand and report their lobbying activities every 4 months. Obligations on lobbyists include registration and to provide information regularly about their lobbying activities, including, in the case of professional lobbyists, information about their clients. A number of updates to the register were carried during 2020 and 2021 to improve register's usability and functionality, adding a facility to send return reminders to users and additional tools to improve searchability. Report 2021 SIPO.

¹²¹ In September 2020, the Taoiseach announced in Dáil Éireann that section 22 of the Act, concerning restrictions on post-term employment as a lobbyist, should be reviewed. Subsequently, the Minister for Public Expenditure and Reform directed that the review be expanded to include a study of the recommendations made by the Commission to both previous reviews, as well as the question of lobbying of relevant persons while they are outside of the State and issues raised in two Private Members' Bills.

¹²² Input from Ireland for the 2022 Rule of Law Report, p. 23.

¹²³ Information received from SIPO in the context of the country visit to Ireland.

sanction non-compliance¹²⁴ with the Act by designated public officials¹²⁵. As regards compliance with transparency in lobbying requirements, SIPO reported three investigations initiated during 2020 as well as the prosecution of four cases with one case remaining before court by end 2020 and two in which compliance was achieved prior to a verdict¹²⁶.

The Protected Disclosures (Amendment) Bill 2022 is at an advanced stage in the legislative process and is expected to be enacted in mid July 2022. It aims at transposing the EU Whistleblowing Directive into Irish law. In particular, it extends the scope of the legislation to include volunteers, shareholders, persons belonging to the administrative, management or supervisory body of an undertaking, and those whose work based relationship is yet to begin.¹²⁷ The Government has increased financial support to Transparency International Ireland (TII) to operate a “Speak Up” helpline and a legal advice centre that offers information and advice to support whistleblowers and potential whistleblowers. TII has also been nominated to receive protected disclosures from Garda personnel on suspected corruption.

The GNECB is carrying out special investigations into corruption and fraud involving the new COVID-19 Pandemic Unemployment Payment. Cases of alleged COVID-related fraud and corruption are under investigation by the GNECB, in particular in high-risk sectors including public procurement and health¹²⁸. A number of Suspicious Transaction Reports (STRs) have been submitted by financial institutions alleging COVID-related fraud in areas such as the COVID-19 Pandemic Unemployment Payment and procurement of personal protective equipment. These STRs are received by the Financial Intelligence Unit Ireland which analyses and disseminates them if necessary¹²⁹.

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 press¹³⁰. A well-established self-regulatory framework based on the Office of the Press Ombudsman and the Press Council of Ireland enables the public opinion to hold to account editors and journalists¹³¹. In the context of the ongoing transposition of the revised Audiovisual Media Services Directive, a number of regulatory steps have been taken to put the Irish media framework on a sustainable foot with the changes affecting the media landscape in the recent years¹³².

¹²⁴ For example, SIPO can issue fixed payment notices of EUR 200 for the late submission of lobbying returns and can also prosecute individuals summarily for contravening a number of relevant contraventions as set out in the legislation.

¹²⁵ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, pp. 11-12 and Irish Statute Book, Regulation of Lobbying Act, 2015.

¹²⁶ Standards in Public Office Commission (2021), 2020 Regulation of Lobbying Annual Report, p.16.

¹²⁷ Amendment of section 3 of Principal Act. Irish Parliament, *Protected Disclosures (Amendment) Bill 2022*,

¹²⁸ Input from Ireland for the 2022 Rule of Law Report, p. 33.

¹²⁹ Ibid.

¹³⁰ Irish Constitution, Article 40.

¹³¹ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 14.

¹³² However, the laws transposing the Audiovisual Media Services Directive are not in place yet, and 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, INFR 2020/0531; European Commission (2022) *Audiovisual Media Services Directive: Commission refers five Member States to the Court of Justice of the EU*. Ireland ranks 6th in the 2022 Reporters without Borders World Press Freedom Index compared to 12th in the previous year.

Preparatory work is ongoing for the establishment of a new media regulatory authority. As referred in the 2021 Rule of Law Report¹³³, the new Media Commission will be responsible for overseeing updated regulations for broadcasting and video on-demand services and the new regulatory framework for online safety¹³⁴. The Media Commission will also have functions on promotion of pluralistic media, research, media literacy, protection of children, journalists and creators' support¹³⁵. The Media Commission is expected to replace the Broadcasting Authority of Ireland (BAI) first quarter of 2023¹³⁶. In the meantime, action is underway to ensure the continuation of broadcasting regulation during the transition to the new regulator. In the 2022 budget, the Government allocated EUR 5.5 million to the establishment of the Media Commission¹³⁷.

Self-regulatory bodies in the press sector experienced an increase in the number of complaints received. In 2021, the Press Ombudsman saw significant numbers of complaints being made to their Office, related in particular to reporting about the COVID-19 pandemic¹³⁸. Most notably, at the early stages of the COVID-19 pandemic, some issues arose concerning the respect of privacy and the right of individuals to have their personal medical history kept private¹³⁹. Nevertheless, the Ombudsman concluded that in the vast majority of cases the media seemed to have covered the COVID-19 pandemic accurately and factually¹⁴⁰.

A regulatory environment sustaining independent and impartial public service media is in place. The Broadcasting Act 2009 requires public service broadcasters to be independent from State, political and commercial influences as regards production of content, presentation of news and definition of programmes schedules¹⁴¹. Public service broadcasters are also required to comply with the Code of Practice for the Governance of State bodies and to follow governance practices and procedures, including codes of conduct, internal control and disclosure of interests¹⁴². Every year, the chairs of the Board for the public service broadcasters are required to confirm to the Minister for Tourism, Culture, Arts, Gaeltacht¹⁴³, Sport and Media that the governance practices and procedures comply with the Code of Practice¹⁴⁴. There are no reported attempts by government or political parties to directly interfere with editorial

¹³³ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, pp. 13-14.

¹³⁴ Online Safety and Media Regulation Bill 2022.

¹³⁵ Ibid.

¹³⁶ 2022 Media Pluralism Monitor, country report for Ireland, p.7, as confirmed by information received from Broadcasting Authority of Ireland in the context of the country visit to Ireland.

¹³⁷ Statement by the Minister for Public Expenditure and Reform Michael McGrath TD on Budget 2022 (2021) Department of Public Expenditure and Reform; Input from Ireland for the 2022 Rule of Law Report, p. 37.

¹³⁸ Approximately 200 out of 525 complaints received were COVID-related; Contribution from The Office of the Press Ombudsman for the 2022 Rule of Law Report, p. 4.

¹³⁹ Information received from The Office of the Press Ombudsman in the context of the country visit.

¹⁴⁰ The Press Ombudsman upheld only four COVID-related complaints: two on grounds of accuracy, two on grounds of privacy, contribution from The Office of the Press Ombudsman for the 2022 Rule of Law Report, p. 4.

¹⁴¹ Section 98 of the Broadcasting Act 2009, as confirmed by input from Ireland for the 2022 Rule of Law Report, p. 39.

¹⁴² Code of Practice for the Governance of State Bodies; Input from Ireland for the 2022 Rule of Law Report, p. 39.

¹⁴³ Gaeltacht is an Irish term referring to substantially Irish-speaking areas recognised by the Government with a view to preserving and extending the use of Irish as a vernacular language, see section 2 of the Ministers and Secretaries (Amendment) Act 1956.

¹⁴⁴ Article 8.2 of the Code of Practice for the Governance of State Bodies (2016); RTE (2020) *Annual Report*, p. 84.

content or public service media activities¹⁴⁵. However, the involvement of the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media in the appointment of the boards and of the Government in the recruitment of the Directors General has been flagged as a risk factor¹⁴⁶. Limited funding has also been indicated as a risk for the editorial independence of public service broadcasters¹⁴⁷.

State advertising has grown in significance during the COVID-19 pandemic and specific rules are still lacking. Distribution of state advertising has increased during the pandemic and it would seem, that the placement by the State of advertising addressing COVID-19 measures helped ensure the viability of some radio stations¹⁴⁸. As referred to in the 2020 Rule of Law Report, besides standard procurement guidelines, the Irish legal framework does not have specific rules on the placement of state advertising in media, which affects the transparency of the precise mechanism governing the distribution of state advertising to media outlets¹⁴⁹. The Government required that COVID-19 advertisements were evenly placed in national, regional and local media. 2020 and 2021 figures show an even split of spending across national and regional media outlets in respect of public information campaigns on COVID-19¹⁵⁰.

Financial difficulties increased local media market concentration. Economic distress following the COVID-19 pandemic pushed some local media actors to merge in order to remain viable, leading to increased media concentration in some areas of the country¹⁵¹. A targeted review of the media merger legislation is currently ongoing, with a view to identifying technical amendments to the legislation to ensure the continued robust operation of the media mergers regime¹⁵².

Additional steps have been taken to alleviate the economic distress of the media sector. In the first phases of the emergency, the Government put in place a range of support mechanisms for all businesses impacted by the COVID-19 pandemic. The Temporary COVID-19 Wage

¹⁴⁵ 2022 Media Pluralism Monitor, country report for Ireland, p. 14, as confirmed by information received from the Press Council of Ireland and the National Union of Journalists in the context of country visit to Ireland.

¹⁴⁶ 2022 Media Pluralism Monitor, country report for Ireland, p. 13.

¹⁴⁷ Irish Public Service Broadcasters are funded via a TV licence fee, which despite repeated recommendations from the BAI to increase it, has remained unchanged since 2008. The lack of adequate funding, the increase of which is subject to governmental approval, together with the lack of clarity around the distribution of state advertising to individual media outlets, raise the risks the political considerations might influence the amount of funds on which Irish PSMs can rely, with consequences on their editorial independence, 2022 Media Pluralism Monitor, country report for Ireland, p. 22.

¹⁴⁸ 2022 Media Pluralism Monitor, country report for Ireland, p. 13 and 2021 Media Pluralism Monitor, country report for Ireland, p. 14, as confirmed by information received from the National Unit of Journalists in the context of country visit to Ireland.

¹⁴⁹ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, pp. 12-13; 2021 Media Pluralism Monitor, country report for Ireland, p. 14; According to Article 4.7 of the 2018 Council of Europe Recommendation on media pluralism and transparency of media ownership, adopted by the Committee of Ministers, Member States are encouraged to adopt legislation or other equivalent measures that set out the disclosure of information on the sources of the media outlets' funding obtained from State funding mechanisms. The aim is to ensure a high level of transparency on the sources of financing of media outlets and allow effective monitoring and controlling of risks of interference with the editorial and operational independence of the media. Recommendation CM/Rec(2018)1[1] of the Committee of Ministers of the Council of Europe to member States on media pluralism and transparency of media ownership.

¹⁵⁰ Written contribution from Department of Teaoiseach (Prime Minister of Ireland) in the context of the country visit to Ireland, p.16.

¹⁵¹ Contribution from the National Union of Journalists for the 2021 Rule of Law Report, p. 1, as confirmed by information received from the National Union of Journalists in the context of the country visit to Ireland.

¹⁵² Written contribution from Department of Justice in the context of the country visit to Ireland.

Subsidy Scheme and the Employment Wage Subsidy Scheme covered also media organisations and self-employed media professionals who were entitled to apply¹⁵³. In 2021, an additional EUR 4.9 million was allocated through the Sound and Vision Scheme to fund the production of content and support the audiovisual and audio industry continuing to experience adverse impacts resulting from COVID-19 restrictions¹⁵⁴.

There is a legal framework in place ensuring right of access to information. The Freedom of Information Act 2014 (FOI Act) is a key national measure, which co-exists with other, more context-specific measures such as the Open Data and Re-use of Public Sector Information Regulations 2021, and establishes a number of rights, including a right to access official records held by Government Departments or other public bodies¹⁵⁵. The operation of the FOI act is effective, ensuring that the right of access to information is well protected in Ireland¹⁵⁶. A comprehensive review of the Freedom of Information Act is underway which will seek to further strengthen and modernise the existing FOI regime. The review is expected to conclude in 2022.

The professional environment for journalists continues to be largely safe. Press in Ireland enjoys a large degree of freedom, and journalists can work in a safe and healthy environment. Nevertheless, in May 2022, the Council of Europe’s platform to promote the protection of journalists and safety of journalist registered the second alert ever filed concerning Ireland since the establishment of the platform in 2015. The alert concerned two defamation proceedings initiated by two Members of the European Parliament against the public service broadcaster RTE¹⁵⁷. In October 2021, the Mapping Media Freedom platform also registered a death threat launched by COVID-19 anti-vaccine campaigners against a broadcaster and its production team¹⁵⁸.

A Report on the Review of the Defamation Act identifies a range of options for further reform. Defamation is not a criminal offence in Ireland. Accordingly, there are no convictions for defamation and cases are heard in the context of civil litigation claims¹⁵⁹. However, the level of legal costs in defamation actions in Ireland is high and represents a major burden on

¹⁵³ The Temporary COVID-19 Wage Subsidy Scheme was a scheme allowing employers to pay their employees during the COVID-19 pandemic. It was replaced in September 2020 by the Employment Wage Subsidy Scheme, which provides a flat-rate subsidy for businesses whose revenues declined by 30% because of COVID, Emergency Measures in the Public Interest (COVID-19) Act 2020.

¹⁵⁴ 2022 Media Pluralism Monitor, country report for Ireland, pp.13 and 14, as confirmed by information received from Department of Media in the context of the country visit. The Broadcasting Act 2009 provides the legislative framework for Sound & Vision. The Sound and Vision Scheme is funded by the TV license fee from the Broadcasting Fund and is administered by the Broadcasting Authority of Ireland. The Scheme supports the production of high-quality TV and radio programmes on Irish culture, heritage and experience. The Scheme is reviewed every 3 years.

¹⁵⁵ While the Freedom of Information Act creates a general right of access to records held by state bodies, the Open Data and Re-use of Public Sector Information Regulations 2021 provides for a right to access to data held by all public sector bodies, with certain exceptions, notably educational, research and cultural organisations. Freedom of Information Act 2014; Open Data and Re-use of Public Sector Information Regulations 2021.

¹⁵⁶ In 2020, the latest year for which statistics are available, public bodies processed 32,652 FOI requests, 81% which were granted in full or in part. Office of the Information Commissioner (2020) Annual Report 2020: Supporting the Right to Information, pp. 65 and 66.

¹⁵⁷ Council of Europe, Platform to promote the protection of journalism and safety of journalists, Ireland.

¹⁵⁸ The threat seems to be part of an orchestrated campaign from anti-vaccination groups, Mapping Media Freedom, Ireland country profile.

¹⁵⁹ Section 35 of the Defamation Act (2009); Input from Ireland for the 2022 Rule of Law Report, p. 44.

newspapers¹⁶⁰. On 1 March 2022, the Department of Justice published a Report on the Review of the Defamation Act presenting the concerns raised by several stakeholders during public consultation. The Review's key recommendations aim at reducing disproportionate awards and unnecessary legal costs and delays in defamation cases while providing clearer protection for responsible public interest journalism and investigative reporting¹⁶¹. The Review also explores the possibility of introducing a new mechanism against Strategic Lawsuit Against Public Participation (SLAPP), to allow defendants to ask for a summary dismissal of defamation proceedings brought against them and that they believe are SLAPP¹⁶². The General Scheme of the Defamation (Amendment) Bill to update aspects of defamation law, based on the recommendations set out in the Report of the statutory review of the Defamation Act 2009, is expected to be published in the fourth quarter of 2022¹⁶³.

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.

New working methods have been adopted aiming at improving the functioning of the Houses of the Parliament. In July 2021, the President of Ireland wrote to the Speakers of both the Upper and Lower Houses of Parliament raising concerns with regard to the functioning of the legislative process¹⁶⁴. The concern was that discussions on new bills tend to be concentrated during short periods of time (in particular, during the two weeks before recesses), with negative consequences for proper parliamentary scrutiny. As a consequence, the Speakers of both Houses of Parliament met with the Government and the Attorney General. Their new informal approach has been to publish some of the more complex bills during recess periods¹⁶⁵. As a result, the text of the draft bill is available to members of Parliament and members of the public for a number of weeks in advance of it being considered formally, allowing for more in-depth consideration of the content. In addition, since July 2021, the Business Committee¹⁶⁶ has paid particular attention to proposals being made on the passage of legislation¹⁶⁷. Moreover, the Speaker of the Lower House established a Forum on a Family Friendly and Inclusive

¹⁶⁰ Contribution from the Office of the Press Ombudsman for the 2022 Rule of Law Report, p. 3.

¹⁶¹ Report of the Review of the Defamation Act 2009.

¹⁶² Report of the Review of the Defamation Act 2009.

¹⁶³ Information received from Department of Justice in the context of the country visit.

¹⁶⁴ Input from Ireland for the 2022 Rule of Law Report, pp. 47-48.

¹⁶⁵ This is possible for bills being presented by Government and in some rare cases, Private Members to the Houses of the Parliament.

¹⁶⁶ The Business Committee meets weekly to agree on the arrangements for the taking of business in the Lower House the following week, which is then agreed by the full Lower House at the beginning of the week at 'Order of Business'.

¹⁶⁷ This scrutiny has focused on the publication of new Government bills, the consideration at Committee and Report Stage and the time between each of those stages. When it is proposed to take stages quickly with little time in-between, the Business Committee has been raising concerns and making suggestions for alternative timings. Some of those suggestions have been agreed to by the Government.

Parliament, which presented its report on 2 November 2021¹⁶⁸. In relation to the fight against the COVID-19 pandemic, ten pieces of primary legislation were adopted in 2021¹⁶⁹, following the ordinary legislative procedure and including sunset clauses¹⁷⁰.

On 1 January 2022, Ireland had two leading judgments of the European Court of Human Rights pending implementation¹⁷¹. At that time, Ireland's rate of leading judgments from the past 10 years that remain pending was at 33%, the average time that the judgments had been pending implementation was 9 years and 7 months¹⁷². The latter is affected by the length of non-implementation of the two judgments which have been pending for over 8 years¹⁷³. On 1 July 2022, the number of leading judgments pending implementation remains two¹⁷⁴.

The Irish Human Rights and Equality Commission was re-accredited with A status. The UN Global Alliance of National Human Rights Institutions (GANHRI) re-accredited the IHREC with A status¹⁷⁵. In its report, GANHRI praised the role of IHREC to promote and protect human rights in Ireland, and made a number of recommendations to further strengthen its role in the system of checks and balances. Following the report, the Government has agreed to provide additional funding to ensure that IHREC can effectively carry out the full breadth of its mandate¹⁷⁶.

Ireland has a vibrant and diverse civil society, but concerns remain in relation to legal provisions regulating funding of NGOs. In April 2022, the Government tabled an Electoral Reform Bill¹⁷⁷, which provides for the establishment of an Electoral Commission. Once established, this Electoral Commission will carry out a comprehensive review of the Electoral Act 1997, including rules governing civil society organisations' access to funding¹⁷⁸. The draft law did not directly address concerns from civil society organisations about the impact of the prohibitions under the Electoral Act to receive donations above a certain threshold for 'political purposes' or from foreign donors¹⁷⁹. Referring to the updated guidance note published by the

¹⁶⁸ Forum on a Family Friendly and Inclusive Parliament 2021, Report as presented to the Ceann Comhairle, Mr Seán Ó Fearghaíl TD.

¹⁶⁹ Input from Ireland for the 2022 Rule of Law Report, pp. 48-49.

¹⁷⁰ 2020 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. 16. The ordinary legislative procedure envisages statutory oversight available to the Oireachtas.

¹⁷¹ 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.

¹⁷² 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 2022. See the Contribution from the European Implementation Network for the 2022 Rule of Law Report, p. 50.

¹⁷³ 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.

¹⁷⁴ Data according to the online database of the Council of Europe (HUDOC).

¹⁷⁵ GANHRI (2021), Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA) 14-24 June 2021.

¹⁷⁶ Information received by IHREC in the context of the country visit.

¹⁷⁷ Electoral Reform Bill 2022.

¹⁷⁸ Input from Ireland for the 2022 Rule of Law Report, p. 55.

¹⁷⁹ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 15 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Ireland, p. 18. 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

Charities Regulator in 2021, which highlights the rules that apply to a charity when engaging in activities to promote a political cause, Civil Society Organisations have also raised concerns on the type of campaigning work that charities can engage in¹⁸⁰. In addition, concerns have been raised regarding public statements from elected representatives to stop funding for Civil Society Organisations¹⁸¹. In April 2022 the Government tabled a General Scheme¹⁸², which, if passed, would mean that human rights organisations may apply for registration as a charity under the charitable purpose of the advancement of human rights. . It has been noted that this should remove any reservations funders may have had about supporting human rights organisations¹⁸³. An increase is also reported as to the number of SLAPP being pursued against applicants for judicial review, in particular environmental organisations¹⁸⁴.

The Government has provided funding to civil society to promote the rule of law in Ireland. In 2021, the Department of Foreign Affairs awarded a grant to the Irish Council for Civil Liberties (ICCL) through its Communicating Europe Initiative to increase the awareness of rule of law issues and the reporting process within Irish civil society organisations and the general public¹⁸⁵. In this context, several events and conferences were organised to raise awareness on the state of the rule of law in Ireland, as well as to encourage civil society organisations to actively engage in a number of rule of law related topics.

interpreted the relevant legislation as also comprising certain activities carried out by civil society organisations, such as advocacy work also outside electoral periods.

¹⁸⁰ Charities Regulator 2021, Guidance on Charities and the Promotion of Political Causes. Civil society organisations (written contribution from the Irish Council for Civil Liberties in the context of the country visit, p. 10, with inputs from CityWide Drugs Crisis Campaign, European Movement Ireland, FLAC-Free Legal Advice Centres, Inclusion Ireland, Independent Living Movement Ireland, Irish Traveller Movement and The Environmental Law Officer of the Irish Environmental Network) have raised concerns claiming that a shift in ineligibility for charitable status for organisations set up with an “exclusive” focus on campaigning to ones which ‘primarily’ focus on campaign work has the potential to impede the important work of some charitable organisations.

¹⁸¹ Parliamentary Question to the Taoiseach on Thursday 17 February 2022 – Question by Deputy Bríd Smith on Promised Legislation. In his reply, the Minister for Children, Equality, Disability, Integration and Youth clarified that funding will not be impacted.

¹⁸² General scheme of the Charities (Amendment) Bill (2022).

¹⁸³ Irish Council for Civil Liberties (2022), ICCL welcomes inclusion of human rights in draft Charities Bill.

¹⁸⁴ Contribution from the Irish Council for Civil Liberties for the 2022 Rule of Law Report, pp. 16, 22 and 28.

¹⁸⁵ Ibid, p. 32.

Annex I: List of sources in alphabetical order*

* *The list of contributions received in the context of the consultation for the 2022 Rule of Law report can be found at https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation_en.*

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Annex II: Country visit to Ireland

The Commission services held virtual meetings in March 2022 with:

- Academics
- Bar of Ireland
- Broadcasting Authority of Ireland
- Court Service
- Department of Justice
- Environmental Pillar
- Garda Economic Crime Bureau
- Garda Síochána Ombudsman Commission (GSOC)
- Houses of the Oireachtas Service (Parliament Service)
- Irish Council for Civil Liberties
- Irish Human Rights and Equality Commission
- Irish Small and Medium Enterprises Association (ISME)
- Law Society of Ireland
- Legal Services Regulatory Authority
- National Union of Journalists
- Office of the Director of Corporate Enforcement (ODCE)
- Office of the Director of Public Prosecution
- Ombudsman for Children's Office
- Press Council
- Representatives of the Judiciary
- Standards in Public Office Commission (SIPO)
- Transparency International

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

- Amnesty International
- Article 19
- Civil Liberties Union for Europe
- Civil Society 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
- Human Rights Watch
- ILGA Europe
- International Federation for Human Rights (FIDH)
- International Press Institute
- Open Society European Policy Institute (OSEPI)
- Osservatorio Balcani e Caucaso Transeuropa
- Philea
- Reporters Without Borders
- Transparency International Europe