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**2021 Rule of Law Report
Country Chapter on the rule of law situation in Ireland**

Accompanying the

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**2021 Rule of Law Report
The rule of law situation in the European Union**

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ABSTRACT

The Irish justice system, characterised by a high level of perceived independence, is undergoing important developments. A new draft law aims at reforming the system for judicial appointments and promotions, alleviating certain previous concerns. However, the reform would continue to leave broad discretion to the Government, given there is no ranking of the candidates and the Government is not bound by this list, although its decisions must be published. It is important that this reform guarantees judicial independence, taking into account European standards. A disciplinary regime is being established to improve judges' accountability and the Judicial Conduct Committee is preparing draft guidelines on conduct and ethics and a complaints' procedure. In accordance with the Constitution, the final decision on dismissal of judges, which is only envisaged in cases of misbehaviour or incapacity, remains a prerogative of the Parliament, which could raise concerns as regards the politicisation of the procedure. The recently established Judicial Council has continued its work on a number of guidelines. Reflections are ongoing on limiting legal costs and improving legal aid schemes, which could improve access to justice. Measures are being taken to address challenges in relation to digitalisation, the low number of judges per inhabitant and the length of proceedings.

Ireland is extensively reviewing its anti-corruption and anti-fraud structures as well as its strategies to prevent, investigate and adjudicate economic crimes and corruption. The Government has committed itself to introduce new anti-corruption and anti-fraud structures, new legislation to provide for preliminary trial hearings, and to amend the Criminal Justice (Corruption Offences) Act 2018. Key challenges in Ireland's capacity to deter and punish corruption remain due to limited resources and institutional fragmentation. Prevention of corruption and promotion of integrity measures are in place, but challenges remain as regards enforcement, in particular on asset disclosure, lobbying and revolving doors. Concerns have been raised that the Standards in Public Office Commission, as the supervisory authority managing the disclosure of interests and tax clearance regimes of the public office holders, may not be adequately resourced. A capacity review is planned to examine the issue.

The broadcast media regulator (Broadcasting Authority of Ireland) is expected to undergo a major reorganisation in the framework of the new draft law on online safety and media regulation, aiming at transposing the revised Audiovisual Media Services Directive. The new draft law is planned to be adopted by the end of 2021. The recent developments aimed at increasing transparency in the sector include making available the database on media ownership, expected to be regularly updated. Amendments to the Defamation Act, foreseen for adoption in the coming months, are expected to have a positive impact on the operation of journalists. The Government has set up an advisory Future of Media Commission to launch a dialogue on new policy measures and possible long-term actions to support the sector.

As regards checks and balances, the ordinary legislative procedure continued to be used to legislate to address the COVID-19 pandemic, but concerns were raised regarding the limited parliamentary oversight over ministerial measures. While Ireland has a well-developed legislative procedure, there has recently been substantial recourse to possibilities to shorten discussions in Parliament. The Irish Human Rights and Equality Commission continues to carry out its work effectively and was re-accredited in June 2021. Ireland has a vibrant and diverse civil society but funding restrictions on NGOs continue to raise some concerns. There are plans to tackle these concerns in the context of the ongoing electoral reform.

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, including workplace relations³. A Judicial Council was established in 2019⁴. Judicial appointments are made by the President of Ireland, acting on the advice of the Government. The Judicial Appointments Advisory Board 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.

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 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 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 In April 2021, the Irish Supreme Court delivered a judgment (*Zalewski v. Adjudication Officer and the Workplace Relations Commission*) on the constitutionality of the workplace relations commission, where most disputes are considered by an adjudication officer, considering also the role of the Labour Court which is a tribunal. The majority held that the exercise of powers by Adjudication Officers pursuant to the Workplace Relations Act, 2015 was the administration of justice within the meaning of Article 37 of the Constitution. In doing so, it rejected a challenge to the validity of certain sections of the 2015 Act and the Unfair Dismissals Act 1977 as amended. However, the Supreme Court also determined that two aspects of the 2015 Act are incompatible with the Constitution: the requirement for all hearings before an Adjudication Officer to be held otherwise than in public and the absence of the provision for the administration of an oath, or any possibility of punishment for giving false evidence. The Supreme Court also made certain observations concerning the need for enhanced independence on the part of adjudication officers in circumstances where their actions amount to the administration of justice, albeit of a limited nature, so as to be permissible under Art. 37 of the Constitution.

⁴ 2020 Rule of Law Report, country chapter on the rule of law situation in Ireland, p. 2.

Independence

The perceived independence of courts and judges among the general public and among companies remains⁵ high. The level of independence of courts and judges is perceived as ‘fairly’ or ‘very good’ by 73% of the general population and by 77% of companies⁶. This high level of perceived judicial independence has been stable since 2016.

The recently established Judicial Council has continued its work to issue a number of guidelines, including through carrying out research and drafting⁷. A modern programme of education and training for judges has commenced, aided by the appointment of a serving judge as Director of Judicial Studies. The Council of Europe’s Group of States against Corruption (‘GRECO’) welcomed the establishment of the Judicial Council in line with its previous recommendations⁸. The Judicial Council is carrying out research to guide its drafting of Sentencing Guidelines. The Personal Injuries Guidelines, which set general guidelines for the amounts to be awarded or assessed in personal injury claims, were adopted by the Council in March 2021 and came into effect in April 2021, once the legislation entered into force. In the implementation of such guidelines due regard should be given to the respect of judicial independence⁹.

A new draft law on the appointment and promotion of judges is under preparation. After the lapsing of the 2017 draft law on judicial appointments at the end of the previous parliamentary term, the new Government presented a new General Scheme¹⁰ in December 2020¹¹. The draft law is expected to be tabled in Parliament in the third quarter of 2021.

The composition of the envisaged Judicial Appointments Commission has been changed. The new General Scheme provides for the establishment of a Judicial Appointments Commission composed of nine members to replace the current Judicial Appointments Advisory Board (JAAB)¹². The Commission will include the Chief Justice (as chair), 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) and four lay members (three of which are to be selected in open competition by the Public Appointments Service, and one of which will be nominated by the Irish Human Rights and

⁵ 2020 Rule of Law Report, country chapter on the rule of law situation in Ireland, p. 3.

⁶ Figures 48 and 50, 2021 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%).

⁷ 2020 Rule of Law Report, country chapter on the rule of law situation in Ireland, p. 4-5.

⁸ GRECO Fourth Evaluation Round – Evaluation Report, para. 124; GRECO Fourth Evaluation Round – Second Interim Compliance Report, paras. 25-28.

⁹ Council of Europe standards require the respect of judicial independence not only from influences outside the judiciary, but also from within. For example, according to the Venice Commission, the practice of guidelines adopted by the Supreme Court or another highest court and binding on lower courts is problematic as regards internal independence (Venice Commission opinion (CDL-AD(2010)004-e, para. 70).

¹⁰ 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 Department of Justice (2020), General Scheme of the Judicial Appointments Commission Bill 2020.

¹² 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.

Equality Commission)¹³. The Attorney General will sit in the Commission in an *ex-officio* non-voting capacity. The composition of the envisaged Commission does not provide, for a clear majority of judges chosen by their peers¹⁴, although it takes into account certain concerns raised as regards the previous plans for a lay majority and a lay chair¹⁵. The membership, even if in non-voting capacity, of the Attorney General, who is also the Government's chief legal advisor and sits at cabinet meetings¹⁶, might raise concerns as regards the independence of the Commission from the Government¹⁷, as reported by the Human Rights and Equality Commission¹⁸ and the Law Society¹⁹. The General Scheme also provides for a Senior Judicial Appointments Advisory Committee to recommend persons for appointment as Chief Justice, President of the Court of Appeal and President of the High Court. This Committee will be composed of the Chief Justice, one lay member and the Attorney General. Therefore, the Attorney General would have a significant role in the appointments of the most senior positions within the judiciary, which could also raise concerns of independence. It is important that the final reform guarantees judicial independence, in line with EU law and taking into account European standards²⁰ and is carried out in full consultation with relevant stakeholders²¹ and the Venice Commission. In particular, according to Council of Europe recommendations, such an independent appointment body should be composed in substantial part from the judiciary and it should be authorised to make recommendations or express opinions which the relevant appointing authority follows in practice²².

The envisaged procedure for judicial appointments and promotions raises concerns. In the current system, for first-time judicial appointments, the JAAB recommends to the Minister for Justice at least seven candidates for each vacancy²³. Shortlisted candidates are

¹³ The Law Society and the Bar of Ireland called for the inclusion of representatives of solicitors and barristers in the Commission. Law Society (2021), Submission to the Joint Oireachtas Committee On Justice on the General Scheme of the Judicial Appointments Commission Bill 2020. Council of The Bar of Ireland (2021) Submission to the Department of Justice on the General Scheme of the Judicial Appointments Commission.

¹⁴ Venice Commission, CDL-AD(2020)006, para.19.

¹⁵ 2020 Rule of Law Report, country chapter on the rule of law situation in Ireland, p. 3.

¹⁶ The Attorney General has limited prosecution responsibilities. Those responsibilities are mostly held by the Director of Public Prosecutions.

¹⁷ Venice Commission, CDL-AD(2020)006, para. 21-22.

¹⁸ Irish Human Rights and Equality Commission (2021), Submission to the Minister for Justice on the General Scheme of the Judicial Appointments Commission p. 14.

¹⁹ Law Society (2021), Submission to the Joint Oireachtas Committee On Justice on the General Scheme of the Judicial Appointments Commission Bill 2020, p.6. The Bar of Ireland considered that where the Attorney General has recused her/himself as s/he is an applicant for such judicial office, an alternate should sit on the Committee. Council of The Bar of Ireland (2021), Submission to the Department of Justice on the General Scheme of the Judicial Appointments Commission.

²⁰ 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 upon a request from a council for the judiciary, indicated that for such council to contribute to 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 19 November 2019, AK, joined cases C- 585/18, C- 624/18 and C- 625/18, paras. 137-138.

²¹ Opinion no.10(2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society, of 23 November 2007, para 87; CCJE Opinion No. 23 (2020) The role of associations of judges in supporting judicial independence, para. 47.

²² Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 47.

²³ Section 16 of the Courts and Court Officers Act 1995. Where fewer than seven persons inform the Board of their wish to be appointed to a judicial office or where the Board is unable to recommend to the Minister at

not ranked in order of preference, and the Government is not bound to select from the list. Promotions of judges are made by the President of Ireland on the advice of the Government and are not subject to the procedure conducted by the JAAB. Concerns were raised as regards the wide discretion left to the executive power in the current system²⁴. The General Scheme provides that all judicial appointments and promotions must be subject to the envisaged new procedure, which is capable of strengthening judicial independence. The General Scheme provides that the Commission would present five unranked candidates to the Government²⁵, thereby better limiting the discretion of the Government compared to the current system of a list of seven candidates. However, the 2017 draft law provided for an even greater limitation, proposing a list of only three ranked candidates. The number of candidates to be submitted and the lack of ranking foreseen by the new General Scheme provides the Government with a broad discretion as regards judicial appointments, which has raised criticism²⁶. This discretion is further amplified by the possibility for the Government to select an applicant who is not in the list prepared by the Commission, without the need to give reasons²⁷. The Government considers that this discretion is required by the constitutional provisions stating that judges are appointed by the President²⁸. Nonetheless, it is important that this reform takes into account Council of Europe recommendations relating to the need for the executive power to follow in practice the recommendations by independent authorities²⁹.

least seven persons, the Board shall submit to the Minister the name of each person wishing to be considered for appointment and the Board shall recommend to the Minister for appointment such of those persons as it considers suitable.

²⁴ 2020 Rule of Law Report, country chapter on the rule of law situation in Ireland, p. 3. An outstanding recommendation of GRECO stressed the need to review the current system for selection, recruitment, promotion and transfers of judges with a view to target the appointments to the most qualified and suitable candidates in a transparent way, without excessive influence from the executive powers. GRECO Fourth Evaluation Round – Evaluation Report, para. 132; GRECO Fourth Evaluation Round – Second Interim Compliance Report, para. 34.

²⁵ 8 recommendations in instances where there are 2 vacancies; and 11 recommendations where there are 3 vacancies.

²⁶ Council of The Bar of Ireland (2021) Submission to the Department of Justice on the General Scheme of the Judicial Appointments Commission, p.3-4. Irish Human Rights and Equality Commission (2021), Submission to the Minister for Justice on the General Scheme of the Judicial Appointments Commission,: ‘the Commission recommends that if [Judicial Appointments Commission] is to have a meaningful role in providing an independent process, then the number of candidates that are recommended to Government should be significantly reduced’, p.25. Also, the Commission recommends that the proposed legislation explicitly requires that all vacancies are advertised in a public and accessible manner (p. 21).

²⁷ See, in this context, CJEU judgment of 20 April 2021, Case C- 896/19, *Repubblika*, ECLI:EU:C:2021:311, para 71, in which the requirement in Malta for the Prime Minister to give reasons when submitting to the President of the Republic the appointment of a candidate not put forward by the Judicial Appointments Committee established under the Constitution, was considered relevant for considering that power of the Prime Minister, inasmuch as it is exercised only in quite exceptional circumstances, not to give rise to legitimate doubts concerning the independence of the candidates selected.

²⁸ Irish Constitution, Article 35(1): ‘*The judges of the Supreme Court, the Court of Appeal, the High Court and all other Courts established in pursuance of Article 34 hereof shall be appointed by the President*’.

²⁹ Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, para. 47, foresees: ‘*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*’.

Work is ongoing on establishing a disciplinary regime for judges, while Parliament remains in charge of removing judges. The Judicial Conduct Committee of the Judicial Council, which was established in 2020 to consider complaints in relation to judicial misconduct, is drafting the Judicial Conduct Guidelines, the procedures for informal resolution of complaints and on admissibility and operation of the complaints regime. The complaint procedure should be ready to be commenced by summer 2022³⁰. Despite the progress in this regard, the current lack of formal disciplinary procedures for judges was raised as concern³¹, including by civil society³². Therefore, the forthcoming guidelines and procedures could lead to improve the accountability of judges; it is important that they preserve judicial independence in line with EU law and taking into account Council of Europe recommendations³³. Parliament remains in charge of deciding on the removal from office of judges and retains its margin of discretion in that regard, which could raise concerns about the politicisation of the process, even if this process has never been engaged³⁴.

Quality

The number of judges remains low and the resources available for the training of judges appear limited. The number of judges per inhabitant remains the lowest in the EU, which could also affect the efficiency of the Irish justice system³⁵. While the Government has committed to review the numbers and types of judges needed to ensure the efficient administration of justice over the next five years³⁶, more immediate measures might address concerns also raised by stakeholders³⁷. The budget per capita for the justice system has consistently increased in the last years and is among the highest in the EU, while the budget as a percentage of GDP has stagnated and remained below EU average³⁸. As regards judicial training³⁹, in 2020, a part-time Director of Judicial Studies (who is a serving judge) was appointed. It has not been possible to expand the training programme, although progress has

³⁰ The statutory deadline for the Board of the Judicial Council to receive the draft Guidelines on judicial conduct and ethics is of 30 June 2021 provides and the deadline for adoption of these Guidelines by the Judicial Council is 30 June 2022.

³¹ 2020 Rule of Law Report, country chapter on the rule of law situation in Ireland, p. 4. An outstanding GRECO recommendation refers to the need to formally establish a code of conduct for judges and to connect such an instrument to an accountability mechanism. GRECO Fourth Evaluation Round, para. 146; GRECO Fourth Evaluation Round – Second Interim Compliance Report, para. 44.

³² Contribution from the Irish Council for Civil Liberties for the 2021 Rule of Law Report ‘EU 2020: Demanding on Democracy, Country & Trend Reports on Democratic Records by Civil Liberties Organisations Across the European Union – Ireland’, p. 5.

³³ Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 69. An outstanding GRECO recommendation refers to the need to formally establish a code of conduct for judges and to connect such an instrument to an accountability mechanism. GRECO Fourth Evaluation Round, para. 146; GRECO Fourth Evaluation Round – Interim Compliance Report, para. 43.

³⁴ 2020 Rule of Law Report, country chapter on the rule of law situation in Ireland, p. 3. Also, the scope of judicial review available in cases of disciplinary sanctions or removal from office is limited to the lawfulness of the procedure only, without a possibility to challenge its substance. Council of Europe standards requiring the respect of judicial independence not only from undue influences outside the judiciary, but also from within. See also footnote 9.

³⁵ Figure 32, 2021 EU Justice Scoreboard.

³⁶ Department of Justice (2021), Justice Plan 2021, action 80.

³⁷ Contribution from the Council of the Bar of Ireland for the 2021 Rule of Law Report, p. 8.

³⁸ Figure 30, 2021 EU Justice Scoreboard. The methodology of the Justice Scoreboard measures the investment into the Justice system as a percentage of the GDP.

³⁹ In its Second Interim Report in the Fourth Evaluation Round, GRECO considered that the recommendation on institutionalising and adequately resourcing a dedicated induction and in-service training for while respecting the independence of the judiciary was still not complied with.

recently been made in securing the administrative support necessary to facilitate developing that programme⁴⁰. A survey of judicial training needs was carried out in 2021⁴¹.

The reflection on the costs of litigation and the legal aid system continues⁴² and could lead to the improvement of access to justice. The Review of the Administration of Civil Justice⁴³ was published in October 2020 and makes recommendations with a view to improving access to civil justice, promoting early resolution of disputes, reducing the cost of litigation, creating a more responsive and proportionate system and ensuring better outcomes for court users. The Review recommended the drawing up of non-binding guidelines on legal costs⁴⁴. The Government has launched an evaluation of this proposal, including whether legal costs should be fixed in a binding manner⁴⁵. Recommendations on this matter are expected by the end of 2021. The Government has also committed to start a review of the civil legal aid scheme this year. These initiatives could help addressing concerns relating to access to justice and, in particular, the civil legal aid system⁴⁶. As regards criminal legal aid, the Government plans to transfer the operation of the scheme to the Legal Aid Board⁴⁷. While the criminal legal aid scheme is generally considered as well-functioning, the Bar of Ireland has raised concerns about the low level of remuneration provided for barristers under the scheme⁴⁸. Strengthening the legal aid systems and limiting legal costs would appear important to improve access to justice. Moreover, the promotion of and incentives for using alternative dispute resolution methods could be further improved⁴⁹.

The Legal Services Regulatory Authority is taking further measures to tackle remaining barriers in the legal services market. The Authority plans to introduce before the end of 2021 the framework for Legal Partnerships (which can include barrister-barrister partnerships and barrister-solicitor partnerships). The Authority also intends to revisit the introduction on multi-disciplinary practices (involving legal practitioners and other professions – e.g. architects, accountants) following on from the introduction of Legal Partnerships. In 2020, the Authority published a report which considered whether the professions of solicitor and barrister should be unified. The report concluded that there was no evidential basis for recommending unification of the professions but undertook to revisit the issue once other reforms under the Act had bedded down⁵⁰. The Authority also published a report on legal practitioner education and training, recommending reforms to define the competence and standards required to practice as a solicitor or barrister. It also recommends the establishment of a statutory framework to accredit existing providers of legal practitioner education and training, as well as allowing new providers to be accredited to provide professional training for solicitors and barristers⁵¹. The Authority is now working with the Department of Justice on the implementation of these recommendations. The Authority is also undertaking a

⁴⁰ Input from Ireland for the 2021 Rule of Law Report, p. 12.

⁴¹ Ibid.

⁴² 2020 Rule of Law Report, country chapter on the rule of law situation in Ireland, pp. 5-6.

⁴³ Review Group Report on the Administration of Civil Justice, Chairperson: The Hon. Mr. Justice Peter Kelly, Former President of the High Court.

⁴⁴ Review of the Administration of Civil Justice, Report, p. 322.

⁴⁵ Ireland, Justice Plan 2021, action 83.

⁴⁶ 2020 Rule of Law Report, country chapter on the rule of law situation in Ireland, pp. 5-6.

⁴⁷ Ireland, Justice Plan 2021, action 88.

⁴⁸ Contribution from Bar of Ireland for the 2021 Rule of Law Report, p. 8.

⁴⁹ Figure 27, 2021 EU Justice Scoreboard.

⁵⁰ Legal Services Regulatory Authority (2020), Greater than the Sum of Its Parts? Consideration of Unification of the Solicitors' Profession and Barristers' Profession.

⁵¹ Legal Services Regulatory Authority (2020), Setting Standards: Legal Practitioner Education and Training.

research project on potential barriers that may exist to commencing a career as a barrister or solicitor, to be issued before the end of 2021. In 2020, the Authority took over the regulation of advertising by legal practitioners, with the introduction of new regulations⁵². It would be important for the Authority to assess whether and how the measures taken have contributed to limit legal costs and enhancing access to justice.

Work continues⁵³ in order to remedy existing gaps in the digitalisation of the justice system. The Courts Service has issued a long-term strategy⁵⁴, which aims to better support access to justice. The modernisation programme's priorities include eFiling, a case management system, and putting in place the infrastructure to facilitate eCourts. During the COVID-19 pandemic, a Virtual Courtroom programme has allowed for more than 2 200 virtual court sessions since March 2020. Remote courts continue to operate across all jurisdictions, extensively, in the Supreme Court, the Court of Appeal and the High Court, and they are planned to continue operating in the future. Despite the measures of 2020 allowing for the increased use of remote hearings in civil matters and in criminal appeals, Ireland scores below EU average as regards procedural rules allowing digital technology in courts in civil/commercial, administrative and criminal cases⁵⁵. Ireland also scores below average as regards the use of digital technology by courts and prosecution service⁵⁶, electronic communication tools in courts⁵⁷, digital solutions to conduct and follow court proceedings in criminal cases⁵⁸ and online access to published judgments by the general public⁵⁹. Further digitalisation of the Irish justice system is therefore necessary to remedy existing gaps, and also to allow for the gathering of data on the length of proceedings according to Council of Europe European Commission for the efficiency of justice (CEPEJ) methodology⁶⁰.

The Government has announced a review covering the functioning of the Special Criminal Courts. The United Nations⁶¹ and civil society⁶² have long called for considering 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 trial. In February 2021, the Government appointed a group to review the Offences Against the State Acts. The review group's remit covers the functioning of the Special Criminal Court⁶³.

⁵² Legal Services Regulatory Authority (2020), Press Release— LSRA takes over the regulation of advertising by legal practitioners.

⁵³ 2020 Rule of Law Report, country chapter on the rule of law situation in Ireland, pp. 6-7.

⁵⁴ Irish Court Service (2020), The Courts Service Long-Term Strategic Vision to 2030: Supporting Access to Justice in a modern, digital Ireland.

⁵⁵ Figure 40, 2021 EU Justice Scoreboard.

⁵⁶ Figure 41, 2021 EU Justice Scoreboard.

⁵⁷ Figure 42, 2021 EU Justice Scoreboard.

⁵⁸ Figure 5, 2021 EU Justice Scoreboard.

⁵⁹ Figure 6, 2021 EU Justice Scoreboard.

⁶⁰ CEPEJ data feed the EU Justice Scoreboard.

⁶¹ UN Human Rights Committee (2014), Concluding observations on the fourth periodic report of Ireland.

⁶² Irish Council for Civil Liberties (2020), *Untenable in a democracy: ICCL renews call for abolition of Special Criminal Court*.

⁶³ Input of Ireland for the 2021 Rule of Law Report, p. 17.

Efficiency

Challenges relating to the length of proceedings have aggravated⁶⁴. The average length of proceedings in the High Court in 2019 was 785 days, an increase of around 35 days from 2018. In particular, the length of commercial proceedings continued to increase, by around 220 days from 2018 to 2019. By contrast, length of proceedings at circuit and district courts decreased in 2019 compared to 2018, following an increase the previous year. Length of proceedings at the Court of Appeal increased by around 110 days between 2019 (1220 days) and 2018 (1101 days). Between 2018 and 2019, the length of criminal proceedings increased by around 120 days at circuit court and by around 100 days at the central criminal court⁶⁵. The Review of the Administration of Civil Justice made recommendations to reduce delay in and the time of proceedings⁶⁶. A Criminal Procedure draft law providing for pre-trial hearings, which could provide for a faster and more efficient court process for certain offences, was signed into law on 24 May 2021⁶⁷.

The Government plans to propose a compensation scheme for cases of excessive length of court proceedings before the end of 2021. This is required by a European Court of Human Rights judgment, whose execution is still under enhanced supervision by the Council of Europe's Committee of Ministers⁶⁸.

II. ANTI-CORRUPTION FRAMEWORK

In Ireland, the investigation of corruption is the responsibility of *An Garda Síochána*, the national police and security service. The Anti-Corruption Unit within the Garda National Economic Crime Bureau is exclusively responsible for the investigation of foreign bribery and responsible for the investigation of cases of domestic bribery and corruption of national importance. The Anti-Corruption Unit acts as a centre of excellence for the investigation, prevention and disruption of bribery and corruption. The Police carries out criminal investigations in the fight against corruption. A new unit focused on investigating corruption within the police force began operations in November 2020. A new Investigation Management System (IMS) has recently been developed and is currently being trialed by the national police and security service. The Standards in Public Office Commission (SIPO) is responsible for enforcing the Electoral Acts, the Ethics Acts and the Regulation of Lobbying Act 2015.

The perception among experts and business executives is that the level of corruption in the public sector remains relatively low. In the 2020 Corruption Perceptions Index by Transparency International, Ireland scores 72/100 and ranks 7th in the European Union and 20th globally⁶⁹. This perception has been relatively stable⁷⁰ over the past five years⁷¹.

⁶⁴ 2020 Rule of Law Report, country chapter on the rule of law situation in Ireland, p. 7.

⁶⁵ Input of Ireland for the 2021 Rule of Law Report, p. 16.

⁶⁶ Department of Justice (2020), Review of the Administration of Civil Justice, Report, pp. 398-399.

⁶⁷ Criminal Procedure Bill 2021.

⁶⁸ 2020 Rule of Law Report, country chapter on the rule of law situation in Ireland, p.8.

⁶⁹ Transparency International, Corruption Perceptions Index 2020 (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).

Following a comprehensive review, the government is planning revisions of the criminal legislative framework to strengthen the effectiveness of the fight against corruption. The 2018 criminal justice law⁷² provides a single consolidated legislation. The law in relation to bribery and corruption has been updated and consolidated by the 2018 law and it is now a criminal offence to fail to report bribery and corruption offences to the police. Corruption offences also have an extraterritorial effect under the Act for foreign corruption if it is proven that part of the relevant conduct outside the State, would be an offence if occurred in Ireland⁷³. As reported last year, an in-depth assessment on the effectiveness of the authorities in the fight against economic crime and corruption was carried out⁷⁴. The so-called “Hamilton review”⁷⁵ was published in December 2020. Following this assessment, the Ministry of Justice has identified priorities that can be implemented in the shorter term, such as the enactment of the draft law on criminal procedure, included in the current legislative programme for enactment. Further priorities include strengthening the law in the area of public sector ethics and amending legislation to address situations of possible breaches of former members of the Parliament (Houses of the *Oireachtas*) who may have contravened their obligations under the Ethics Acts. They also include amending the criminal justice legislation to allow for standalone search warrants that will allow the police to demand passwords to electronic devices owned or controlled by persons subject to arrest warrants⁷⁶.

Ireland is currently reviewing its national anti-corruption structure. One of the main recommendations of the *Hamilton review* is the establishment, on a permanent basis, of a cross-sectoral advisory council to coordinate and lead a holistic approach to economic crimes and corruption. To address the lack of a national strategy for combating economic crime and corruption and the multiple authorities with anti-corruption competences, the *Hamilton review* also recommended the development of a multi-annual strategy and an accompanying action plan⁷⁷.

The competences and responsibilities for anti-corruption policies as well as for detecting, investigating and prosecuting corruption are shared between different specialised law enforcement bodies. The Garda National Economic Crime Bureau (GNECB) and its specialised Anti-Corruption Unit in particular are responsible for the investigation of all corruption offences, including foreign bribery. While the police has been recently allocated substantial resources⁷⁸, there has not been a commensurate increase in

⁷⁰ In 2015 the score was 75, while, in 2020, the score is 72. 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 five years.

⁷¹ The Eurobarometer data on corruption perception and experience of citizens and businesses as reported last year is updated every second year. The latest data set is the Special Eurobarometer 502 (2020) and the Flash Eurobarometer 482 (2019).

⁷² Criminal Justice (Corruption Offences) Act of 2018.

⁷³ Criminal Law (Extraterritorial Jurisdiction) Act 2019, Section 3.

⁷⁴ 2020 Rule of Law Report, country chapter on the rule of law situation in Ireland, p. 10.

⁷⁵ Department of Justice (2020), Review Group Report on structures and strategies to prevent, investigate and penalise economic crime and corruption.

⁷⁶ Department of the Taoiseach (2020), Programme for Government: Our Shared Future.

⁷⁷ Department of Justice (2021), Hamilton Review Group Implementation Plan. An Implementation Plan to implement the recommendations was published in April 2021.

⁷⁸ *An Garda Síochána* has allocated a budget of EUR 1.952 billion for 2021. This level of funding is enabling ongoing recruitment of Garda members and staff. As a result, Garda numbers are now over 14 600 Garda

resources for the Office of the Director of Public Prosecutions (ODPP), although increased resourcing of other parts of the system (police, courts, judges) has an impact on the workload of the ODPP, as increased police numbers, detections and investigations create more prosecution files for the ODPP. Within the police, a new anti-corruption unit to deal with internal corruption investigations also became operational. ODPP focuses exclusively on prosecuting offences submitted by the investigatory authorities and has no prevention function. ODPP has a Special Financial Crime Unit, which the Anti-Corruption Unit liaises directly with in relation to relevant corruption cases. The Police is a member of Transparency International Ireland's "Integrity at Work" initiative and seek to promote a supportive working environment for reporting concerns of wrongdoing. The Anti-Corruption Unit, GNECB operates a free-phone bribery and corruption confidential reporting line.

Limited resources remain a challenge for the Anti-Corruption Unit within the Garda National Economic Crime Bureau (GNECB). The GNECB currently has 74 investigators (12 of whom are on temporary transfer), 18 Civilian Staff and three Forensic Accountants. The Anti-Corruption Unit within the GNECB is currently comprised only of three persons, one detective sergeant and two detective investigators. A competition to select detectives for allocation to the GNECB has recently been completed and the Anti-Corruption Unit will receive one additional staff member. The Anti-Corruption Unit uses resources within GNECB when conducting major operations and has a close working relationship with other national units⁷⁹. The *Hamilton review* noted the lack of resources of the Anti-Corruption Unit, and recommended to ensure that additional resources are given to the GNECB, as well as to the Office of the Director of Public Prosecutions. The recommendation specific to the latter included additional prosecutors along with a seconded specialist in digital forensics and a seconded forensic accountant⁸⁰. According to the GNECB data, the unit currently has nine ongoing corruption investigations, out of which three investigations concern foreign bribery of foreign public officials.

The analysis of electronic evidence in corruption cases poses some challenges. An Investigation Management System (IMS) has recently been developed and is currently being trialed. This system will standardise all investigations and will record all actions replacing paper based systems currently in use. According to the authorities, the collection of electronic evidence, including mobile phone data, computer data, cloud data and data from social networks is a further challenge⁸¹. The Anti-Corruption Unit does not currently have access to a tool that enables the effective and efficient examination of this data. This results in the examination of electronic data taking up a significant amount of investigative resources and resulting in significant delays to investigations.

Prevention of corruption and promotion of integrity measures are in place, however challenges remain as regards the enforcement of rules. The general rules and procedures

members and 3 000 Garda staff nationwide. Budget 2021 provides for the recruitment of up to 620 new Gardaí and an extra 500 Garda staff.

⁷⁹ Such as the Criminal Assets Bureau, the Garda National Cyber Crime Bureau, the Garda National Bureau of Criminal Investigation and the Garda National Drugs and Organised Crime Bureau. Detectives attached to the Anti-Corruption Unit are members of An Garda Síochána.

⁸⁰ Department of Justice (2020), Review Group Report on structures and strategies to prevent, investigate and penalise economic crime and corruption.

⁸¹ Written contribution received by the Garda National Economic Crime Bureau in the context of the country visit to Ireland.

concerning asset disclosure are set out in the Ethics Acts⁸². Interests to be disclosed and evidence on compliance must be submitted to the Standards in Public Office Commission (SIPO) by all members of both Houses of the Parliament, the Attorney General and appointees to senior office in public bodies. SIPO continues to oversee the implementation of legislation, but challenges have been reported⁸³ as the interests to be disclosed do not include liabilities (mortgages, loans, etc.) and the public disclosures only concern members of the Parliament. SIPO has no remit to investigate actions of either office holder or civil servant when actions are taken after leaving office.

Some shortcomings remain with regard to the capacity to enforce the rules on lobbying and revolving doors. The Regulation of Lobbying Act 2015 created a requirement for a register of lobbyists. The Second Statutory Review of the Regulation of Lobbying Act 2015 was published in February 2020⁸⁴. The Register, which is a web-based system⁸⁵, is overseen by SIPO. There are currently over 2 100 organisations and individuals who have registered on the Register. SIPO has certain enforcement powers under law, including the ability to carry out investigations where it believes a person may have committed a contravention. Furthermore, it has the power to bring and prosecute specific offences, including where a person who is lobbying has not registered⁸⁶. The Regulation also provides for a one year post-employment “cooling off” period, during which particular public officials cannot undertake specific lobbying activities. Apart from the Regulation, there are references to post-employment restrictions in the Code of Conduct for office holders and the Civil Service Code of Standards and Behaviour. Working within limited resources (which it shares with the Office of the Ombudsman), SIPO is not able to pro-actively pursue compliance with codes of conduct. As regards revolving doors, post-employment restrictions are included in the Regulation of Lobbying Act 2015, the Code of Conduct for office holders and the Civil Service Code of Standards and Behaviour. However SIPO lacks the necessary powers to monitor irregularities.

Harmonised conflict of interest rules are still pending. A review of the ethics legislation is currently being undertaken by Government, after the Public Sector Standards draft law 2015⁸⁷, which would have enhanced the existing framework for identifying, disclosing and managing conflicts of interest and minimising corruption risks, lapsed with the dissolution of the last parliament⁸⁸. Prevention of corruption and promotion of integrity measures have been identified among the priorities in the 2020 Programme for Government. The Group of States against Corruption (GRECO) has noted in this respect that the establishment of a uniform and consolidated legal framework for ethical conduct of members of parliament and

⁸² 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.

⁸³ Information received in the context of the country visit to Ireland.

⁸⁴ The Review includes a number of recommended further actions for the Standards Commission to consider, most of which relate to requests received for greater clarity, guidance and education. Department of Public Expenditure and Reform (2020) Second Statutory Review of the Regulation of Lobbying Act 2015. The third statutory review of the 2015 Act is required to commence by 1 September 2022.

⁸⁵ See www.lobbying.ie.

⁸⁶ Department of Public Expenditure and Reform (2020) Second Statutory Review of the Regulation of Lobbying Act 2015.

⁸⁷ Public Sector Standards Bill 2015.

⁸⁸ 2020 Rule of Law Report, country chapter on the rule of law situation in Ireland, p. 10.

improvements of the asset declaration regime have been impacted by the lapsing of the 2015 draft law⁸⁹.

As regards the measures to address and mitigate the COVID-19 pandemic, public procurement appears to be a high-risk area for bribery and corruption. Currently, four of the Anti-corruption Unit's ongoing investigations relate to procurement, and assistance has been provided in three other cases. The GNECB also ran a 'Fraud Awareness Week' where there was regular media exposure on fraud prevention. COVID-19 procurement fraud featured as a topic during this campaign.

III. MEDIA PLURALISM AND MEDIA FREEDOM

In Ireland, freedom of expression is protected by the Constitution, which requires the State to guarantee the protection of fundamental rights, including freedom of expression and freedom of the press⁹⁰. A major legislative overhaul of the media law is expected to be finalised in 2021 in the context of the transposition of the revised Audiovisual Media Services Directive⁹¹.

The legal framework for the independent media regulator is being revised. The new regulatory framework, to be established by the upcoming draft law on online safety and media regulation⁹², envisages the dissolution of the Broadcasting Authority of Ireland (BAI) and the assignment of all its functions to the new Media Commission. The Media Commission will also be granted with new compliance and sanction powers, including the power to seek the imposition of administrative financial sanctions, in view of overseeing the new framework for online services. The Media Commission will include a maximum of six commissioners, appointed following an open competition, conducted by the Public Appointments Service. There are currently nine members of BAI, five of whom are appointed by the Government on the nomination of the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media⁹³. The new Commission will be governed by an executive chairperson with a managerial role. The General Scheme of the draft law proposes to uphold the funding of the regulatory activities of the new Media Commission through the introduction of industry levies, similarly to the current funding scheme of BAI⁹⁴. The General Scheme confirms that the Commission is to be independent in the performance of its functions. The new legal framework is expected to be adopted by the end of 2021. Similarly as in 2020, the 2021 Media Pluralism Monitor (MPM)⁹⁵ assessed the risks to the independence and effectiveness

⁸⁹ GRECO Fourth Evaluation Round – Second Interim Compliance Report, p. 9.

⁹⁰ Irish Constitution, art. 40.

⁹¹ Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities. Ireland was ranked in 12th place in 2021 World Press Freedom Index (7th among the EU Member States), one place up compared to 2020, when it ranked 13th. Reporters without borders, Ireland.

⁹² The Online Safety and Media Regulation Bill will aim to transpose in the Irish legal framework the revised Audiovisual Media Services Directive.

⁹³ The current staff and functions of BAI will be overseen by the Commissioner for Broadcasting.

⁹⁴ In order to support the news media sector during the COVID 19 pandemic, the Minister for Communications, Climate Action and Environment requested BAI to consider waiving the levy on independent radio stations for the first six months of 2020. According to 2019 Annual Report, BAI accepted this request, pursuing a number of cash flow management and budgetary strategies.

⁹⁵ 2021 Media Pluralism Monitor, country report for Ireland, p. 10.

of the Irish media regulator to be at low level, highlighting that the existing legal safeguards effectively narrow the scope for potential external interference.

Ireland has a well-established system of self-regulatory bodies in the news media sector.

The framework is based on the activities of the Press Council of Ireland (PCI)⁹⁶ and the Office of the Press Ombudsman (PO), and covers newspapers (print and online), magazines and online-only news publications that are members of the Press Council. According to the 2020 annual report, last year 346 complaints were submitted to the PCI and 25 were analysed by the PO.⁹⁷ This constitutes a raise in comparison to 252 complaints submitted in 2019⁹⁸. In 2021, the PO has already examined ten cases⁹⁹.

Various measures have been put in place to ensure the provision of open and pluralistic broadcasting services in Ireland¹⁰⁰.

A searchable database¹⁰¹ covering the ownership information regarding Irish-owned media businesses was launched on 11 November 2020. It will be subjected to regular updates every six months. Under the Competition and Consumer Protection Act 2014, the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media is competent to assess the effects of ownership transactions (mergers) in the media sector on the media plurality in Ireland¹⁰². In addition, every three years, BAI is required to undertake a review of ownership of media businesses in Ireland, focusing, in particular, on changes in ownership and their implications for media plurality. The first two reviews were conducted in 2015 and in 2018. In preparation for the upcoming review, planned for 2021¹⁰³, BAI organised a public consultation for stakeholders, which ran until 30 April 2021. These transparency measures¹⁰⁴ are important, taking into account the high level of concentration in the Irish media sector, especially at local level¹⁰⁵. The 2021 MPM refers to a lack of data to be able to assess news media concentration¹⁰⁶.

The Government took some measures to mitigate the impact of the COVID-19 pandemic. As reported by Reporters without Borders, many regional titles found themselves

⁹⁶ 2020 Rule of Law Report, country chapter on the rule of law situation in Ireland, p. 12.

⁹⁷ Press Council Annual Report 2020.

⁹⁸ Ibid.

⁹⁹ Press Council of Ireland, Decisions of the Press Ombudsman.

¹⁰⁰ As stipulated in section 25 of the Broadcasting Act 2009. This principle is expected to be confirmed in the upcoming Online Safety and Media Regulation Bill – Head 10.

¹⁰¹ The database was designed and maintained by staff at the DCU School of Communications. The project is an initiative of the BAI in the context of its statutory requirement to conduct research relating to the plurality of the media in Ireland. The database is available here: mediaownership.ie

¹⁰² In the period 2018-20, all proposed media mergers were approved. See: gov.ie - www.gov.ie - [Media Mergers](http://www.gov.ie)

www.gov.ie According to the 2014 Competition and Consumer Protection Act, such a report should describe the ownership and control arrangements for undertakings carrying on a media business in Ireland, describe the changes to the ownership and control arrangements of such undertakings over the previous 3 years, and analyses the effects of such changes on plurality of the media in Ireland.

¹⁰⁴ As reported in by Study on the implementation of the new provisions in the revised Audiovisual Media Services Directive in Ireland, media merger decisions and all other media ownership decisions are reported publicly by the relevant bodies, whether the Department of Communications (BAI) or the Competition Commission and are reported in the national and regional media.

¹⁰⁵ According to Reporters without Borders – Ireland “*Independent News and Media (INM) controlled much of the daily and Sunday newspaper market, while broadcasting continued to be dominated by the semi-state company RTE - itself facing mounting financial burdens that threaten its continued stability*”.

¹⁰⁶ Lack of data on revenue and audience concentration for all media markets appears to be an issue. See Media Pluralism Monitor, country report for Ireland, p. 11.

on the brink of financial collapse in 2020¹⁰⁷. A number of print freesheets also suspended their operations as a consequence of the COVID-19 pandemic, and only an increase in state advertising, related to addressing Covid-19 measures, prevented some radio stations from ceasing their operation¹⁰⁸. Also, the State's Pandemic Unemployment Payment scheme was open to all employees, including journalists, which helped to alleviate the economic impact of the COVID-19 pandemic on journalists. Freelancers could also benefit from certain financial support as self-employed workers¹⁰⁹.

The Government is reflecting on the future of the media sector. The Irish government decided to launch a discussion on possible long-term actions to support the media sector, establishing an independent Future of Media Commission¹¹⁰ in October 2020. The Commission's reflections have focused in particular on the challenges faced by all media actors with regards to changing revenue streams, audience behavior and new technical models of media consumption. The Commission organised between 12 December 2020 and 8 January 2021 a public consultation which resulted in over 800 written submissions from stakeholder groups and the general public. The Commission is currently engaging in a series of thematic dialogues in view of producing a report and recommendations by summer 2021.

Discussions on amending the journalists' protection framework are ongoing. Following the announcement of the plans to revise the 2009 Defamation Act¹¹¹, the Irish Government is finalising a statutory review. A new Scheme of Defamation could be presented by the end of 2021. As highlighted by stakeholders¹¹², the current regime enables to impose a disproportionately high amount of damages for defamation, which can have a negative impact on journalistic freedom. The last consultation on the review of the Irish defamation law took place in late 2016 and did not result in any legislative changes. In 2020, the Council of Europe platform to promote the protection of journalism and safety of journalists registered one alert concerning Ireland. It was the first alert concerning Ireland since 2015¹¹³. The alert concerned a legal action brought by a political activist who was mentioned in the press report of the Dublin Inquirer. The legal action related to alleged negligence in the journalistic conduct by the newspaper. No alerts have been registered in 2021. Regarding the digital safety of journalists, the 2021 MPM reiterates legislative risks stemming from the Data Retention Act, in particular its lack of specific safeguards for the protection of journalistic sources.¹¹⁴ While the Irish government announced in 2020 its intention to revise the Communications Act, it is not among current priority files¹¹⁵.

¹⁰⁷ Reporters without Borders – Ireland “*Independent News and Media (INM) controlled much of the daily and Sunday newspaper market, while broadcasting continued to be dominated by the semi-state company RTE - itself facing mounting financial burdens that threaten its continued stability*”..

¹⁰⁸ 2021 Media Pluralism Monitor, country report for Ireland, p. 8.

¹⁰⁹ European Federation of Journalists (2020), COVID-19: What financial support have the media and journalists received in Europe?.

¹¹⁰ The Commission is composed of 10 members, chosen on the basis of their expertise and experience in the media.

¹¹¹ 2020 Rule of Law Report, country chapter on the rule of law situation in Ireland, p. 13.

¹¹² Reporters Without Borders.

¹¹³ The report was not addressed by the Irish authorities.

¹¹⁴ The 2017 Murray Report assessed the data retention regime of the act as insufficiently safeguarding the principle of protection of journalistic sources.

¹¹⁵ Autumn legislative programme.

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

Ireland has a bicameral parliamentary system: Parliament (Houses of the *Oireachtas*) comprises a Lower House (*Dáil Éireann*), and an Upper House (*Seanad Éireann*). 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 ordinary legislative procedure is used to tackle the COVID-19 pandemic, but certain issues have been raised regarding Parliament's oversight of emergency measures. Ireland's response to the COVID-19 pandemic, that has continued to rely on the ordinary legislative procedure¹¹⁶, has largely been implemented through Statutory Instruments signed by the Minister for Health, delegated by primary legislation¹¹⁷. The relevant powers in these laws were, according to sunset clauses, foreseen to remain in force until 9 November 2020 unless extended. A motion tabled in October 2020 extended the powers until 9 June 2021, which several members of Parliament objected to, suggesting shorter extensions. The short time allocated to debate on this motion raised criticism¹¹⁸. A report of the IHREC¹¹⁹ recommended shorter extensions and specifying in the legislation the maximum length of any extension, while raising other concerns¹²⁰. These concerns were echoed by civil society organisations¹²¹. Because of the general election held in January and the delay in appointing a government, no ordinary committee meetings were held between January and October 2020, while a Special Committee on COVID-19 Response sat between 6 May 2020 and 30 September 2020. In June 2021, the sunset clauses contained in four pieces of primary legislation, brought in to address COVID-19, were further extended¹²². As a result, measures will continue in operation until the 9 November 2021, and can be extended further for a single period of three months by a resolution of both Houses.

The legislative process has been characterised, since the beginning of the pandemic, by shortened discussions in Parliament. The procedural tools to shorten parliamentary discussion and ensure swift consideration by Parliament were used frequently, mainly in relation to COVID-19-related legislation. This included waiving the requirement for scrutiny

¹¹⁶ 2020 Rule of Law Report, country chapter on the rule of law situation in Ireland, p. 14. The ordinary legislative procedure envisages statutory oversight available to the *Oireachtas*.

¹¹⁷ At the start of the pandemic in March, the *Oireachtas* enacted the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020. Ancillary enforcement measures were authorised in the Criminal Justice (Enforcement Powers) (COVID-19) Act 2020 (September), and the Health (Amendment) Act 2020 (October). Also in March, the *Oireachtas* enacted the Emergency Measures in the Public Interest (Covid-19) Act 2020 which provided broad statutory powers to deal with the harsh economic and social effects of the pandemic, as well as changing the procedures for authorising detention under the Mental Health Act 2001.

¹¹⁸ Irish Human Rights and Equality Commission (2021) Ireland's Emergency Powers During the Covid-19 Pandemic, p. 27.

¹¹⁹ Ibid.

¹²⁰ The Report of the IHREC also criticised the limited scope for parliamentary oversight of secondary legislation made by the Minister for Health because of the lack of pre-enactment consultation with or scrutiny by any committee of the Houses, combined with the limited ex-post scrutiny. Other concerns relate to blurring the line between legal requirements and health guidelines, the retroactive application of Regulations and the lack of prompt publication of Regulations.

¹²¹ Contribution from the Irish Council for Civil Liberties for the 2021 Rule of Law Report, p. 12.

¹²² Health and Criminal Justice (Covid-19) (Amendment) Act 2021.

of the draft text of a Bill before it is published ('pre-legislative scrutiny')¹²³, the use of so-called 'guillotine motions' to shorten the time allocated to debate, and early signature motions to ensure rapid consideration by the President of a Bill passed by Parliament. In 2020, guillotine motions were prepared in 30 out of the 32 Bills that were passed¹²⁴ and 19 guillotine motions were used in order to shorten the debate on 17 different pieces of draft legislation. In 2020, early signature motions¹²⁵ were agreed on 18 occasions, allowing for the President's consideration of the Bill to take place within five days. During the establishment phase of new Committees, from September 2020, following the elections to both Houses, it was agreed to waive the requirement for pre-legislative scrutiny in relation to 17 of the Bills that were enacted. In 2020, Committee stage was undertaken by a Committee of the whole Lower House for 26 of Acts. Concerns were raised by civil society organisations as regards the short time allocated for consultations¹²⁶.

The accreditation of the Irish Human Rights and Equality Commission will be reviewed in 2021. It was accredited with A status in November 2015 by the UN Global Alliance of National Human Rights Institutions (GANHRI)¹²⁷. In February 2021 the IHREC published a report on Ireland's emergency powers during the COVID-19 pandemic¹²⁸. The report concluded that the principal measures introduced so far to control the pandemic (mainly restrictions on movement and home gatherings, obligations to wear face coverings) were justified by the State's obligation on to protect public health¹²⁹. The report also sets a number of conclusions, such as recommending that the Irish Government should at all times maintain a clear distinction between measures that are legally obligatory and public health advice, or that all measures adopted as part of the response to the COVID-19 pandemic should be subject to sunset clauses.

Ireland has a vibrant and diverse civil society, although funding restrictions continue to raise some concerns¹³⁰. In addition to the EUR 45 million COVID-19 Stability Fund established by the Government in 2020 to provide cash injection for community and voluntary organisations, charities and social enterprises delivering critical front-line

¹²³ Under *Dáil* Standing Order 173 (1) the Business Committee, which is made up of representatives of Government and all Opposition Parties, can waive the requirement for pre-legislative scrutiny on foot of a request from a member of Government.

¹²⁴ Out of the 32, 15 Bills were focused on the introduction of various provisions and measures to address the Covid-19 pandemic.

¹²⁵ 'Early Signature Motion' - Article 25 (2)(1) of the Constitution stipulates that when a Bill has passed all stages in both Houses, it is sent to the *Taoiseach*, who presents it to the President. The President then considers the Bill and the President should sign the Bill 'not earlier than the fifth day and not later than the seventh day after it has been presented to him'. Sub-Section 2 of the same article of the Constitution allows that 'at the request of the Government, with the prior concurrence of *Seanad Éireann*, the President may sign' the Bill earlier than the fifth day. This is done by way of a Motion in the *Seanad* (presented after the *Seanad* has completed its consideration of the Bill), and the *Seanad* is asked to concur with the Government to request the President to sign the Bill earlier than five days.

¹²⁶ Contribution from ENNHRI for the 2021 Rule of Law Report, p. 217 and information received in the context of the country visit to Ireland.

¹²⁷ 2020 Rule of Law Report, country chapter on the rule of law situation in Ireland, p.15.

¹²⁸ Irish Human Rights and Equality Commission (2021), Ireland's Emergency Powers During the Covid-19 Pandemic.

¹²⁹ The report from the IHREC does not cover the measure introduced in spring 2021 by the Irish Government for a mandatory hotel quarantine system for travelers arriving in Ireland from a number of designated countries. The system has been subject to criticism; see for example ICCL 2021, ICCL calls for end to mandatory quarantine if rights issues not addressed, 19 April 2021.

¹³⁰ 2020 Rule of Law Report, country chapter on the rule of law situation in Ireland, p. 15.

services¹³¹, an additional EUR 10 million has been made available for 2021. Civil society organisations continued to raise concerns¹³² about the impact of the prohibitions under the Electoral Act for donations to be given for ‘political purposes’ above a certain amount¹³³ as well as by non-citizens resident outside Ireland¹³⁴. The Standards in Public Office Commission, which is responsible for overseeing the implementation of the Act, has also called for a comprehensive review of the Electoral Act¹³⁵. A General Scheme of an Electoral Reform was recently published and aims to establish an independent, statutory Electoral Commission. The Government’s intention is that the Electoral Commission will carry out a comprehensive review of the Electoral Act 1997, including addressing concerns raised by civil society organisations¹³⁶.

¹³¹ The Fund focuses on organisations providing supports and services in the following sectors: health and social care (including addiction, disability and mental health); child and family services (including counselling/therapies); domestic/sexual/gender based violence; housing/homelessness; community services (e.g. meals on wheels/befriending services/old age supports/vulnerable people’s support groups etc.); and community education sector.

¹³² 2020 Rule of Law Report, country chapter on the rule of law situation in Ireland, p. 15. See also the communication from the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association and the UN Special Rapporteur on the situation of human rights defenders of 10 December 2020.

¹³³ 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.

¹³⁴ SIPO has interpreted the relevant legislation as also comprising certain activities carried out by civil society organisations, such as advocacy work also outside electoral periods.

¹³⁵ SIPO (2020), Annual Report 2019, pp. 27-28.

¹³⁶ General Scheme of the Electoral Reform Bill 2020.

Annex I: List of sources in alphabetical order*

* The list of contributions received in the context of the consultation for the 2021 Rule of Law report can be found at <https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2021-rule-law-report-targeted-stakeholder-consultation> .

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Annex II: Country visit to Ireland

The Commission services held virtual meetings in March 2021 with:

- Bar of Ireland
- Broadcasting Authority of Ireland
- Court Service
- Department of Justice
- Garda Economic Crime Bureau
- Garda Síochána Ombudsman Commission (GSOC)
- Hamilton Commission
- 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
- 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
- Center for Reproductive Rights
- CIVICUS
- Civil Liberties Union for Europe
- Civil Society Europe
- Conference of European Churches
- EuroCommerce
- European Center for Not-for-Profit Law
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Front Line Defenders
- Human Rights House Foundation
- Human Rights Watch
- ILGA-Europe
- International Commission of Jurists
- International Federation for Human Rights
- International Planned Parenthood Federation European Network (IPPF EN)
- International Press Institute
- Netherlands Helsinki Committee
- Open Society European Policy Institute

- Philanthropy Advocacy
- Protection International
- Reporters without Borders
- Transparency International EU