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COMMISSION STAFF WORKING DOCUMENT

2024 Rule of Law Report Country Chapter on the rule of law situation in Poland

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

2024 Rule of Law Report

The rule of law situation in the European Union

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ABSTRACT

Poland is implementing a new Action Plan on the Rule of Law to address long-standing concerns regarding judicial independence. The Sejm adopted a law to address the concerns relating to the National Council for the Judiciary and is examining draft legislation to address the serious concerns relating to the Constitutional Tribunal. The Government committed to strengthen the independence of the Supreme Court. The disciplinary regime for judges was reformed. Some of the effects of the contested justice reforms of 2017 regarding the functioning of the ordinary judiciary are being reversed. Additional steps have been taken to ensure the functional independence of the prosecution service from the Government and to separate the office of the Minister of Justice from that of the Prosecutor General. The level of digitalisation of the justice system is advanced. The Commission concluded that there is no longer a clear risk of a serious breach of the rule of law by Poland and withdrew its reasoned proposal of December 2017, thereby closing the Article 7(1) TEU procedure for Poland.

The government has engaged in preliminary discussions with stakeholders on a new anti-corruption strategy. While previously identified institutional and practical barriers in law remain, there are plans to strengthen the investigation and prosecution of corruption crimes, with several legislative reforms proposed to this end. Also, the investigation of fraud and corruption affecting the financial interests of the Union is expected to be facilitated, since Poland joined the European Public Prosecutor's Office. Although risks still remain concerning the effective enforcement against high-level corruption, including the threat of selective application of the law and impunity caused by the disparity in the treatment of corruption cases for political purposes, steps have been taken to enable a robust track record of high-level corruption cases, with several investigations ongoing. No further steps were taken to address the broad immunities of top executives or to strengthen lobbying rules, and concerns remain regarding political party donations and election campaigns. A whistleblower protection law was adopted and instructions given to prepare a law to standardise the asset declaration system.

The Constitution and the sector-specific legislation provide a framework for the protection of freedom of the press and freedom of expression. Despite existing safeguards, concerns persist regarding regulatory impartiality of the National Broadcasting Council. There has been some progress regarding safeguards for the granting of operating licences to media outlets as well as regarding the rules to enhance the independence of public service media. The management of public service media was changed following persisting concerns as to its independence and a new legal framework is expected, with a relevant public consultation ongoing. In 2021-2022 some media were confirmed to have had privileged access to state advertising and some challenges persist with access to information. SLAPPs continue to be used against journalists.

While the Government committed to ensure adequate consultations in the law-making process, room for further improvement remains. Findings of the Supreme Audit Office are being followed up and outstanding vacancies in its College have been filled. The framework in which the Ombudsperson operates has been considerably improved. The Sejm has established parliamentary investigative committees to address three specific cases of concern in respect for the law by public authorities in the period 2015-2023. The Polish Government plans to prepare a draft law regarding implementation of judgments of the European Court of Human Rights. Steps have been taken to improve the framework in which civil society operates.

RECOMMENDATIONS

Overall, concerning the recommendations in the 2023 Rule of Law Report, Poland has (made):

- Some progress on separating the function of the Minister of Justice from that of the Prosecutor-General and significant progress on continuing efforts to ensure functional independence of the prosecution service from the Government.
- No progress on strengthening the existing integrity rules by introducing lobbying rules and some progress on standardising online system for asset declarations of public officials and Members of Parliament.
- Some progress on ensuring independent and effective investigations and prosecutions, no progress on addressing the broad scope of immunities for top executives, and no progress yet on abstaining from introducing impunity clauses in legislation in order to enable a robust track record of high-level corruption cases.
- Some progress on ensuring that fair, transparent and non-discriminatory procedures are adhered to for the granting of operating licences to media outlets.
- Some progress on strengthening the rules and mechanisms to enhance the independent governance and editorial independence of public service media taking into account European standards on public service media.
- Fully implemented the recommendation to ensure a more systematic follow-up to findings by the Supreme Audit Office and to ensure, as a matter of urgency, the appointment of the College Members of the Supreme Audit Office in order to ensure its effective functioning.
- Significant progress on improving the framework in which civil society operates and fully implemented the recommendation to continue such efforts regarding the Ombudsperson, taking into account European standards on civil society and Ombudsinstitutions.

On this basis, and considering other developments that took place in the period of reference including the closure of the Article 7(1) procedure by the European Commission and in view of the Action Plan on the Rule of Law aimed at strengthening judicial independence, and in addition to recalling the obligation to comply with the rule of law related rulings of the Court of Justice of the EU and the rule of law related infringement procedures referred to in the country chapter as well as recalling the relevant commitments made under the Recovery and Resilience Plan , it is recommended to Poland to:

- Continue efforts to separate the function of the Minister of Justice from that of the Prosecutor-General and to ensure functional independence of the prosecution service from the Government.
- Strengthen the existing integrity rules by introducing lobbying rules and a standardised online system for asset declarations of public officials and Members of Parliament.
- Continue efforts to ensure independent and effective investigations and prosecutions, address the broad scope of immunities for top executives and remove previously introduced impunity clauses in legislation in order to enable a robust track record of high-level corruption cases.
- Pursue efforts to ensure that fair, transparent and non-discriminatory procedures, are adhered to for the granting of operating licences to media outlets.
- Pursue efforts to ensure an effective legislative framework for the independent governance and editorial independence of public service media, taking into account European standards on public service media.
- Continue the on-going process to improve the framework in which civil society operates, taking into account European standards on civil society organisations.

I. JUSTICE SYSTEM

The Polish justice system is separated in two main branches: administrative and ordinary judiciary. The Supreme Administrative Court and 16 administrative courts exercise control over public administration, including the lawfulness of measures of local government bodies and of territorial organs of government administration. The ordinary judiciary, supervised by the Supreme Court¹, consists of three levels: 11 appeal courts, 47 regional courts, and 319 district courts. Judges are appointed by the President of the Republic at the request of the National Council for the Judiciary. The Constitutional Tribunal, which adjudicates notably on the constitutionality of legislation, is composed of 15 judges chosen by the Sejm (lower chamber of the Parliament) for a term of office of nine years. The National Council for the Judiciary is tasked by the Constitution to safeguard judicial independence. A particular characteristic of the prosecution system, which is not part of the independent judiciary, is that the Prosecutor General and the Minister of Justice are the same person. The Constitution provides that advocates and legal counsellors can self-regulate their practice. Poland has joined the European Public Prosecutor's Office on 29 February 2024.

Independence

The level of perceived judicial independence in Poland continues to be very low among both the general public and companies, yet the decreasing trend has started to reverse. Overall, 28% of the general population and 22% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2024². The level of perceived judicial independence among the general public has increased in comparison with 2023 (23%), although it remains lower in comparison with 2020 (34%). The level of perceived judicial independence among companies has increased in comparison with 2023 (17%) but is still lower in comparison with 2020 (27%). The main reason cited by both the general public and companies for the perceived lack of independence of courts and judges is the perception of interference or pressure from the Government and politicians³.

Poland is implementing a new Action Plan on the Rule of Law to address the long-standing concerns regarding judicial independence. On 13 December 2023, the new Prime Minister⁴ appointed an Inter-Departmental Team for restoring the Rule of Law and constitutional order⁵. In February 2024, the Polish authorities adopted⁶ an Action Plan on the

¹ The Supreme Court also supervises military courts.

² Figures 51 and 53, 2024 EU Justice Scoreboard, and 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%).

³ Figures 52 and 54, 2024 EU Justice Scoreboard. It is also noted that 33% of the companies in Poland are either fairly or very confident that their investments are protected by the law and courts in the Member State. 33% of the surveyed companies see the quality, efficiency or independence of justice as one of the main reasons for concern about investment protection in the country. Figures 55 and 56, 2024 EU Justice Scoreboard.

⁴ A new Government was elected following the October 2023 parliamentary elections.

⁵ It is noted that representatives of legal professions, associations of judges and prosecutors, as well as members of the civil society can participate in meetings of the team in an advisory role. See the contribution of the Government to the Rule of Law Report, pp. 15 ff. A call was also made by the largest associations of judges for urgent actions to be taken by the Minister of Justice to pave the way for the restoration of the rule

Rule of Law. The Action Plan includes a clear affirmation by Poland to the primacy of EU law, to respect the case law of the Court of Justice of the EU (Court of Justice) and underlines the importance of the requirements of judicial independence. The Action Plan lays out, institution by institution, the Government's intentions about how judicial independence would be restored and safeguarded. It was presented by Poland to the General Affairs Council⁷ with a view to addressing the concerns raised in the Commission's reasoned proposal of December 2017 under Article 7(1) of the Treaty on European Union (TEU), as well as in judgments of the European Court of Human Rights (ECtHR) and of the Court of Justice. The Minister of Justice formally called on Polish judges to fully respect and apply EU law and legal principles stemming from the European Convention on Human Rights⁸. The Minister of Justice also committed to engage with the Council of Europe and the Venice Commission⁹; first consultations on the new reforms took place in April 2024.

The Commission decided to close the Article 7(1) TEU procedure for Poland. On 6 May 2024, the Commission finalised its analysis¹⁰ on the rule of law situation in Poland in the context of the Article 7(1) TEU procedure and concluded that there was no longer a clear risk of a serious breach of the rule of law by Poland. It highlighted the steps under way to address the concerns on the independence of the justice system, as well as the commitments Poland made to the primacy of EU law and to the implementation of judgments of the Court of Justice and of the ECtHR. These steps were also welcomed in a debate in the General Affairs Council on 21 May 2024¹¹. Following this discussion, on 29 May 2024, the Commission decided to close the Article 7 procedure by withdrawing its reasoned proposal of 2017. The Commission confirmed that it will continue to monitor the measures under the Action Plan, as well as other steps to promote the rule of law in Poland, in particular under the Rule of Law Report process¹².

Reforms of the disciplinary regime applicable to judges were positively assessed by the Commission. Under the Recovery and Resilience Facility (RRF), the Commission concluded that Poland had satisfactorily fulfilled the two “super milestones” to strengthen important aspects of the independence of the Polish judiciary, following the measures taken with regard to the disciplinary regime for judges introduced between June 2022 and February 2024¹³. In particular, the Disciplinary Chamber of the Supreme Court was abolished and replaced by an

of law (See the Common position of judges' associations on necessary, urgent actions of the Minister of Justice signed by seven associations of judges of 29 January 2024).

⁶ See the ordinance of the Prime Minister of 13 December 2023 (Official Journal “Monitor Polski” of 2023, item 1384); see also the press release of the Ministry of Justice of 20 February 2024.

⁷ The Action Plan was presented by Poland to the General Affairs Council on 20 February 2024 and was subsequently discussed on 19 March and 21 May 2024.

⁸ Such a call is in itself not binding on judges. See the communication of the Minister of Justice of 7 February 2024 as regards standards related to the right to a fair trial.

⁹ Statement of the Minister of Justice of 15 March 2023 at the plenary session of the Venice Commission; see the press release of 15 March 2023 of the Ministry of Justice.

¹⁰ See the Commission press release of 6 May 2024 IP/24/2461.

¹¹ See the Council press statement of 21 May 2024.

¹² See the Commission press release of 29 May 2024, MEX/24/2986.

¹³ See the Commission's preliminary assessment of Poland's first payment request and the Commission Implementing Decision on the authorisation of the disbursement of the first instalment of the non-repayable support and the first instalment of the loan support for Poland, C(2024) 2369 final. Furthermore, Poland also satisfactorily fulfilled another “super milestone” committing Poland to use Arachne, an IT tool that supports Member States' audit and control systems and which contributes to ensuring the necessary safeguards against risks of fraud.

independent and impartial Chamber of the Supreme Court; the disciplinary regime was reformed, and controversial disciplinary offences were removed; all judges affected by the rulings of the Disciplinary Chamber had the right to have their case reviewed by the new Chamber within a clear timeframe and on the basis of the new regime and all judges suspended in office by the Disciplinary Chamber were reinstated. In addition, the Polish courts can initiate verification procedures on whether a judge meets the requirements of independence stemming from Article 19 TEU. The Commission also considered that Poland now fulfils the horizontal enabling condition related to the EU Charter of Fundamental Rights ('the Charter')¹⁴.

Concerns about disciplinary investigations and proceedings against judges related to the content of their judicial decisions are addressed. An area of previous concern was the risk that disciplinary investigations were being used to investigate and potentially prosecute judges in view of the content of their judicial decisions¹⁵. This risk was confirmed in two rulings of the Court of Justice¹⁶. The Chamber of Professional Liability of the Supreme Court considered such practice to be unlawful¹⁷. In addition to the provisions in the Law of 9 June 2022 which effectively determine that the content of judicial decisions is not classified as a disciplinary offence, and in line with the RRP commitments, on 15 February 2024, the Minister of Justice adopted an Order which establishes the framework on the use of *ad hoc* disciplinary officers and which provides that such *ad hoc* disciplinary officers will be appointed in disciplinary cases concerning the content of judicial decisions.¹⁸ The appointment of an *ad hoc* officer by the Minister of Justice excludes any other such officer from dealing with a given case. The Minister of Justice already appointed *ad hoc* disciplinary officers¹⁹ to take over such disciplinary investigations and proceedings, and, if these officers consider it justified, terminate those investigations or proceedings²⁰. Furthermore, Poland's

¹⁴ See Commission press release IP/24/1222.

¹⁵ These cases concerned instances where judges contested the regularity of the appointment of other judges or the legitimacy of constitutional bodies of State; see to that end the press release of the Disciplinary Officer for Ordinary Court judges of 7 December 2023 and the press release of the Deputy Disciplinary Officer at the Regional Court in Warsaw of 8 January 2024.

¹⁶ See the judgment of 15 July 2021 in the case C-791/19, *Commission v Poland* and of 5 June 2023 in the case C-204/21, *Commission v Poland*.

¹⁷ See case I ZSK 10/23.

¹⁸ The Order stipulates that such officers are to be independent from the Minister of Justice and will be appointed to handle investigations or disciplinary proceedings regarding: (1) the submission of a request for a preliminary ruling to the Court of Justice of the European Union; (2) the content of judicial decisions; (3) the examination by a judge whether the appointment of another judge is in compliance with the applicable law, whether another judge satisfies the requirements of independence and impartiality in connection with the circumstances accompanying his appointment or whether the court bench is compliant with the law in connection with the circumstances accompanying the appointment of a judge who is a member of that bench.

¹⁹ These 'ad hoc' disciplinary officers are appointed from among judges (1) with 10 years of experience in criminal cases; (2) appointed at the request of the NCJ whose independence was beyond doubt; (3) specialised in conducting disciplinary cases. See the press release of the Ministry of Justice of 29 January 2024. See also the Order of the Minister of Justice referred to above.

²⁰ The appointment of 'ad hoc' disciplinary officers occurred for example on 29 January, 15 and 23 February, and on 12 March 2024. So far, over 15 proceedings have been closed. The Ministry of Justice is currently preparing amendments to the rules governing allowances and work-patterns of judges which would reduce the allowances received by disciplinary officers and increase their workload as regards the examination of regular cases. A similar solution as regards the workload will be applied to the judges-members of the NCJ. According to the Ministry of Justice, this would result in a significant increase of the number of cases being examined annually in Poland. See: Rzeczpospolita.pl of 2 March 2024 and Oko. press of 2 April 2024; and Prawo.pl of 4 April 2024.

commitment to the respect of the jurisprudence of the Court of Justice, includes the judgment of 5 June 2023 (case C-204/21) declaring certain provisions of the Polish law on disciplinary offences of judges to be in violation of EU law, which requires all national authorities, and in particular, all national courts, to disapply these provisions. As of November 2023, the NCJ no longer elects new disciplinary officers for ordinary court judges²¹.

The Court of Justice and the European Court of Human Rights further clarified requirements on judicial independence in cases concerning Poland. On 6 July 2023, the ECtHR ruled that there had been multiple violations of the European Convention on Human Rights in a case concerning the disciplinary regime for judges²². On 23 November 2023, the ECtHR issued a pilot judgment²³ concerning judicial independence in Poland, requesting Poland to take a range of legislative measures to comply with Article 6 § 1 requirements, including the principle of independence of the judiciary²⁴. The new Minister of Justice announced²⁵ that Poland would not contest the pilot judgment and would take action to implement it. The new Minister of Foreign Affairs informed the Council of Europe that the Polish Government is committed and determined to fully implement the rulings of the ECtHR, in particular those concerning the rule of law and judicial independence²⁶. On 21 December 2023, the Court of Justice ruled²⁷ that a bench of three judges of the Chamber of Extraordinary Control and Public Affairs of the Supreme Court did not meet the requirements of an independent and impartial tribunal previously established by law as required under Article 19(1) TEU. Polish courts continue to submit to the Court of Justice referrals for preliminary rulings on issues related to judicial independence. The Action Plan on the Rule of Law presented by the Polish Government envisages a full implementation of all the rulings concerning judicial independence issued so far by the Court of Justice and by the ECtHR²⁸.

²¹ See the contribution of the Supreme Court to the Rule of Law Report, p. 4.

²² ECtHR judgment of 6 July 2023, *Tuleya v. Poland*, (Applications nos. 21181/19 and 51751/20).

²³ ECtHR judgment of 23 November 2023 in the case *Wałęsa v. Poland*. Over the past few years, the European Court of Human Rights has developed a new procedure known as the pilot-judgment procedure as a means of dealing with large groups of identical cases that derive from the same underlying problem.

²⁴ In this ruling, and in the light of previous judgments concerning the judicial reforms in Poland initiated in 2017, the ECtHR held that the violations of the right to a fair hearing under Article 6 § 1 had originated in the interrelated systemic problems connected with the malfunctioning of domestic legislation and practice. These underlying problems are: (1) a defective procedure for judicial appointments involving the National Council of the Judiciary as established under the 2017 Amending Act; (2) the resulting lack of independence on the part of the Chamber of Extraordinary Review and Public Affairs of the Supreme Court; (3) the exclusive competence of the Chamber of Extraordinary Review and Public Affairs of the Supreme Court in matters involving a plea of lack of independence on the part of a judge or a court; (4) the defects of the extraordinary appeal procedure as established in this judgment; (5) the exclusive competence of the Chamber of Extraordinary Review and Public Affairs of the Supreme Court to deal with extraordinary appeals. See the ECtHR press release ECHR 322 (2023).

²⁵ Statement made by the Minister of Justice at the session of the National Council for the Judiciary of 14 December 2023.

²⁶ See the letter of the Minister of Foreign Affairs of 15 December 2023 addressed to the President of the European Court of Human Rights and the Committee of Ministers of the Council of Europe. See the press release of the Ministry of Foreign Affairs of the same date.

²⁷ Case C-718/21, *Krajowa Rada Sądownictwa (Maintien en fonctions d'un juge)*. A similar reasoning was retained in the orders of the Court of Justice of 29 May 2024 in the case C-43/22, *Prokurator Generalny*, and in the case C-720/21, *Rzecznik Praw Obywatelskich*.

²⁸ See the press release of the Ministry of Justice of 20 February 2024.

Poland has also started reviewing the positions taken by the previous Government in pending cases before those courts²⁹.

A law to address the serious concerns related to the independence of the National Council for the Judiciary was adopted by the Sejm. The National Council for the Judiciary (NCJ) continued to make requests for judicial appointments to the President of the Republic despite the persisting serious doubts as to its independence³⁰. In order to counter this practice, pending the implementation of a structural solution, the Ministry of Justice announced the freezing of publication of vacant posts in ordinary courts³¹. On 20 December 2023, the Sejm adopted a resolution on the NCJ, stating that it has been composed in violation of the Polish Constitution and thus deprived of the capacity to carry out its constitutional functions and tasks³². On 20 February 2024, as set out in the Action Plan, the Government formally tabled a draft law in the Sejm³³ aimed at restoring the independence of the NCJ. According to the draft law, judges, instead of the Sejm, would be empowered to select and appoint the 15 judges-members of the NCJ³⁴. The NCJ and the First President of the Supreme Court issued negative opinions, considering the draft law to be unconstitutional³⁵. Associations of judges and representatives of civil society organisations welcomed the objectives of the draft law³⁶. At the request of the Minister of Justice, the Venice Commission provided an urgent opinion on the draft law³⁷ that was subsequently reflected by the Senate in an amended legislative text. On 12 July 2024, the Sejm adopted the law, while rejecting a Senate's amendment allowing judges appointed or promoted at the request of the NCJ in its composition pursuant

²⁹ For example, Poland changed its position in cases C-521/21, *Rzecznik Praw Obywatelskich*, joined cases C-146/23 and C-374/23, *Sąd Rejonowy w Białymstoku*, and C-197/23 *S*.

³⁰ 2023 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 5. The NCJ continued adopting resolutions contesting activities of judges aimed at promoting and upholding the rule of law and also challenged several measures adopted by the new Government; See the resolution No. 728/2023 of the NCJ of 29 August 2023 as regards standards of independence and impartiality of judges and resolution No. 113/2024 of 16 February 2024 requesting the Constitutional Tribunal to declare the unconstitutionality of provisions allowing the Minister of Justice to dismiss court presidents and vice-presidents without the binding opinion of the NCJ. On statements of the NCJ criticising draft laws proposed and rulings issued by judges, see the contribution of five NGOs to the Rule of Law Report, p. 5.

³¹ See the communication of the Minister of Justice of 7 February 2024.

³² Resolution of the Sejm of 20 December 2023 as published in "Monitor Polski" of 22 December 2023, item 1457.

³³ Governmental draft law amending the law on the National Council for the Judiciary, Sejm printout No. 219. The draft law was subject to prior consultation of stakeholders.

³⁴ According to the draft law, representatives of all levels of the judiciary in Poland would be included among the new judges-members. The NCJ judges-members appointed thereto by the Sejm since 2018 as well as judges appointed to office at the NCJ's request in its composition since 2018 would be barred from standing in elections but would be able to votes on other candidates. The mandates of the current judges-members of the NCJ elected by the Sejm on 12 May 2022 would expire on the day on which the results of the election for the new members-judges of the Council are announced.

³⁵ See the opinion of the First President of the Supreme Court as regards the draft law on the NCJ of 22 January 2024 (BSA III.021.1.2024) and the opinion of the NCJ of 15 February 2024 on the draft governmental law amending the law on the National Council for the Judiciary (WP.420.1.2024).

³⁶ Full recording of the Committee for Justice and Human Rights of 26 March 2024 holding a public hearing on the draft law. See also the ENNHRI contribution to the Rule of Law Report, p. 8. See also the opinion on the draft law by the 'Iustitia' association of judges (which nonetheless indicates that the draft should also address a number of further issues); opinion of 31 January 2024 by the Helsinki Foundation for Human Rights; and the urgent interim opinion of 8 April 2024 by OSCE/ODHIR (JUD-POL/500/2024 [NR/AIC]).

³⁷ See CDL-PI(2024)009-e Poland - Urgent Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law of the Council of Europe on the draft law amending the Law on the National Council of the Judiciary of Poland issued on 8 May 2024.

to the Law of 8 December 2017 from standing as candidates for membership of the NCJ³⁸. The President of the Republic has 21 days, as of the transmission of the adopted law, to either sign, veto or refer the law to the Constitutional Tribunal³⁹.

Poland committed to strengthen the independence of the Supreme Court. In a number of rulings, the ECtHR and the Court of Justice held that the appointment process of a number of Supreme Court judges was vitiated by fundamental irregularities⁴⁰. As mentioned in the 2023 Rule of Law Report⁴¹, several judges of the Supreme Court, including its First President, have been appointed to the Court in conditions considered by the ECtHR as violating the right to a court established by law. This continues to raise concerns, which meanwhile have led to dissension within the Supreme Court⁴². Poland pledged in its ‘Action Plan’ on Rule of Law to take measures aimed at implementing all the relevant judgments of the Court of Justice and the ECtHR relating to judicial independence. The ‘independence test’ under the Law of 9 June 2022⁴³ and the regular recusal procedures, remain available to the parties to proceedings as a means to remove judges who do not meet the requirements of independence stemming from Article 19(1) TEU and Article 47 of the Charter in specific cases. The First President of the Supreme Court contested the actions taken to address deficiencies in the

³⁸ On this point, the law as adopted by the Sejm does not follow the recommendation of the Venice Commission in its urgent opinion to review the wholesale blanket exclusion from eligibility to the NCJ of such a large cohort (according to the Venice Commission ca. 2500-3500) of judges appointed or promoted at the request of the NCJ in its composition pursuant to the Law of 8 December 2017, because it lacks individual assessment and thus raises questions as to its proportionality. According to the law, such judges would not be able to stand as candidates for membership of the NCJ, but would be only able to vote on other candidates (judges appointed to judicial office or promoted by the NCJ operating prior to the entry into force of the Law of 8 December 2017).

³⁹ On 11 July 2024, the Minister of Justice while supporting the rejection of the Senate’s amendment announced at the session of the Sejm’s Committee for Justice and Human Rights that if the law is not signed by the President of the Republic, it will be necessary to start a new legislative procedure on a new NCJ law and to address the Venice Commission’s recommendations while finding a compromise between the right of newly appointed judges to stand as candidates to the NCJ and the need to restore the rule of law.

⁴⁰ See notably ECtHR judgments of 8 November 2021, *Dolińska - Ficek and Ozimek v. Poland*, 49868/19; of 3 February 2022, *Advance Pharma Sp. Z O.O v. Poland*, 1469/20; and the judgment of the Court of Justice of 21 December 2023 in the Case C-718/21, *Krajowa Rada Sądownictwa* (Maintien en fonctions d’un juge). See also the contributions to the Rule of Law Report by the ENNHRI, p. 8, and by the MEDEL, p. 15.

⁴¹ The 2023 Rule of Law Report: Country Chapter for Poland, p. 7.

⁴² A group of 37 Supreme Court judges appointed before 2018 issued an open letter calling on the Polish authorities to prevent Supreme Court judges appointed in procedures affected by fundamental irregularities from adjudicating cases. The call is also addressed to the Presidents of the Supreme Court, requesting them to step down from their offices. The letter has been widely reproduced by the media, see e.g. *Onet.pl* of 30 January 2024. Furthermore, lay judges of the Supreme Court adopted resolutions announcing that they would abstain from adjudicating cases in panels composed of Supreme Court judges appointed at the request of the NCJ in its composition as of March 2018; see *Prawo.pl* of 13 October 2023. The Civil Chamber of the Supreme Court adopted a resolution whereby they consider that their status cannot be questioned; see Resolution No. 2/2024 of the Assembly of Judges of the Civil Chamber of the Supreme Court of 12 January 2024 on the status of Supreme Court judges, which was adopted by a majority of judges appointed to the court as of March 2018. Three judges of the Chamber of the Extraordinary Control and Public Affairs decided to abstain from adjudicating certain types of cases until rulings of the ECtHR and of the Court of Justice concerning their status have been fully implemented. It is noted that other judges of the same Chamber continue examining such cases, see e.g. the judgment of 28 February 2024 in the case I NKRS 87/23.

⁴³ Introduced by the Law of 9 June 2022 amending the Law on the Supreme Court and certain other laws.

functioning of the justice system⁴⁴. The President of the Republic proposed amendments to the internal rules of the Supreme Court, notably aiming to reduce the quorum necessary for Chambers of the Supreme Court sitting in full bench – from two-thirds to half⁴⁵. A 2021 preliminary ruling of the Court of Justice concerning a judicial appointment to the Supreme Court still remains to be implemented⁴⁶.

The Government tabled draft legislation to address the remaining serious concerns related to the Constitutional Tribunal. On 14 December 2023, the ECtHR pointed to irregularities in the appointment of three judges of the Constitutional Tribunal who sat on the bench delivering a ruling⁴⁷. On 6 March 2024, the Sejm adopted a resolution underlining the unconstitutional character of the appointment of these judges and recalling the unlawful appointment of the current President of the Tribunal⁴⁸. The resolution called on the judges of the Constitutional Tribunal to resign from office and to join the process of democratic change and called on public authorities to abstain from cooperating with the Constitutional Tribunal in order to preserve the principle of legality stemming from the constitution⁴⁹. On 6 March 2024, the Government tabled two draft laws on the Constitutional Tribunal, prepared together with civil society organisations⁵⁰, which were subject to their first reading in Parliament⁵¹.

⁴⁴ See the statement of the First President as regards the draft amendments to the rules of functioning of ordinary courts of 17 December 2023; Declaration of the First President as regards the statements made by the Marshal of the Sejm of 5 January 2024; Declaration of the First President as regards unlawful actions of the President of the Labour Law and Social Security Chamber and of the Marshal of the Sejm of 8 January 2024; Declarations of the First President as regards the unlawful attempt to depose the President of the Court of Appeal in Warsaw of 11 March 2024 and of 20 March 2024 (see also below).

⁴⁵ The amendments were published with final effect in the Journal of Laws of 5 December 2023, item 2635. On 22 December 2023, amendments proposed by the President of the Republic to the internal rules of the Supreme Administrative Court were published with final effect in the Journal of Laws of 22 December 2023, item 2754. These amendments changed the number of judicial posts in the Supreme Administrative Court.

⁴⁶ This concerns the judgment of the Court of Justice of 6 October 2021 in the case C-487/19, *W.Ż.* On 20 March 2024, the newly appointed President of the Criminal Chamber of the Supreme Court decided to reject a motion of the main party to proceedings to recuse from the case four judges directly affected by the judgments of the ECtHR contesting their judicial status. See the ruling of 20 March 2024 in the case I NWW 468/23. Cf. the 2022 Rule of Law Report: Country Chapter for Poland, p. 9.

⁴⁷ ECtHR judgment of 14 December 2023 in the case *M.L. v. Poland* (application no. 40119/21), para. 173.: “next to judge M.M. the Court pointed that judges J. P and J.W. were elected in 2017 and 2018 respectively in order to replace two other judges who had been elected together with Judge M. M by the eighth-term Sejm in a procedure which the Court has already found to be in breach of Article 6 [...]”. The judgment of the Constitutional Tribunal which was contested before the ECtHR concerned the unconstitutionality of the Law on family planning, protection of the human foetus and conditions permitting the termination of pregnancy.

⁴⁸ As of 13 December 2023, the new Government started the practice of publishing rulings of the Constitutional Tribunal with an additional clarification in case these rulings were issued in an irregular composition. The clarification attached to the rulings concerned referred notably to the case law of the ECtHR in cases *Xero Flor w Polsce Sp. z o.o. v. Poland* of 7 May 2021, application no. 4907/18, *Wałęsa v. Poland* of 23 November 2023, application no. 50849/21; *M.L. v. Poland* of 14 December 2023, application no. 40119/21. Following the adoption of the Sejm’s resolution on 6 March 2024, the Polish Government ceased publishing all rulings of the Constitutional Tribunal.

⁴⁹ Cf. The Resolution of the Sejm of the Republic of Poland of 6 March 2024 as regards the removal of effects of the constitutional crisis of 2015-2023 in the context of activities of the Constitutional Tribunal, published in the “Monitor Polski” of 2024, item 198. The resolution is not legally binding. On 28 May 2024, the Constitutional Tribunal held that this resolution is unconstitutional.

⁵⁰ See the press release of the Ministry of Justice of 4 March 2024.

⁵¹ The first reading took place on 26 April 2024. The draft laws on the Constitutional Tribunal (printouts nos. 253 and 254) entail notably the following changes: rulings of the Constitutional Tribunal issued in its

Meanwhile, the Constitutional Tribunal issued a further ruling declaring the unconstitutionality of EU Treaty provisions⁵². On 11 December 2023, it declared a new law aimed at bringing important improvements to the functioning of the judiciary unconstitutional⁵³. It also continued to reject requests for recusal of judges considered to have been appointed unlawfully⁵⁴. The former Prosecutor General as well as Supreme Court judges appointed after March 2018 continued seizing the Constitutional Tribunal in matters related to the constitutionality of EU law⁵⁵, and the Constitutional Tribunal issued a number of interim measures following constitutional complaints lodged by persons deposed from their offices⁵⁶. According to the Polish authorities, these interim measures were issued without any legal basis. The infringement procedure launched by the Commission against Poland concerning the Constitutional Tribunal and its case law is still pending before the

irregular composition would be invalidated (without the invalidation of other decisions issued on the basis of such rulings); the term of office of the President of the Constitutional Tribunal would be terminated and its duties would be taken over by the judge with the highest seniority in the judicial post; the appointment of three judges to already occupied posts would be invalidated; other judges would be given one month to retire (otherwise they would continue to adjudicate in the Constitutional Tribunal). New Constitutional Tribunal judges would be appointed by a 3/5 majority of the Sejm (instead of by absolute majority) and the catalogue of authorities empowered to propose candidates would be significantly extended. Persons who in the past four years exercised a political office would not be allowed to become judges of the Constitutional Tribunal. In addition, the Government proposed a constitutional amendment changing i.a. the method of appointment of new Constitutional Tribunal judges to ensure that no large-scale appointments would materialize within the period of one term of office of the Sejm.

⁵² The judgment of 11 December 2023 in the case K 8/21 as regards a (periodic) penalty payment or a lump-sum payment imposed by the CJEU; in this ruling, the Constitutional Tribunal considered as unconstitutional Article 279 of the Treaty on the Functioning of the European Union and Article 39 of the Statute of the Court of Justice of the European Union.

⁵³ The judgment of 11 December 2023 in the case Kp 1/23 concerning the law of 13 January 2023 amending the Law on the Supreme Court and certain other laws; see the 2023 Rule of Law Report: Country Chapter on the rule of law situation in Poland, pp. 9-10.

⁵⁴ See e.g. the communication of the Sejm of 3 April 2024 issued in the context of the case K 27/23.

⁵⁵ See the legal questions of the Civil Chamber of the Supreme Court of 12 January 2024 in the case II CSKP 426/22 contesting the constitutionality of Article 19(1) TEU read in connection with Article 47 of the Charter of Fundamental Rights and Article 267 TFEU. See also the motion of the previous Prosecutor-General to the Constitutional Tribunal as regards specific measures adopted under the “Green Deal” package (see the press release of the Ministry of Justice of 20 October 2023) and the European Trading System (see the press release of the Ministry of Justice of 24 November 2023). Similar motions are being withdrawn. For example, the current Prosecutor-General withdrew on 31 January 2024 the motion of the previous Prosecutor-General as regards the constitutionality of provisions governing the functioning of the self-government of medical doctors; see. DoRzeczy.pl of 31 January 2024. On 23 April 2024, the National Council for the Judiciary requested the Constitutional Tribunal to declare the unconstitutionality of provisions of the ECHR requiring Poland to implement ECtHR judgments on judicial independence and to pay damages to parties in such cases (See the Resolution of 23 April 2024 No. 233/2024).

⁵⁶ This concerns i.a. interim measures in the case Ts 9/24, aimed at preventing the Prosecutor-General from carrying out the appointment of a new National Prosecutor (see also below) and in the case Ts 32/24 aimed at withholding the dismissal of the President of the Court of Appeal in Warsaw. The Minister of Justice considers these decisions as legally invalid, notably since they were issued in the context of constitutional complaints which can be lodged with the Constitutional Tribunal only after the exhaustion of all legal remedies available before ordinary courts. See to this end the press release of the Ministry of Justice of 23 January 2024.

Court of Justice⁵⁷. Poland has meanwhile changed its position in this case, acknowledging the existence of a violation of EU law.

The effects of the contested justice reforms of 2017 regarding the functioning of the ordinary judiciary are being reversed. The new Minister of Justice publicly pledged to involve the judiciary in all decisions related to appointments to key positions within the ordinary judiciary and to organise transparent appointment procedures based on open competitions⁵⁸. This new approach was already implemented as regards the appointment of court presidents and vice-presidents which, since 2017, did not ensure the involvement of bodies of judicial self-government. The Minister of Justice dismissed⁵⁹ or started the process of dismissing⁶⁰ several court presidents and vice-presidents appointed by the previous Minister of Justice on the grounds of abuse of power⁶¹. Some of these decisions were contested, and the Constitutional Tribunal⁶² issued interim measures suspending certain dismissals⁶³. Internal rules on the functioning of ordinary courts were amended to ensure that the verification of compliance by judges with the requirements stemming from Article 19(1) TEU are not conducted by judges appointed to the office at the request of the NCJ in its composition as of March 2018⁶⁴. The President of the Republic and the NCJ contested the constitutionality of these amendments before the Constitutional Tribunal. A new head of the National School of Judiciary and Prosecution was appointed⁶⁵. Several secondments of ordinary court judges to the Ministry of Justice, the NCJ and the National School of Judiciary and Prosecution were revoked by the Minister of Justice who considered that public officials could fill those positions and that courts would benefit from the return of the seconded judges⁶⁶. The new Government also announced the creation of four specialised Committees tasked

⁵⁷ On 17 July 2023, the Commission brought an application pursuant to Article 258 TFEU against Poland to the Court of Justice for violations of EU law by the Constitutional Tribunal and its two rulings issued in 2021; see case C-448/23.

⁵⁸ Press release of the Ministry of Justice of 22 January 2024.

⁵⁹ On 19 December 2023, the Minister of Justice withdrew decisions of the previous Minister of Justice concerning appointments to the office of court presidents that had not yet exerted legal effect; see the press release of the Ministry of Justice of 19 December 2023.

⁶⁰ It is noted that some court presidents and vice-presidents decided to resign on their own from the offices occupied; see the press release of the Ministry of Justice of 2 April 2024.

⁶¹ Often the dismissal decisions are preceded by the suspension of the court president or vice-president in office. See e.g. two press releases of the Ministry of Justice of 11 March 2023. As of 5 July 2024, 108 dismissal procedures have been launched each time suspending the president/vice president from duty.

⁶² It is also noted that the Constitutional Tribunal has been seized by the NCJ as regards the constitutionality of provisions allowing the Minister of Justice to dismiss court presidents without a prior binding opinion of the NCJ to that end – see above.

⁶³ Wyborcza.pl of 22 February 2024 describing a declaration made by the President of the Court of Appeal in Warsaw who is, at the same time, the Main Disciplinary Officer for Ordinary Court judges, of 22 February 2024. As regards the involvement of the Constitutional Tribunal, see the interim measure order issued in the case Ts 32/24.

⁶⁴ See the Regulation of the Minister of Justice of 6 February 2024 amending the Regulation – Internal rules governing the functioning of ordinary courts published in the Official Journal of 7 February 2024, item 149.

⁶⁵ The appointment was organised as an open competition; the new Minister of Justice dismissed from the office the previous head of the School appointed by the previous Government just before the new Government took office. See the press release of the Ministry of Justice of 2 February 2024 and of 14 March 2024.

⁶⁶ See the press release of the Ministry of Justice of 12 January 2024.

with proposing improvements to the legislation in the areas of civil law, criminal law, family law, and legislation governing the functioning of the judiciary and the prosecution system⁶⁷.

Significant progress has been made to ensure the functional independence of the prosecution service from the Government and some progress has been made to separate the office of the Minister of Justice from that of the Prosecutor General. The 2023 Rule of Law Report recommended to Poland to ‘[s]eparate the function of the Minister of Justice from that of the Prosecutor General and continue efforts to ensure functional independence of the prosecution service from the Government’⁶⁸. Following his appointment, the new Minister of Justice-Prosecutor General formally called on the prosecutors to act independently, pending a full separation from the two offices⁶⁹. The Ministry of Justice presented a broad description of the forthcoming reform to separate the office of the Minister of Justice from that of the Prosecutor-General and enhance the functional independence of prosecutors⁷⁰. On 12 January 2024, the Minister of Justice formally ascertained that the National Prosecutor had returned to active service without a valid legal basis and, consequently, cannot occupy the office⁷¹. This decision was contested, among others, by the President of the Republic who seized the Constitutional Tribunal⁷². On 14 March 2024, the Prime Minister appointed a new National Prosecutor⁷³, which was also contested by the President of the Republic⁷⁴. Developments concerning the National Prosecutor are also raised in a case before the Supreme Court⁷⁵. Changes were made to the composition of the National

⁶⁷ See the press release of the Ministry of Justice of 5 March 2024.

⁶⁸ 2023 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 11. The Commission had assessed that no progress had been made on the recommendation in the 2022 Rule of Law Report to separate the function of the Minister of Justice from that of the Prosecutor-General and that some progress had been made on the recommendation to ensure functional independence of the prosecution service from the Government.

⁶⁹ See the letter of the Prosecutor-General of 15 January 2024 addressed to prosecutors, assistant prosecutors, assistants, officials and clerks working at public prosecutor’s offices.

⁷⁰ According to the announced reform, the new Prosecutor-General would be appointed by the absolute majority of votes in the Sejm with the binding consent of the Senate to a 6-year term of office (not renewable). The appointment of a new Prosecutor-General would be preceded by an open competition and public hearings and his dismissal would be possible exclusively in situations provided for by law. See the press release of the Ministry of Justice of 19 January 2024.

⁷¹ Appointed to the post on 18 March 2022. The current Prosecutor-General considered that the former Prosecutor-General had brought back to active service the prosecutor later nominated National Prosecutor on the basis of provisions which, at the relevant time, had ceased to apply. Therefore, the Minister of Justice considered that the National Prosecutor was not formally dismissed from the office – which would have required a formal consent of the President of the Republic – but was considered as never validly having exercised the office supposedly held. See the press release of the Ministry of Justice of 12 January 2024.

⁷² The former National Prosecutor lodged a constitutional complaint with the Constitutional Tribunal which, on that basis, on 15 January 2024 issued an interim measures order in the case Ts 9/24, prohibiting the Prosecutor-General from preventing the hitherto National Prosecutor from carrying out his duties. The Prosecutor-General denied the legal validity of this decision (see above). On 15 January 2024, the President of the Republic lodged with the Constitutional Tribunal a request to settle the dispute over authority and to determine whether the Prosecutor-General can decide *de facto* on the personal composition of the National Prosecutor’s Office in circumvention of the Prime Minister and the President of the Republic; see the case Kpt 1/24 (pending).

⁷³ This was done following an open and transparent procedure. See the press release of the Ministry of Justice of 9 February 2024.

⁷⁴ See the letter of the President of the Republic addressed to the Prime Minister of 19 March 2024 (BPU.0701.8.2024) where he considers that the office continues to be occupied by the previous holder.

⁷⁵ Following a legal question submitted by an ordinary court; see Prawo.pl of 7 March 2024.

Council of Prosecutors⁷⁶. Prosecutors degraded or seconded by the previous Prosecutor-General were returned to their former posts⁷⁷. Following the request of Poland, the Commission confirmed Poland's participation in the European Public Prosecutor's Office (EPPO). The EPPO will be competent to investigate and prosecute crimes affecting the Union's financial interests committed in Poland after 1 June 2021⁷⁸. In view of the developments set out above, there has been significant progress on the 2023 recommendation to continue efforts to ensure functional independence of the prosecution service from the Government and some progress on the recommendation to separate the function of the Minister of Justice from that of the Prosecutor General.

Quality

The level of digitalisation is advanced, although gaps still remain regarding online access to judgments. Digital tools are broadly used in courts, and digital solutions to initiate and follow proceedings in civil, commercial, and administrative cases are in place⁷⁹. Gaps still remain in particular in online access to published judgments or in the availability of electronic communication tools in the prosecution service⁸⁰. As regards salaries of judges, the Constitutional Tribunal ruled on the unconstitutionality of provisions governing their determination⁸¹. Meanwhile, the Government adjusted the budgetary law for 2024 applying regular statutory rules to the judicial salaries⁸².

Efficiency

The overall performance of ordinary and administrative courts continues to be relatively stable. As regards ordinary courts, while the estimated time needed to resolve civil, commercial, administrative, and other cases in 2022 further decreased (from 107 days in 2021 to 100 days in 2022)⁸³, an opposite trend is seen in litigious civil and commercial cases in first instance courts (an increase from 330 in 2021 to 362 in 2022)⁸⁴. The rate of

⁷⁶ On 21 December 2023, the Prosecutor-General dismissed five members of the Council representing his office, appointed thereto by the previous Prosecutor-General. This gave rise to controversy and the dismissed members contested the decision, arguing that the office held in the Council is of four years and cannot be rescinded unless in cases specified by law. See: the press release of the Ministry of Justice of 21 December 2023 and Prawo.pl of 29 December 2023.

⁷⁷ See the press releases of the Minister of Justice-Prosecutor-General of 4 January 2024 on the termination of secondments of prosecutors to the National Prosecutor's Office and of 29 January 2024 on the termination of secondments of 10 prosecutors of the Regional and Provincial Prosecutor's Offices. See also the press releases of the National Prosecutor of 11 and 29 March 2024.

⁷⁸ See the Commission Decision (EU) 2024/807 of 29 February 2024 confirming the participation of Poland in the enhanced cooperation on the establishment of the European Public Prosecutor's Office. Procedures for the appointment of the European Prosecutor from Poland and European Delegated Prosecutors are ongoing.

⁷⁹ Figures 44 and 43, 2024 EU Justice Scoreboard.

⁸⁰ Figures 45 and 49, 2024 EU Justice Scoreboard.

⁸¹ Following up on a request lodged by the First President of the Supreme Court, the President of the Supreme Administrative Court and the NCJ; see the judgment of 8 November 2023 in the case K 1/23; for additional background see the 2023 Rule of Law Report: Country Chapter on the rule of law situation in Poland, p. 14.

⁸² See the amendment of the Government to the governmental draft law on specific solutions for the implementation of the budgetary law for 2024 (amendment No 128-A). See also LIBERTIES contribution to the Rule of Law Report, p. 12.

⁸³ Figure 5, 2024 EU Justice Scoreboard.

⁸⁴ Figure 6, 2024 EU Justice Scoreboard.

solving civil, commercial, administrative, and other cases continues to increase⁸⁵. As regards administrative courts, the estimated time to solve administrative cases in first instance increased slightly (from 151 in 2021 to 163 in 2022)⁸⁶.

II. ANTI-CORRUPTION FRAMEWORK

Several authorities are responsible for anti-corruption in Poland, including the Prosecutor General⁸⁷, and the Minister of Internal Affairs and Administration who is in charge of prevention aspects, such as the lobby register for public officials. The Central Anti-Corruption Bureau is the law enforcement body set-up to combat corruption in the public and the private sector⁸⁸ alongside the Central Police Investigation Bureau and the regular police, the Internal Security Agency, and the Prosecution Service⁸⁹. The Supreme Audit Office (NIK) has a preventive role, monitoring the public spending of the government administration bodies, including the National Bank of Poland and state legal persons⁹⁰.

The perception among experts and business executives is that the level of corruption in the public sector remains relatively high. In the 2023 Corruption Perceptions Index by Transparency International, Poland scores 54/100 and ranks 19th in the European Union and 47th globally⁹¹. This perception has deteriorated over the past five years.⁹² The 2024 Special Eurobarometer on Corruption shows that 52% of respondents consider corruption widespread in their country (EU average 68%) and 45% of respondents feel personally affected by corruption in their daily lives (EU average 27%)⁹³. As regards businesses, 43% of companies consider that corruption is widespread (EU average 65%) and 27% consider that corruption is

⁸⁵ Figure 10, 2024 EU Justice Scoreboard.

⁸⁶ Figure 12, 2024 EU Justice Scoreboard.

⁸⁷ See also Pillar I on progress to separate the Prosecutor General from the position of Minister of Justice.

⁸⁸ The Bureau is also competent in matters related to corruption prevention, particularly in health care bodies and policy coordination. The Supreme Audit Office audit questioned the appropriateness of also entrusting the Central-Anticorruption Bureau with corruption prevention and policy coordination tasks, as it would neither have the competence (i.e. legislative initiative) as a law enforcement body nor the resources to coordinate public policy. Supreme Audit Office (2022), Post-audit presentation of the audit Implementation of the Government Anti-Corruption Programme for 2018-2020.

⁸⁹ Cf. Law of 9 June 2006 on the Central Anti-Corruption Bureau. The Law of 24 May 2002 on the Internal Security Agency and Foreign Intelligence Agency. The Law of 28 January 2016 on the Prosecution Service. Law of 6 April 1990 on the police. Within the police, the Police Internal Affairs Bureau is appointed to combat and reduce corruption within the police itself. According to input from Poland for the 2024 Rule of Law Report, p. 25, at the regional level, there are also specialised corruption departments in the Provincial Police Headquarters, while in the Public Prosecutor's Office, the most serious cases of corruption are prosecuted by eleven local departments that are institutionally part of the National Public Prosecutors Office's Department for Organised Crime and Corruption.

⁹⁰ Law of 23 December 1994 on the Supreme Audit Office.

⁹¹ Transparency International (2024), Corruption Perceptions Index 2023. 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).

⁹² In 2019, the score was 58, while, in 2023, the score is 54. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points) and is relatively stable (changes from 1-3 points) in the last five years.

⁹³ Special Eurobarometer 548 on Citizens' attitudes towards corruption in the EU (2024). The Eurobarometer data on citizens' corruption perception and experience is updated every year. The previous data set is the Special Eurobarometer 534 (2023).

a problem when doing business (EU average 36%)⁹⁴. Furthermore, 42% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 32%)⁹⁵, while 22% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 31%)⁹⁶.

The Government has engaged in preliminary discussions with stakeholders on a new anti-corruption strategy to address prevailing corruption risks for the years to come⁹⁷. As reported last year, the Supreme Audit Office recommended in its December 2022 report to prepare and adopt an anti-corruption programme⁹⁸. Preliminary exchanges have taken place between the Government and civil society on the benefits of developing a comprehensive anti-corruption policy, which could include a new strategy and action plan, to support an overall strategic policy approach which for now is still missing⁹⁹.

The Government committed to strengthening the investigation and prosecution of corruption crimes. To address some of the systemic weaknesses identified in previous reports, the Government plans to increase the independence of the anti-corruption institutions in charge of investigating and prosecuting corruption crimes¹⁰⁰, including through legislative amendments to separate the position of Prosecutor General from the position of Minister of Justice¹⁰¹. The Association of Prosecutors is calling for a comprehensive legislative reform of the prosecution service to address risks of politicisation and the selective application of the law in corruption cases for political purposes¹⁰². In addition, the Government Coalition Agreement contains a commitment to dismantle the Central Anti-Corruption Bureau, transferring its resources and competences, including to fight corruption, among others to the Police's Central Bureau of Investigation¹⁰³, as previous reports raised concerns about the

⁹⁴ Flash Eurobarometer 543 on Businesses' attitudes towards corruption in the EU (2024). The Eurobarometer data on business attitudes towards corruption as is updated every year. The previous data set is the Flash Eurobarometer 524 (2023).

⁹⁵ Special Eurobarometer 548 on Citizens' attitudes towards corruption in the EU (2024).

⁹⁶ Flash Eurobarometer 543 on Businesses' attitudes towards corruption in the EU (2024).

⁹⁷ Poland's last anti-corruption strategy and action plan was in place from 2018-2020.

⁹⁸ Supreme Audit Office, Implementation of the Government Programme Counteracting Corruption for the Years 2018-2020 (December 2022). See the 2023 and 2022 Rule of Law Report, Country chapter on the rule of law situation in Poland, pp. 13-14; see also Supreme Audit Office (2022), Post-audit presentation of the audit Implementation of the Government Anti-Corruption Programme for 2018-2020.

⁹⁹ Information received from Batory Foundation/ Helsinki Foundation for Human Rights in the context of the country visit to Poland.

¹⁰⁰ See Government Coalition Agreement (2023); Gazeta Wyborcza (10 November 2023), The first open coalition agreement in the history of Poland. For more details on related reforms on the independence, see pillar I.

¹⁰¹ Written contribution from Ministry of Justice in the context of the country visit to Poland, pp. 1-2. See also for more details pillar I above.

¹⁰² This was raised as a concern in previous Rule of Law Reports; instead of amendments to the existing law on the prosecution service, Lex Super Omnia proposed a comprehensive draft bill to inform the Government on 26 December 2023, see Draft new law on the system of the public prosecutor's office. See also in this context Lex Super Omnia (9 February 2024), Prosecutors will not be intimidated by politicians, reporting intimidation efforts by Law and Justice politicians of prosecutors who support the reform.

¹⁰³ According to the Spokesperson for the Minister of Special Services, plans include the establishment of a new unit within the police with regular police powers (rather than special intelligence powers of the Central Anti-Corruption Bureau) and competences to investigate high-level corruption cases. Competences for petty corruption cases are envisaged to be shifted to the Police's Central Bureau of Fighting Corruption, which is to be created on the basis of a new law and where the staff of the Central Anti-Corruption Bureau would be transferred. Competences of the Central Anti-Corruption Bureau related to public procurement are envisaged

subordination of the Bureau to the executive¹⁰⁴. A draft act is envisaged to be submitted to the Sejm before the summer¹⁰⁵. Poland's participation in the European Public Prosecutor's Office is also expected to facilitate the investigation of fraud and corruption affecting the financial interests of the Union¹⁰⁶.

The reform of the Criminal Code to increase the level of penalties for corruption entered into force. Corruption is broadly criminalised under Polish law¹⁰⁷. The reform of the Act of July 2022, initially due on 14 March 2023, was adopted on 1 October 2023¹⁰⁸. The reform was passed through an accelerated procedure in Parliament, which gave rise to some criticism from a wide range of stakeholders¹⁰⁹. In practice, corruption crimes committed

to be shifted to the National Revenue Administration, and those related to the control and verification of asset declarations to the National Revenue Administration see Polsat News (29 March 2024), referring to a statement delivered to the media by the spokesperson of the Minister for Interior and Administration; see also the Polish Press Agency (22 April 2024) presenting statements of the Minister for Interior and Administration on this issue. See also the draft law of 28 May 2024 on the Enhancing the Coordination of Anti-Corruption Actions, Dismantlement of the Central Anti-Corruption Bureau and amending certain other laws.

¹⁰⁴ See Government Coalition Agreement (2023), para. 19, p. 7, and concerns raised in the 2023 Rule of Law Report, Country chapter on the rule of law situation in Poland, p. 17. See also Bertelsmann Stiftung (2024), Transformation Index (BTI) – Country Report: Poland, p. 11, highlighting that the Central Anti-Corruption Bureau is closely linked to the former government lacking independence. Similarly, information received from Batory Foundation and Helsinki Foundation for Human Rights in the context of the country visit to Poland, stressing the need for an ex-anti impact assessment before the dissolution and embedding in a larger anti-corruption policy approach, including a new strategy.

¹⁰⁵ See the draft governmental Act on Enhancing coordination of anti-corruption activities, dismantling of the Central Anti-Corruption Bureau and the amendment of other acts, which was entered in the List of legislative works of the Council of Ministers under number UD46, see <https://legislacja.gov.pl/projekt/12385657>. It envisages the establishment of the Central Corruption Combatting Bureau within the police structures, with country-wide competence to detect, analyse, prevent and combat corruption. According to the publicly available information, the Council of Ministers is expected to adopt this draft law by the second quarter of 2024.

¹⁰⁶ See Pillar I. Input from Poland for the 2024 Rule of Law Report, p. 20. This initiative is welcomed by practitioners, such as the Association of Judges and Prosecutors Iustitia, Themis and Lex Super Omnia, reporting about evidence especially for political cases having been controlled by the central prosecutors office previously and not been shared with the EPPO, according to information received in the context of the country visit to Poland.

¹⁰⁷ The key offence penalised by the Criminal Code is bribery of public officials in its passive (accepting a bribe) and active (offering a bribe) forms. The term 'person holding a public position' as defined by law has a broad scope, including among others the President of the Republic of Poland, members of Parliament, judges, notaries, officers of a public authority, members of local authorities.

¹⁰⁸ The delay in enforcement was introduced by the amendment of provision on the effective date of the act by the Act of 26 January 2023 amending the Code of Civil Procedure and some other acts and justified by the Vice-Minister of Justice as necessary to address inconsistencies with the new Executive Penal Code (that did not exist at the time of adoption of the amendments to the Criminal Code) and the Act on Support and Rehabilitation of Juveniles. See also Gazeta Prawna (30 January 2023). The reform introduces stricter levels of criminal responsibility, higher sanctions and new types of offences to capture certain aggravating circumstances for corruption crimes.

¹⁰⁹ See for instance, Krakowski Instytut Prawa Karnego (2023), p. 29; Dogmaty Karnisty (1 October 2023). Lawyers' associations have complained about the procedure, the government justification and lack of consultation, as they see the problem not in the level of sanctions but in the effectiveness of the proceedings, and therefore issued a resolution and an open letter questioning the impact of the amendments. Information received from National Chamber of Legal Councillors/ Supreme Bar Council/ Free Courts Initiative in the context of the country visit to Poland. See in this context also the press release of the Ombudsperson of 18 July 2022; the Opinion of the Ombudsperson of 15 July 2022 (II.510.1043.2021.PZ); resolution No. 82/2022 of the National Bar Council of 19 November 2022.

before 1 October 2023 will continue to be prosecuted and adjudicated under a less severe regime (*lex mitior*). Stakeholders took the view that the challenges of fighting corruption do not relate to the level of penalties, which the reform increased¹¹⁰, but to shortcomings regarding the effectiveness of corruption proceedings¹¹¹. Whilst the effectiveness of combatting foreign bribery in practice currently remains rather low¹¹², the new Prosecutor General encouraged prosecutors to make full use of sources of information and to increase judicial cooperation to enhance the effectiveness of foreign bribery detection¹¹³. Moreover, the Ministry of Justice is continuing the work to amend the Act on the liability of collective entities for criminal offences¹¹⁴. As previously reported, the amendments aim to remove the rule according to which private companies can be held criminally liable for foreign bribery only after the final instance court sentence convicting the natural person(s) involved in the foreign bribery case or after the termination of the proceedings for other reasons¹¹⁵.

Some progress has been made towards enabling a robust track record of high-level corruption cases and several large-scale cases are now being investigated. The 2023 Rule of Law Reports recommended to Poland to “ensure independent and effective investigations and prosecutions, [...] in order to enable a robust track record of high-level corruption cases”¹¹⁶. Some large-scale corruption cases involving public officials are now being investigated¹¹⁷, including in relation to the visa corruption scandal¹¹⁸ and the bribery scheme for university diplomas¹¹⁹. The levels of specialisation within the police and prosecution service, cooperation among relevant entities in charge of combatting corruption, and access to

¹¹⁰ The underlying rationale of the amendments was the strengthening of the protection of citizens’ security.

¹¹¹ As reported last year, 2023 Rule of Law Report, Country Chapter on the rule of law situation in Poland p. 16. See also pillar I regarding the progress on the functional independence of prosecutors (pp. 13-14) and in pillar II on calls for a comprehensive prosecution service reform to depoliticise the prosecution (pp. 17 and 19).

¹¹² See 2023 Rule of Law Report, Country Chapter on the rule of law situation in Poland p. 16. The OECD reports one single conviction of an individual as the only successful prosecution to date. OECD Anti-Bribery Convention, Phase 4 Report – Poland (8 December 2022), p. 4. See also Transparency International, Exporting Corruption (2022), pp. 99-100, reporting little or no enforcement, with one investigation having been opened in the period of 2018-2021, while no cases were commenced or concluded with sanctions.

¹¹³ Information received from General Prosecutor’s Office/ Office of the National Prosecutor in the context of the country visit to Poland.

¹¹⁴ Input from Poland for the 2024 Rule of Law report, p. 15.

¹¹⁵ 2023 Rule of Law Report, Country chapter on the rule of law situation in Poland, p. 16. See also OECD, Implementing the OECD Anti-Bribery Convention - Phase 4 Report: Poland, p. 63 and the justification of the bill 2022, pp. 5-6; an indicative legislative timeline is not yet available.

¹¹⁶ No progress was made in this regard in the previous year, see 2023 Rule of Law Report, Country chapter on the rule of law situation in Poland, p. 2.

¹¹⁷ For example, the prosecution of the findings of misuse of per diem allowances of a member of the European Parliament has been started after more than three years. See the press release of the Public Prosecutor’s Office in Lublin of 26 February 2024. See in this context also Helsinki Foundation (2022), A state of accusation: Polish prosecution service 2015-2022.

¹¹⁸ A total of 9 individuals have already been charged, see Central Anti-Corruption Bureau (17 January 2024), Former deputy Minister of Foreign Affairs detained. In September 2023, the Commission wrote a letter to Polish Government requesting detailed information about the concerning allegations (see Commission statement on 3 October 2023). In Poland, a Resolution was passed on 19 December 2023 to set up an investigative committee in the Parliament to investigate.

¹¹⁹ Central Anti-Corruption Bureau (13 March 2024), Collegium Humanum scandal – further detainees. Academic MBA titles were allegedly issued for bribes after a short time of study, sometimes only weeks or a few months, followed by nominations to state-owned enterprises, according to information received from the Civil Development Forum in the context of the country visit to Poland.

relevant registries, are found to be overall sufficient for investigation and prosecution work to be carried out effectively¹²⁰, although prosecution faces some practical challenges¹²¹. In addition, risks of a selective application of the law and disparity in the treatment of corruption cases for political purposes, as previously reported, still remain¹²² but are envisaged to be addressed through reforms related to the prosecution service¹²³. In some high-level corruption cases, presidential pardons were issued in relation to former politicians¹²⁴. In response to the discovery of hidden prosecution files concerning corruption cases involving high-level politicians in the previous legislature, action was taken now with several prosecutors having been dismissed and an internal control of all cases handled by a regional prosecution office been launched. This has resulted in the re-examination of several high-level proceedings of this office¹²⁵. Following the Supreme Audit Office's report of the control of the National Centre for Research and Development's spending¹²⁶ which pointed to irregularities, corruption and the abuse of public officials' powers in this executive agency¹²⁷, the Central Anti-Corruption Bureau launched an investigation¹²⁸. Overall, due to these initial developments, interlocutors and stakeholders expect an increase of corruption cases to be

¹²⁰ Information received by the General Prosecutor's Office/ Office of the National Prosecutor/ Central Anti-Corruption Bureau in the context of the country visit to Poland. Notably, the Representatives of lawyers expressed a different view, highlighting the need for additional financial resources and for enhanced expertise for complex corruption cases within the police and the prosecution service, as well as clients' access to files.

¹²¹ Notably as regards complex evidence gathering in the context of encrypted criminal communication devices and the use of cryptocurrencies. Information received from the General Prosecutor's Office/ Office of the National Prosecutor/ Representatives of lawyers in the context of the country visit to Poland.

¹²² Information received by the Association of Judges and Prosecutors (Iustitia, Themis, and Lex Super Omnia),/ representatives of lawyers (Bar and Legal Councillors), and NGOs (Helsinki Foundation for Human Rights, Batory Foundation) and representatives of journalists and media associations met in the context of the country visit to Poland. See 2023 and 2022 Rule of Law Report, Country chapter on the rule of law situation in Poland, p. 17 (for 2023) and p. 16 (for 2022). Following the elections, the prosecution service has by now withdrawn the request to the Senate to lift the immunity of a Senator, see Polish Press Agency (22 February 2024): The decision of the prosecutor's office has been made, other corruption cases against political opponents of the previous Government are still pending in 2023, for example the investigations against Roman Giertych, see Onet.pl (20 November 2023): the prosecution is considering a request for waiver of immunity; Polish Press Agency (8 September 2023).

¹²³ See pillar I above regarding the progress on the functional independence of prosecutors (pp. 13-14) and in pillar II above on the Government's commitment to strengthen the investigation and prosecution of corruption crimes and calls for a comprehensive prosecution service reform to depoliticise the prosecution(p. 17).

¹²⁴ See the press release of the President of the Republic of 23 January 2024; see also Pillar IV for additional details of the context of the pardon concerned; the Polish President says he has pardoned two jailed opposition politicians, including a former minister and former deputy minister convicted in 2015 for abuse of office while working at the Central Anti-Corruption Bureau who lost an appeal against the court verdict including a sentence to two years imprisonment in December 2023.

¹²⁵ Ministry of Justice (29 January 2024), Dismissal of 10 District and Regional Prosecutors. See also Wyborcza.pl (9 February 2024). Radio Szczecin (29 January 2024).

¹²⁶ As previously reported, this is a case where no effective follow up was undertaken by the police and prosecution service despite the suspicion of a large-scale corruption and fraud involving EU fund. Instead the police questioned the reporting authorities and other stakeholders flagging the suspicion, see 2023 Rule of Law Report, Country chapter on the rule of law situation in Poland, p. 17.

¹²⁷ Supreme Audit Office (16 November 2023), NCBR – billions spent with no effect for innovation, filing reports to the prosecutor's office and a notification to the European Anti-Fraud Office (OLAF).

¹²⁸ Central Anti-Corruption Bureau, CBA control at the National Centre for Research and Development.

brought to the courts in the coming years¹²⁹. In light of this, there has been some progress on the recommendation made in the previous years.

There has been no progress yet to address the broad immunities of top executives and the impunity clauses in legislation, which remain in place. The 2023 Rule of Law Report recommended to Poland to “[...] address the broad scope of immunities for top executives and to abstain from introducing impunity clauses in legislation in order to enable a robust track record of high-level corruption”¹³⁰. Concerns regarding the broad scope of immunities of persons exercising top executive functions, who are also members of Parliament, have not yet been addressed, with GRECO reiterating its recommendation to exclude corruption crimes from the scope of immunities¹³¹. As reported last year, such immunities act as an obstacle to criminal accountability for corruption crimes committed outside the official capacity of top executives¹³². An amendment to the Criminal Code, adopted in July 2023 by the Sejm and in force since 1 October 2023, introduced a new impunity provision for accomplices of corruption in public tenders, if they report the crime to police, effectively excluding prosecution¹³³. In addition, previously introduced impunity clauses remain to a large extent unchanged and in force¹³⁴. As underlined in last year’s report, such exemptions from criminal responsibility increase the risk of corruption and may foster the abuse of political and administrative power, given the lack of deterrence and the perception of impunity. In practice, the Central Anti-Corruption Bureau, in its supervisory capacity, continues to monitor the use of impunity clauses, providing opinions and threat assessments¹³⁵. However, impunity provisions have been applied in a starkly increasing number of cases, from 10 cases (in 2023) to 163 cases (from January to mid-March 2024), as reported by the prosecution service¹³⁶. However, the fact that a dedicated investigative

¹²⁹ Information received from Association of judges (Iustitia, Themis), representatives of lawyers (the Bar and Legal Councillors), and NGOs (Helsinki Foundation for Human Rights, Batory Foundation) and representatives of journalists and media associations met in in the context of the country visit to Poland (see the annex).

¹³⁰ No progress was made in this regard in the previous year, see 2023 Rule of Law Report, Country chapter on the rule of law situation in Poland, p. 2.

¹³¹ GRECO Fifth Evaluation Round – Second Compliance Report, paragraph 54.

¹³² 2023 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 18. GRECO Fifth Evaluation Round – Compliance Report, paragraphs 54-63; and GRECO Fifth Evaluation Round – Evaluation Report, paragraphs 82-91, reiterating its recommendation that in respect of persons exercising top executive functions, an in-depth reform of the system of immunities be carried out with a view to facilitating the prosecution of corruption offences by excluding these from the scope of immunities and by ensuring that the procedure for the lifting of the immunity is transparent and based on objective and fair criteria used effectively in practice (see paragraph 87).

¹³³ The reform introduced to Article 305 of the Criminal Code a new paragraph (6), according to which a person who commits offence avoids the penalty if they report the offence to the competent law enforcement or antitrust authorities, disclosing all relevant circumstances of the case. For more details on the reform, see Dentons Law Firm (31 October 2023), Amendment to the criminal code: Significant changes to the provisions on disrupting public procurement.

¹³⁴ 2023 Rule of Law Report, Country Chapter on the rule of law situation in Poland, pp. 18-19.

¹³⁵ According to information received from the Central Anti-Corruption Bureau in the context of the country visit to Poland, its monitoring activities focused in particular on the use of impunity clauses in public procurements, including regarding the construction of the Polish-Belarusian border, the Government’s ‘anti-corruption shield’ to prevent irregularities in privatisation of key enterprises, and the strategic reserve fund. In this context, see also Gazeta Wyborcza (8 December 2023). See also Central Anti-Corruption Bureau (10 April 2024), Information on the results of the CBA’s activities in 2023.

¹³⁶ Information received from the General Prosecutor’s Office/Office of the National Prosecutor in the context of the country visit to Poland.

commission has been set up in the Parliament to investigate activities of high-level public officials, including members of Parliament, provides an opportunity to address parliamentary immunities and to assess broad impunity legislation from the past¹³⁷. Since no steps have been taken to address the broad scope of immunities for top executives and to amend the existing impunity provisions in force, there has been no progress yet on the implementation of those parts of the recommendation made in the previous years.

There has been no progress yet to strengthen lobbying rules. The 2023 Rule of Law Report recommended to Poland to “strengthen the existing integrity rules by introducing lobbying rules [...]”¹³⁸. The 2018-2020 anti-corruption programme¹³⁹ had included the revision of the lobbying regulation¹⁴⁰. This has, however, not materialised so far and no information is available on whether the preparatory activities previously carried out by the Ministry of Interior will provide a basis for future work. Poland has regulated some aspects of lobbying¹⁴¹ but does not have lobbying rules in place which would oblige persons exercising top executive functions to disclose their contacts with interest representatives¹⁴². Such a system would contribute to transparency in the law-making process¹⁴³. The Government however carries out awareness-raising activities on integrity¹⁴⁴. A sound framework for lobbying transparency, preventing undue influence while at the same time allowing for

¹³⁷ Information received from the Government in the context of the country visit to Poland. See also further below in pillar IV.

¹³⁸ 2023 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 2.

¹³⁹ The resolution No. 207 of 19 December 2017 of the Council of Ministers – the Governmental Anti-Corruption Programme for years 2018-2020, (M.P. z 2018 r. item 12). See also above in the paragraph on the Anti-Corruption Programme.

¹⁴⁰ Law of 7 July 2005 on Lobbying. The applicable law defines lobbying, establishes a public register as well as determines obligations and sanctions for unregistered lobbyists. While most of the objectives to provide educational material and trainings have been met, the implementation of important legislative initiatives specified in the programme has not been completed. These include, in particular, the draft law on Liability of Collective Entities, the reform of the asset declaration system, and the revision of the lobbying legislation, as previously reported in the 2023 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 20.

¹⁴¹ See Act of 7 July 2005 on lobbying activities in the lawmaking process and implementing regulations, including principles on transparency and a register (on the latter see also next footnote). Since 2019, the Commission of the Prime Minister's Office considers also applications for approval of new employment outside the public service of persons who have held public functions, particularly including those that were involved in issuing decisions on matters concerning the new employer, before the expiration of one year after ceasing public office.

¹⁴² See GRECO Fifth Evaluation Round - Compliance Report, paragraphs 32-36 and GRECO Fourth Evaluation Round – Second Interim Compliance Report, pp. 3-4, recommendations of which have not been implemented. In practice, there are three lobby registers in place, one for the Government (based on the lobbying regulation), one for the lower chamber of Parliament (Sejm), and one covering its higher chamber (Senate). For lobbying activities towards the government, the Minister of Internal Affairs and Administration is the supervisory body maintaining the register. For members of Parliament, the two chambers have supervisory tasks over lobbying activities.

¹⁴³ This also includes specific cases. For example, the draft law amending laws to support recipients' electricity, gaseous fuels and heat and certain other laws. See Polish Press Agency (1 December 2023); RMF24 (7 December 2023). The prosecution service initiated investigations in the case, according to the tweet of the former Minister for Education and Science (12 December 2023). In turn, civil society called for public consultations on the law in compliance with the legislative standards, see, for example, Greenpeace (6 December 2023), Appeal of civil society organisations on wind energy, which the Government announcing to amend, resubmit and provide for public consultations on the bill, see Politico (1 December 2023), Poland's new parliamentary majority hits its first legislative snag over wind power rules.

¹⁴⁴ See GRECO Fifth Evaluation Round – Second Compliance Report, paragraphs 31.

decision-makers to obtain technical expert advice and supporting data, is essential to inform the public of the decision making-process¹⁴⁵. Concerns also persist as to the effectiveness of the registers for lobbyists currently in place, with continuing low registration rates and even some deregistration as well as insufficient oversight and enforcement in practice¹⁴⁶. Therefore, there has been no further progress on the recommendation made in the previous years.

Some progress has been made towards standardising Poland’s asset declarations system. The 2023 Rule of Law Report recommended to Poland to “strengthen the existing integrity rules by introducing [...] a standardised online system for asset declarations of public officials and Members of Parliament¹⁴⁷.” On 21 November 2023, a legislative proposal was introduced¹⁴⁸ to broaden Poland’s asset declaration rules¹⁴⁹. The draft proposal would extend the personal scope of the asset declarations of high-level public officials at the national, regional, and local level¹⁵⁰ to also cover their spouses’ separate property¹⁵¹. Presidents, vice-presidents, and board members of state-owned companies would also be

¹⁴⁵ The current discourse on lobbying among politicians from the different political groups and parties appears to focus primarily on negative connotations of lobbying and aspects of undue influence, while it carries also the potential to better inform policymakers of technically complex issues. See examples of tweets published by politicians, including for example Mateusz Morawiecki, (Law and Justice), <https://twitter.com/MorawieckiM/status/1730226558114156717>, Paulina Hening-Kloska (The Third Way), <https://x.com/hennigkloska/status/1731558994555097324?s=20>.

¹⁴⁶ According to the Register of Entities, which currently includes approximately 580 entities, only 25 new entities are reported to have performed professional lobbying activities since the beginning of 2023, while some other entities have deregistered. See the Register of Entities engaged in professional lobbying activities of the Minister for the Interior and Administration. Notably, there is only a legal obligation to keep a register. Oversight is not systematic, and no information is available on whether sanctions have been applied to unregistered lobbyists, as previously reported in 2023 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 20. Registrations of professional lobbyists in the *Sejm* is even lower and most of the registered lobbyists remain inactive, with only 4 out of the 16 registered individuals having reported lobbying the Parliament in 2022, see the website of the *Sejm* with none of the activities having reportedly influenced the work of the *Sejm*, see Information on actions taken towards the *Sejm* of the Republic of Poland in 2022 by entities performing professional lobbying activities, pp. 11-12.

¹⁴⁷ No progress was made in the previous year, see 2023 Rule of Law Report, Country chapter on the rule of law situation in Poland, p. 2.

¹⁴⁸ The bill was initiated by the Members of Parliament of the Civic Coalition, as the current ruling party. Since 22 February 2024, readings in the respective Parliamentary committees have commenced regarding the Bill of Act amending the Act on Restrictions on the Conduct of Business by Persons Performing Public Functions and certain other acts, which would entail amendments also to the Act on exercising the mandate of a deputy and senator; the Act of 8 March 1990 on municipal-level local government; and Act of 5 June 1998 on district-level local government.

¹⁴⁹ According to information received from the Ministry of Justice in the context of the country visit to Poland, a similar draft was submitted on 29 December 2023 by the current opposition (Law and Justice), which is also at the stage of parliamentary readings in the relevant committees since 6 March 2024 (Print No. 156).

¹⁵⁰ This would relate to the asset declarations of the President of Poland, Marshal of the *Sejm*, Marshal of the Senate, Prime Minister, deputy Marshal of the *Sejm*, deputy Marshall of the Senate, deputy Prime Minister of the Council of Ministers, minister, as well as deputies and senators.

¹⁵¹ Currently, there is no obligation to disclose the property registered under the spouses’ names. Notably, this obligation would only cover married spouses, while informal relationships, which may be quite common, would not fall under the disclosure requirement. See in this context also the GRECO recommendations ix (on family members and publication) and recommendation xix (on the introduction of a robust and effective verification system) for high-level public officials, Fifth Evaluation Round – Second Compliance Report (20 July 2023); and for members of Parliament GRECO, Fourth Evaluation Round - Second Interim Compliance Report, pp. 4-5 (20 July 2023).

subject to asset disclosure obligations once it is adopted¹⁵². Furthermore, the draft proposal contains requirements to publish asset declarations in public information bulletins. However, the creation of a uniform, centralised submission and monitoring system for asset declarations is not envisaged under the new proposal¹⁵³. On 19 June, the Minister Coordinator for Special Services instructed the Central Anti-Corruption Bureau to develop a draft legal act to regulate the unification, digitisation and control of asset declarations¹⁵⁴. In practice, the level of digitalisation of politicians' asset declaration continues to be low¹⁵⁵. Most declarations are still filled out by hand and in a variety of formats¹⁵⁶. The large majority of controls proceedings and pre-control analysis of asset declarations conducted by the Central Anti-Corruption Bureau focused on those submitted by public officials and other employees of local, municipal governments¹⁵⁷. Stakeholders therefore continue to call for a comprehensive reform of Poland's conflict of interest and asset declaration system¹⁵⁸. Against this background, the existing rules are not yet strengthened, but ministerial instructions are given to take legislative steps to broaden the asset declarations rules. Some progress has therefore been made towards the recommendation made in the previous years.

A new law on whistleblower protection was adopted. On 11 January 2024, a new draft law¹⁵⁹ was published by the Government and subsequently submitted to the *Sejm* for accelerated legislative procedure¹⁶⁰. The draft is a political priority for the Government¹⁶¹. While it is largely based on the previous draft Government proposal¹⁶², a number of issues of concern have been addressed: for example, the Office of the Commissioner for Human Rights is now again envisaged as the dedicated entity to receive whistleblower reports¹⁶³, including

¹⁵² This obligation would only extend to companies with a share of over 50% of the State Treasury share.

¹⁵³ As previously reported, the Central Anti-Corruption Bureau had prepared a draft regulation, however, it has not been made public, while the technical work towards a more standardised, electronic system was suspended until appropriate legislative steps were to be taken. Access to document requests by stakeholders regarding the regulation were declined, see 2022 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 18.

¹⁵⁴ According to information received from the Government during the Member State consultation, the instructions include to develop a central, integrated, electronic submission system.

¹⁵⁵ GRECO Fifth Evaluation Round – Evaluation Report, recommendations x and xi, paragraphs 72 and 78.

¹⁵⁶ *Ibid.* 2023, 2022 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 21 (for 2023), p. 18 (for 2022) and p. 19 (for 2021), where it was reported that, at least, 16 different forms are in use. Provisions on asset declarations are scattered among several legislative acts.

¹⁵⁷ See the report of the Central Anti-Corruption Bureau, Information on the results of activities of the Central Anti-Corruption Bureau in 2022.

¹⁵⁸ Information received from Batory Foundation/ Helsinki Foundation for Human Rights in the context of the country visit to Poland.

¹⁵⁹ Draft Act on the Protection of Whistleblowers (UC101), aiming to implement Directive (EU) 2019/1937.

¹⁶⁰ Due to the transposition delay since 17 December 2021, the European Commission decided to refer Poland to the Court of Justice for failure to transpose the Directive on time, see Press release, The European Commission decides to refer 8 Member States to the Court of Justice of the European Union over the protection of whistleblowers (IP 23/703 of 15 February 2023) upon which financial penalties were imposed on Poland. For more information on the steps taken by Poland to transpose the directive see Eurocadres/Whistleblowing International Network/Transparency International-EU, EU Whistleblowing Monitor <https://www.whistleblowingmonitor.eu/?country=poland>.

¹⁶¹ *Ius Laboris* (25 January 2024), New Polish government makes whistleblowing directive a priority.

¹⁶² Previous draft law on the protection of whistleblowers, <https://legislacja.gov.pl/projekt/12352401>.

¹⁶³ Instead of the National Labour Inspectorate, as previously reported, which had raised concerns among stakeholders, see 2023 Rule of Law Report, Country chapter on the rule of law situation in Poland, p. 21.

on corruption, vested with the mandate to refer disclosures to the competent authorities¹⁶⁴. However, to carry out its new tasks effectively, the Office highlighted the need for additional human, financial and technical resources to create a new department within its structure¹⁶⁵. Stakeholders called for a broader material scope of the bill¹⁶⁶. The deadline for the entry into force of the draft law after adoption has been shortened to one month to speed up the transposition of EU law¹⁶⁷. The law was adopted by the Parliament on 14 June 2024 and, after being signed by the President of the Republic, will enter into force on 24 September 2024¹⁶⁸. Prosecutors underline that whistleblower disclosures are an important source of information to detect crimes, including corruption, and that an effective whistleblower protection system is instrumental in the fight against corruption¹⁶⁹.

Transparency of political party financing remains a challenge in practice, while party donations and undue influence in election campaigns remained an issue in 2023. Political party finance is regulated in the Political Parties Act. As reported last year, challenges persist in the practical application of the 2022 legislation¹⁷⁰. Publication practices still vary significantly, calling for more standardisation¹⁷¹. Some good practices exist, where filter functionalities are embedded on parties' websites, facilitating the search for specific party finance data¹⁷². The OSCE Office for Democratic Institutions and Human Rights (ODIHR)

¹⁶⁴ Information received from the Office of the Commissioner for Human Rights in the context of the country visit to Poland.

¹⁶⁵ Information received from the Office of the Commissioner for Human Rights in the context of the country visit to Poland.

¹⁶⁶ The bill covers breaches of the law relating to consumer protection, financial regulation, public procurement or environmental protection. Stakeholders called for an all-encompassing approach, covering breaches of all laws and internal regulations, such as Codes of Conducts and bylaws. For more details, see the proposal prepared by civil society organisations: Batory Foundation/ Helsinki Foundation for Human Rights/ Institute of Public Affairs Foundation/ Anti-Corruption Academy Foundation/ Civic Network Watchdog Poland Association/ Solidarity '80 Trade Union (18 January 2024), Social bill on protection of whistleblowers. These proposals go beyond the requirements of the EU Directive.

¹⁶⁷ Until the new law enters into force the current whistleblowers' protection framework is provided for in different legal provisions: whistleblowers are benefiting from protection on the basis of general principles of labour law and provisions protecting whistleblowers from retaliation, such as anti-discrimination provisions and the provisions that prohibit mobbing in the place of employment, while reviews found that the effectiveness of the labour code provisions in practice is low and only covering part of the working population. See UN Conference of the State Parties to the UN Convention against Corruption (2015), Implementation Review Group – Poland, p. 5, and OECD (2015), Poland: Follow up to the Phase 3 Report and Recommendations (2015), pp. 5 and 29.

¹⁶⁸ The law was published in the Official Journal on 24 June 2024 (item 928).

¹⁶⁹ Information received from the General Prosecutor's Office/ Office of the National Prosecutor in the context of the country visit to Poland. See also further below in pillar IV.

¹⁷⁰ This is with a view to Article 25(6)-(13) of the Political Parties Act, requiring political parties to publish up-to-date information of the register of donations and, according to Article 27(a)-(c), of the register of contracts. 2023 Rule of Law Report, Country chapter on the rule of law situation in Poland, p. 21 and 22. Stakeholders consider the public availability of this information as a significant step toward more transparency in political party finance, noting however that the reliability of the published data still needs to be tested.

¹⁷¹ As previously reported, the information is published on the party's website partly in downloadable pdf-format (see website of the Civic Platform party at http://bip.platforma.org/rejestr_umow_i_wplat/, or the Left Together party at <https://partiarazem.pl/informacje/bip>); partly as embedded tables (see websites of the Law and Justice party, <http://bip.pis.org.pl/rejestr-wpat>, and the New Left party at <https://bip.lewica.org.pl/rejestr-wplat>).

¹⁷² See, for instance, the website of the New Left party, <https://bip.lewica.org.pl/rejestr-wplat>.

highlighted undue influence over the use of state resources and public media as an issue¹⁷³. Risks of systemic challenges relating to clientelist networks around state-owned enterprises contributing to inequality in the election process, as previously reported, have materialised in practice, including payments of state-owned enterprise executives to individual politicians¹⁷⁴, which the parliamentary bill of 29 February 2024 aims to address by a ban on such payments and further transparency requirements for state-owned companies¹⁷⁵. Also the engagement of state-owned enterprises in the referendum campaign, that took place in parallel to the election campaign, has been found to circumvent campaign finance rules. They were found to thereby undermine spending limits and the separation of the state and parties, while also raising questions as to conflicts of interest¹⁷⁶. Moreover, there are no explicit regulations for effective oversight and transparency of campaign online advertising, including for third-party campaigning¹⁷⁷. The government at the time did not follow recommendations made by ODIHR to abstain from introducing amendments to fundamental elements of the electoral legal framework shortly before the parliamentary elections and to still consult the public¹⁷⁸.

¹⁷³ OSCE/ODIHR (27 March 2024), Parliamentary Elections 15 October 2023: ODIHR Limited Election Observation Mission – Final Report, p. 1, noting also that the absence of a requirement for reporting prior to election day, and unregulated third-party campaigning, combined with insufficient campaign finance regulation for the referendum, negatively affected the transparency and accountability of political party and campaign finance.

¹⁷⁴ Two former heads of state-owned enterprises recently confirmed to have gotten their positions only against payments, see TVN24 (3 October 2023). Art. 25 of the Act of 27 June 1997 on political parties prohibits the acceptance of donations from legal entities. Reportedly, the payments were not made voluntarily and when they were too low, there were demands to increase donations, at times in cash, circumventing the law. See also, as previously reported, the contribution from Citizens Network Watchdog Poland, Civil Development Forum, Free Courts Foundation, Institute of Public Affairs, Helsinki Foundation for Human Rights, Polish Federation of Non-governmental Organisations, Stefan Batory Foundation for the 2023 Rule of Law Report, p. 18. Previously, stakeholders had highlighted the practice of simultaneous donations by a large number of individuals of the same state-owned enterprise to individual politicians, as these donations were just below the annual ceiling for donations from natural persons, raising questions as to conflicts of interest and the effectiveness of the ban of donations from legal entities to political parties and of political party finance transparency in practice. See 2023 Rule of Law Report, Country chapter on the rule of law situation in Poland, p. 22.

¹⁷⁵ See Sejm, Deputies' bill amending certain acts to improve corporate governance in companies with State Treasury shareholding, Paper no. 261.

¹⁷⁶ OSCE/ODIHR (27 March 2024), Parliamentary Elections 15 October 2023: ODIHR Limited Election Observation Mission – Final Report, pp. 1, 2-3. While the National Election Commission is mandated with campaign finance oversight, it is not explicitly mandated to monitor campaign finance prior to election day.

¹⁷⁷ An explanatory note of the National Election Commission of March 2023 on the activities of third parties campaigning on behalf of political parties on the internet highlights that the activities are subject to the same rules as the provision of services to political parties by commercial entities. There are ODIHR estimates that at least PLN 7.5 million in third-party spending on the internet (in addition to formal internet spending) was not formally accounted for.

¹⁷⁸ The electoral reform that took place only a few months before the elections, without meaningful consultation, decreased, among others, the minimum number of inhabitants per precinct; changed the qualifications for membership in the Constituency Election Commissions; introduced organised public transport for voters in rural areas, etc., see ODIHR (15 October 2023), Poland: Limited Election Observation Mission Final Report, p. 6. See 2023 Rule of Law Report, Country chapter on the rule of law situation in Poland, pp. 22-23. The Draft Law of 26 January 2023 amending the Election Code and certain other acts combined several draft laws introduced to the lower chamber of Parliament on 22 December 2022, many of which were adopted in the second and third, final reading on the same day of 26 January 2023. The draft law proposed to introduce extensive amendments to the 2011 Election Code, and some changes to selected provisions of the 1997 Act on Political Parties, the 1997 Law on Restrictions on Conduct of Business Activities by Persons Performing Public Functions, the 2000 Law on the National Criminal Register, the

While amendments to criminal liability in public procurement procedures entered into force, corruption in public procurements remains in focus. On 1 October 2023, amendments to the Criminal Code introduced a broader range of criminalised behaviour and law enforcement measures with the aim to facilitate the detection and prosecution of crime as well as stricter penalties for undue interference in public tendering¹⁷⁹. Businesses' attitudes towards corruption in the EU show that 24% of companies in Poland (EU average 27%) think that corruption has prevented them from winning a public tender or a public procurement contract in practice in the last three years¹⁸⁰. Similarly, stakeholders qualify public procurement and the construction sector as the main corruption risk sectors in Poland¹⁸¹. Investigations of the Central Anti-Corruption Bureau into suspicions of irregularities in a call for proposals issued by the National Centre for Research and Development relating to EU structural funds are ongoing¹⁸². As reported above, in November 2023, the Supreme Audit Office's control of the case found a large scale of irregularities both in the process and the organisation of the call for proposals, confirming the existence of corruption risks in the National Centre for Research and Development¹⁸³.

III. MEDIA PLURALISM AND MEDIA FREEDOM

The Constitution provides a framework for the protection of freedom of the press and freedom of expression. It also gives a role to the media regulator, the National Broadcasting Council (KRRiT), to safeguard public interest in the radio and television broadcasting. Sector specific legislation is based on the Law on Broadcasting and the Press Law. Those instruments provide detailed provisions on the competences of the media regulator, as well as safeguards and conditions for the exercise of the journalistic profession. Poland has three public service media outlets - Polish Television, Polish Radio and Polish Press Agency - and is currently working on a new legislative framework on public service media, media pluralism and independence.

2000 Law on Local Referendum, the 2003 Law on Nationwide Referendums, and several other legislative acts. See OSCE/ODIHR, Opinion on the Draft Act amending the Election Code and certain other Acts (Senate paper No. 911) – Poland (20 February 2023), p. 2.

¹⁷⁹ For more details, see the explanatory memorandum submitted by the authors of the amendment (Parliamentary Paper No. 2024). It is to be noted that amendments to Article 305 of the Criminal Code introduced by the reform also introduced a new impunity provision in the new paragraph (6), effectively protecting certain categories of offenders from prosecution. For more details see above in this pillar.

¹⁸⁰ Flash Eurobarometer 543 on Businesses' attitudes towards corruption in the EU (2024). This is 3 percentage points below the EU average.

¹⁸¹ Information received from representatives of lawyers (Bar and Legal Councillors), and NGO (Batory Foundation), in the context of the country visit to Poland.

¹⁸² The ongoing investigations have already led to arrests. CBA inspection at the National Centre for Research and Development (2023); see also TVN24.pl (7 March 2024).

¹⁸³ The Office has informed the prosecution services of potential violations of the Act of 11 July 2014 on the rules for implementing cohesion policy programmes financed under the financial perspective 2014-2020. See Supreme Audit Office (16 November 2023), NCBR – billions spent with no effect for innovations; see also Science Business (18 October 2023), Audit uncovers 'corruption mechanisms' at Polish research funding agency. See, in turn, the Statement of the National Center for Research and Development (12 October 2023), emphasising transparent operations in the case in compliance with applicable regulations. The large scale of irregularities and significant issues relating to the reliability of the EU funds spending triggered also investigations by the EU Anti-Fraud Office (OLAF). As previously reported, members of the Parliament had requested such an audit control, see 2023 Rule of Law Report, Country chapter on the rule of law situation in Poland, p. 24.

Concerns persist regarding the regulatory impartiality of the media regulator¹⁸⁴. The 2024 Media Pluralism Monitor reports high risks in relation to the independence and effectiveness of the media regulator, in comparison to the medium risks reported in 2023. The Media Pluralism Monitor states that such a change results from a lack of regulatory impartiality and transparency¹⁸⁵. Representatives of the media community pointed out to cases of severe financial penalties imposed by KRRiT against independent broadcasters, which may be seen as attempts to induce self-censorship in newsrooms¹⁸⁶. Examples include the KRRiT's decision to sanction radio TOK FM for comments made by one of its journalists regarding the new school handbook for the alleged demeaning of the Polish President¹⁸⁷ or a fine imposed on Radio ZET in relation to its reporting on the visit of the Ukrainian President to Poland, considered by KRRiT as contrary to the Polish reasons of state¹⁸⁸. Concerns are also raised with regard to the lack of transparency and clear process for managing complaints and investigations led by KRRiT¹⁸⁹. Representatives of KRRiT pointed out that the new budget will only partially cover the needs of the regulator related to human resources¹⁹⁰. The Ministry of Culture has started its work on a new regulatory framework on media pluralism and independence, which is expected to address issues related to the regulator's set up and competences¹⁹¹.

There has been some progress regarding safeguards for the granting of operating licences to media outlets. The 2023 Rule of Law Report recommended to Poland to “ensure that fair, transparent and non-discriminatory procedures are adhered to for the granting of operating licences to media outlets”. Stakeholders reported cases of prolonged procedure for granting licences¹⁹². For instance, news radio TOK FM waited seven months for a decision by KRRiT on the extension of its licence (the decision was issued only two months before it was set to expire)¹⁹³ and TVN Style – a channel belonging to TVN group and targeting female audience – waited 11 months¹⁹⁴ (the decision was issued only on 12 June when the previous licence was set to expire on 28 July 2024¹⁹⁵). Some progress has been made on the recommendation made in the previous years, as the Ministry of Culture has started its work on a new regulatory framework on media pluralism and independence which is expected to modernise the system of granting licences¹⁹⁶.

¹⁸⁴ Contribution from the Consortium of five NGOs for the 2024 Rule of Law Report, p.23.

¹⁸⁵ 2024 Media Pluralism Monitor, p. 12.

¹⁸⁶ Mission Report on Media Capture and Vexatious Lawsuits in Poland by the Media Freedom Rapid Response.

¹⁸⁷ The sanction was imposed on 24 January 2024. The head of the National Broadcasting Council punishes TOK FM again, see: Wirtualnemedi.pl (25 January 2024).

¹⁸⁸ The sanction was imposed on 11 August 2023. Liberties 2024 Rule of Law Report – Poland, p. 50.

¹⁸⁹ Mission Report on Media Capture and Vexatious Lawsuits in Poland by the Media Freedom Rapid Response p. 9.

¹⁹⁰ Information received KRRiT in the context of the country visit.

¹⁹¹ See the announcement by the Ministry of Culture and National Heritage: “We begin consultations on the main tenets of the media law” of 24 June 2024.

¹⁹² Liberties 2024 Rule of Law Report – Poland, p. 499.

¹⁹³ The licence was granted on 5 July 2023. See Wyborcza.pl (5 July 2023).

¹⁹⁴ TVN style applied for the licence in July 2022. Wirtualnemedi.pl (25 April 2024). Delays had occurred in the past for TVN24 and TVN7 as reported in the 2022 Rule of Law Report.

¹⁹⁵ TVN Style z koncesją na kolejne 10 lat - Krajowa Rada Radiofonii i Telewizji - Portal Gov.pl (www.gov.pl).

¹⁹⁶ See the announcement by the Ministry of Culture and National Heritage: “We begin consultations on the main tenets of the media law” of 24 June 2024.

The framework for media ownership transparency is in place. The 2021 amendment of the Law on Broadcasting continues to provide a framework for media ownership transparency, obliging broadcasters, video-on-demand providers, and video-sharing platforms, to make available information on partners, shareholders, and beneficial owners of their companies to the Central Register of Beneficial Owners and on their websites, and to disclose information on all the media services they offer, or which belong to the same company. Since this legislative change, the 2024 Media Pluralism Monitor has reported some progress as regards media ownership transparency, with risks being assessed at medium level¹⁹⁷. However, research published by the Media Forum Foundation shows a low level of knowledge regarding the media ownership at the local level. Readers are often unable to distinguish between local media that are privately owned and those that are owned by local governments¹⁹⁸.

The management of public service media, heavily criticised for its lack of independence, was dismissed, and a new framework to strengthen the rules and mechanisms to enhance the independence of public service media is expected. The 2022 and 2023 Rule of Law Reports set forth concerns related to the independent reporting by public broadcasters and highlighted the absence of progress to enhance the independent governance and editorial independence of public service media. The Commission recommended to Poland to “strengthen the rules and mechanisms to enhance the independent governance and editorial independence of public service media taking into account European standards on public service media.” In December 2023, the Sejm adopted a resolution calling for appropriate actions by state authorities to restore legal order as well as the impartiality and integrity of public service media¹⁹⁹. The Minister of Culture and National Heritage, as the body exercising the ownership rights of the State Treasury, dismissed the management bodies of public service media on the basis of the Commercial Companies Code. Some stakeholders raised concerns in this regard²⁰⁰, highlighting in particular that appointments and dismissals of members of public media management bodies should be based on the Broadcasting Act and the Polish Press Agency Act and not on the Commercial Companies Code²⁰¹. The Constitutional Tribunal held²⁰² that implementing changes in the management of public service media or liquidating them on the basis of the provisions of Commercial Companies Code is unconstitutional. However, the lawfulness of this ruling has been questioned given the irregular composition of the panel delivering it²⁰³. Also, in 2023, the Supreme Audit Office (NIK), in its audit of the public television’s finances, pointed to numerous violations

¹⁹⁷ 2024 Media Pluralism Monitor, p. 19.

¹⁹⁸ According to research carried out by the Media Forum Foundation, a significant proportion of readers make very little distinction between private local media and local government-owned media.

¹⁹⁹ Resolution of 19 December 2023.

²⁰⁰ For example the Ombudsperson, see the ENNHRI contribution for the 2024 Rule of Law Report as regards Poland (p. 10).

²⁰¹ Position of the Helsinki Foundation for Human Rights on changes in public media | Helsinki Foundation for Human Rights (hfhhr.pl).

²⁰² Judgment K 29/23.

²⁰³ The panel consisted of i.a. a judge appointed to an already occupied post – see Pillar I. The ruling was published with an additional clarification that it had been issued by an irregular composition of the Constitutional Tribunal (see Pillar I). See also a statement of the Ministry of Culture and National Heritage of 18 January 2024 published on the X platform.

in the management of the public funds²⁰⁴. The Polish authorities are currently working on a legislative proposal that would provide a new regulatory framework for public service media, and the relevant open public consultation was launched²⁰⁵. The aim is to ensure full alignment of the Polish framework for public service media with provisions of the European Media Freedom Act. The new law is expected to be adopted by the end of 2024²⁰⁶. Therefore, some progress has been made in addressing the 2023 recommendation.

Some media were confirmed to have had privileged access to state advertising and some challenges persist with access to information. According to the finding of the audit carried out by the NIK, public media and certain pro-government media have been main beneficiaries of the state advertising within the analysed period (2021-2022)²⁰⁷. The Polish authorities are currently working on a legislative proposal that would provide a new framework concerning the access to state advertising, and relevant open public consultation was launched²⁰⁸. Private pro-government media appeared to have been favoured with respect to access to information by the government at the time²⁰⁹. Stakeholders also reported a case where funding had been withdrawn because of the media outlet's reluctance to follow the reporting line advocated by the government at the time²¹⁰. Challenges are also reported with regard to the right of access to information and public officials by journalists²¹¹. According to stakeholders, the operation of journalists may also be affected by long response times from the side of public authorities and laconic answers to questions²¹².

Journalists continue to face difficulties in their activities, in particular in relation to SLAPPs. SLAPPs remain a tool used against journalists and media outlets²¹³. Media freedom organisations refer to the practices of filing several lawsuits concerning the same issue and underline that media, and especially those operating at the local level, are also increasingly served with pre-litigation requests for corrections²¹⁴. Since July 2023, the Council of Europe Platform to promote the protection of journalism and safety of journalists registered seven alerts concerning Poland²¹⁵ and the Mapping Media Freedom platform registered 26 alerts²¹⁶. The journalistic community continues to be affected by a lack of self-regulatory measures that could contribute to the strengthening of the status of journalists. As pointed out by the Media Pluralism Monitor, the existing polarisation within the journalistic community

²⁰⁴ NIK considered that the principles of legality, reliability or purposefulness were violated in the context of the expenses of the Polish public television; summary of the press conference of the Supreme Audit Office of 6 October 2023.

²⁰⁵ See the announcement by the Ministry of Culture and National Heritage of 24 June 2024.

²⁰⁶ Bogdan Zdrojewski: ustawa medialna wejdzie w życie w 2024 roku | Polska Agencja Prasowa SA (pap.pl).

²⁰⁷ Summary of the press conference of the Supreme Audit Office of 6 October 2023.

²⁰⁸ See the announcement by the Ministry of Culture and National Heritage of 24 June 2024.

²⁰⁹ Mission Report on Media Capture and Vexatious Lawsuits in Poland by the Media Freedom Rapid Response p. 13.

²¹⁰ *Ibidem*.

²¹¹ Raport o stanie jawności w Polsce (Report on the state of transparency in Poland) 2023, p. 31-32.

²¹² Contribution from the Reporters Without Borders for the 2024 Rule of Law Report, p.22.

²¹³ SLAPP (wirtualnemedia.pl). See also the Coalition Against SLAPPS in Europe 2023 report update: "SLAPPS: A Threat to Democracy Continues to Grow".

²¹⁴ *Ibidem*.

²¹⁵ The alerts concerned mainly threats to the operation of journalists, including harassment and intimidation of journalists. Platform to promote the protection of journalism and safety of journalists (coe.int).

²¹⁶ In particular, out of 26 alerts nine related to cases of verbal attacks, nine related to legal incidents, four related to cases of attacks to property, and 1 related to the case of a physical attack. The other five related to five cases of censorship. Mapping Media Freedom, Poland country profile.

could be seen as the main impediment in fostering widely recognised self-regulatory mechanisms²¹⁷.

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

Poland is a representative democratic republic with a directly elected President, a bicameral Parliament (Sejm and Senate) and a Constitutional Tribunal in charge of the constitutional review of laws. The Sejm has the final decision-making power when adopting laws. Their entry into force is subject to the signature of the President of the Republic. The President of the Republic, the Senate, a group of 15 Members of the Sejm, the Council of Ministers, and a group of at least 100 000 citizens have the right to propose new legislation. The independent Ombudsperson is tasked with safeguarding the freedoms and rights of persons and citizens specified in the Constitution and other normative acts and functions as the equality body. The Supreme Audit Office is the chief organ of state audit, subordinate to the Sejm, acting in accordance with the principles of collegiality.

While the Government committed to ensure adequate consultations in the law-making process, room for further improvement remains. The quality of law-making and the frequent changes in legislation remain a significant cause for concern about the effectiveness of investment protection among companies in Poland²¹⁸. However, according to information available, the new Government is not seeking to pass laws through excessively hasty procedures²¹⁹. Moreover, Polish authorities committed to ensure adequate consultations of stakeholders in the context of the law-making process and are seeking to provide relevant information related to ongoing legislative processes²²⁰. As from 2024, civil society organisations are being more involved in the consultation process of draft legislation²²¹. The Recovery and Resilience Plan includes reforms to improve the quality of law-making and enhance the involvement of social partners in the legislative process, in view of which the Polish authorities are working on amendments to the rules of procedure of the Senate, the Sejm, and the Council of Ministers²²².

On 1 January 2024, Poland had 46 leading judgments of the European Court of Human Rights pending implementation, to the same number as the previous year. At that time, Poland's rate of leading judgments from the past 10 years that remained pending was at 51%

²¹⁷ 2024 Media Pluralism Monitor, p. 19.

²¹⁸ In Poland, 37% of the surveyed investors perceive the frequent changes in legislation or concerns about quality of law-making process as a reason for the lack of confidence in investment protection (compared to 50% in 2023). Figure 56, 2024 EU Justice Scoreboard.

²¹⁹ In the fourth year of the Sejm of the previous term of office, it would take on average three days to adopt laws within three readings; see the contribution of five NGOs, p. 29. As reported by the Ombudsperson, the previous Sejm continued excessively hasty processing of laws in particular in the area of the justice system; written contribution from ENNHRI for the 2024 Rule of Law Report (p. 15). See the data concerning the procedure of adoption for each legislative draft available under <https://sejm.gov.pl/Sejm10.nsf/proces.xsp>.

²²⁰ See the contribution of the Polish Government to the 2024 Rule of Law Report, pp. 41-42.

²²¹ This includes notably the organisation of public hearings over draft laws where also CSOs are invited. While in the last year of the Sejm of the IX term of office (2023), from among over 127 Government submissions, at least 28% of them were not consulted at all or were consulted for less than 14 days; see the contribution of five NGOs (p. 29) and the contribution of the ILGA Europe CSO (p. 7).

²²² The legislative work on the draft resolution on the amendments to the Rules of Procedure of the Sejm is planned by the end of the second quarter of 2024. The legislative work on the draft resolution on the amendments to the Rules of Procedure of the Council of Ministers is planned by the end of the second quarter of 2024. See also the Resolution of the Senate of the Republic of Poland of 13 December 2023.

(compared to 56% in 2023), and the average time that the judgments had been pending implementation was 5 years and 5 months (compared to 5 years and 6 months in 2023)²²³. The oldest leading judgment, pending implementation for almost 19 years, concerns the excessive length of proceedings before administrative bodies and courts and absence of an effective remedy²²⁴. As regards the respect of payment deadlines, on 31 December 2023 there were 18 cases in total awaiting confirmation of payments (compared to 24 in 2022)²²⁵. On 1 July 2024, the number of leading judgments pending implementation had increased to 50²²⁶. The Ministry of Justice, in cooperation with the Ministry of Foreign Affairs, plans to prepare a draft law on the implementation of ECtHR judgments.

The recommendation regarding the Supreme Audit Office (SAO) has been fully implemented by ensuring the appointment of its College members and an adequate follow-up to its findings. The 2023 Rule of Law Report recommended to Poland to ‘[e]nsure a more systematic follow-up to findings by the Supreme Audit Office and ensure, as a matter of urgency, the appointment of the College Members of the Supreme Audit Office in order to ensure its effective functioning’²²⁷. On 29 February 2024, acting upon a motion of the President of the Supreme Audit Office (SAO), the new Marshal of the Sejm appointed eight members of the College, thereby ensuring its effective functioning²²⁸. The prosecution service, under the new Prosecutor General and the National Prosecutor, opened several criminal investigations, thereby following up on reports of the SAO in sensitive cases concerning possible large-scale money embezzlement²²⁹. Given that new members of the College have now been appointed, and a more systemic follow up to SAO findings is being

²²³ 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 2024. See the Contribution from the European Implementation Network for the 2024 Rule of Law Report, p. 6.

²²⁴ Judgment of the European Court of Human Rights of 1 February 2005, *Beller v. Poland*, 51837/99.

²²⁵ Council of Europe (2024), Supervision of the execution of judgments decisions of the European Court of Human Rights – 17th Annual Report of the Committee of Ministers – 2023, p. 138.

²²⁶ Data according to the online database of the Council of Europe (HUDOC).

²²⁷ 2023 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 29. The Commission had assessed that no progress had been made on the recommendation in the 2022 Rule of Law Report to ensure a more systematic follow-up to findings by the Supreme Audit Office and ensure, as a matter of urgency, the appointment of the College Members of the Supreme Audit Office in order to ensure its effective functioning.

²²⁸ Two more College members received their nominations soon thereafter; see the press release of the Sejm of 29 February 2024 “and the press release of the SAO of 1 March 2024. Furthermore, on 5 December 2023, after obtaining the consent of the Marshal of the Sejm, the President of the SAO appointed the Director General of the SAO and on 22 December 2023, the Marshal of the Sejm, also at the request of the President of the SAO, appointed three new Vice-Presidents of the SAO as well as two new members of the College. As of 29 February 2024, the SAO College consists of a total of 18 out of 19 persons (with one representative of employees still remaining to be appointed).

²²⁹ For example, the prosecution service followed up on the findings of the SAO as regards the functioning of the “Justice Fund” run by the Ministry of Justice, where the SAO determined in 2021 a possible large-scale embezzlement of funds that should have been used for supporting victims of crimes, whereas large amounts were allegedly used to gain political support for the political party of the previous Minister of Justice. See the press release of the National Prosecution of 26 March 2024. Furthermore, the prosecution service followed up on the findings of the SAO of October 2023 as regards the alleged number of irregularities, both at the stage of preparation and organisation of the competition, as well as in the process of accepting applications and selecting projects for co-financing by the National Center for Research and Development; see the Polish Press Agency press report of 28 March 2024. See also the written input of the Supreme Audit Office submitted in the context of the 2024 Rule of Law Report: Country Chapter for Poland preparation.

ensured, the recommendation made in the previous years concerning the Supreme Audit Office is fully implemented.

The Sejm established parliamentary investigative committees to assess three specific cases of concern in respect for the law by public authorities in the period 2015-2023. The Sejm appointed an investigative committee to examine possible breaches of law by the organisers of the “postal” Presidential elections in 2020²³⁰, an investigative committee to examine alleged irregularities in the issuance of Polish visas to foreigners²³¹, and an investigative committee for the use of “Pegasus” software²³². The new Prosecutor General decided to formally notify persons targeted by “Pegasus” software and appointed a special team to carry out investigations on the legality of the use of this software²³³. The State Committee for the examination of Russian influence on the internal security of Poland between 2007 and 2022 was rendered inoperative by the new Sejm²³⁴; a law repealing the law establishing that Committee is now being examined by the Sejm²³⁵. Furthermore, on 26 March 2024, members of the Government tabled in the Sejm a motion to subject the President of the National Bank to proceedings before the Tribunal of State²³⁶. The President of the Republic has raised doubts as to whether the Sejm is correctly composed and, as of 31 January 2024, has referred laws adopted by the Sejm to the Constitutional Tribunal,

²³⁰ See the resolution of the Sejm of 7 December 2023 on the appointment of an Investigative Committee to investigate the legality, regularity and purposefulness of actions taken to prepare and carry out the elections of the President of the Republic of Poland in 2020 in the form of postal voting. See also the 2020 Rule of Law Report: Country Chapter for Poland (p. 16).

²³¹ See the resolution of the Sejm of 19 December 2023 on the appointment of an Investigative Committee to examine the legality, regularity and purposefulness of actions, as well as the occurrence of abuses, negligence and omissions in the legalisation of the stay of foreigners in the territory of the Republic of Poland in the period from 12 January 2019 to 20 November 2023.

²³² See the resolution of the Sejm of 17 January 2024 on the appointment of an Investigative Committee to examine the legality, regularity and purposefulness of operational and reconnaissance activities undertaken, among others, by means of Pegasus software by members of the Council of Ministers, secret services, the Police, fiscal and customs-fiscal control authorities, bodies responsible for prosecuting crimes and the prosecutor's office in the period from 16 November 2015 to 20 November 2023. See also the 2023 Rule of Law Report: Country Chapter on the rule of law situation in Poland (pp. 32-33). It is noted that on 28 May 2024, the ECtHR held that there had been three violations of Article 8 (right to respect for private and family life and correspondence) of the European Convention on Human Rights in respect of the complaints concerning the operational-control regime, the retention of communications data for potential use by the relevant national authorities, and the secret-surveillance regime under the Anti-Terrorism Act (see, the ECtHR judgment of 29 May 2024 in the case Pietrzak and Bychawska-Siniarska and Others v. Poland (applications nos. 72038/17 and 25237/18).

²³³ See the press release of the National Prosecution of 23 February 2024. See also CyberDefence24.pl of 5 April 2024.

²³⁴ 2023 Rule of Law Report: Country Chapter for Poland p. 30). On 8 June 2023 the Commission opened an infringement procedure against the law concerning this Committee.

²³⁵ See the draft law of 11 April 2024 on the repeal of the Law on the State Committee for the examination of Russian influence on the internal security of Poland between 2007 and 2022 (print No. 351).

²³⁶ The motion is based on eight main accusations concerning, in essence, the alleged lack of independence of the President of the National Bank of Poland as well as his acting on the basis of political considerations. There is no time frame established as yet as regards the follow up to be given to the motion. See the Polish Press Agency press release of 26 March 2024 “. It is noted that on 11 January 2024, acting upon a motion of the representatives of the parliamentary opposition, the Constitutional Tribunal ruled that provisions in force allowing to subject the President of the National Bank by means of only an absolute majority of votes of the Sejm and simultaneously to suspend him in office if proceedings before the Tribunal of State are initiated - are unconstitutional. Prior to the ruling of the Constitutional Tribunal, the contested provision had been in force for over 20 years. See the ruling of 11 January 2023 in the case K 23/23.

requesting it to examine their constitutionality²³⁷. On 19 June 2024, the Constitutional Tribunal held that a law was unconstitutional as it was adopted by the Sejm in an irregular composition²³⁸.

The 2023 recommendation to improve the framework in which the Ombudsperson operates has been fully implemented. The 2023 Rule of Law Report recommended to Poland to ‘continue efforts to improve the framework in which the Ombudsperson operates, taking into account European standards on Ombudsinstitutions’²³⁹. In 2024, the Government increased the annual budget allocated to the Ombudsperson’s Office²⁴⁰. Given the new competences to be assigned to the Ombudsperson²⁴¹ regarding the implementation of the EU directive on the protection of whistleblowers²⁴², further budgetary increases may however still be needed. The Ombudsperson welcomed the Polish Government’s commitment to address concerns related to the rule of law and proposed additional recommendations in that respect²⁴³ and also pointed to shortcomings in the area of public service media²⁴⁴. The Ombudsperson continues enjoying an ‘A’ status by the UN Global Alliance of National Human Rights Institutions (GANHRI)²⁴⁵. In light of the improved framework in which the Ombudsperson operates, the 2023 recommendation has been fully implemented.

Significant progress has been made to improve the framework in which civil society operates. The 2023 Rule of Law Report recommended to Poland to ‘improve the framework in which civil society operates [...] taking into account European standards on civil

²³⁷ This is related to a final ruling of 20 December 2023 of a criminal court holding two MPs of the current opposition criminally liable for actions taken when leading the Central Anti-Corruption Bureau in 2007. In 2015, the President of the Republic pardoned the two individuals before the criminal ruling in their cases became final. This pardon was deemed ineffective by the Supreme Court which referred the case to ordinary courts for re-examination. Following their conviction, the Marshal of the Sejm ascertained that the two MPs had lost their right of being elected. The President of the Republic considered, however, that the initial pardon remained valid and, as these MPs are prevented from participating in the works of the Sejm, the Sejm itself was inappropriately composed. See the press release of the President of the Republic of 31 January 2024. It is noted that in spite of the above, the President of the Republic decided to grant another pardon to the two former MPs on 23 January 2024; see the press release of the President of the Republic of 23 January 2024. So far, the Constitutional Tribunal has not ruled in any of these motions of the President of the Republic.

²³⁸ Ruling of 19 June 2024 in the case K 7/24.

²³⁹ 2023 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 11. The Commission concluded that Poland had made some progress on improving the framework in which the Ombudsperson operates, taking into account European standards on Ombudsinstitutions, and no progress on improving the framework in which civil society operates, taking into account European standards on civil society.

²⁴⁰ According to information available, the budget allocated for 2024 is higher than the amount initially requested by the Ombudsperson; see the ENNHRI contribution for the 2024 Rule of Law Report as regards Poland (p. 6).

²⁴¹ See the ENNHRI contribution for the 2024 Rule of Law Report as regards Poland (p. 3).

²⁴² Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.

²⁴³ See the opinion of the Ombudsperson on the draft law amending the law on the NCJ of 29 January 2024 and the open letter to the Ministry of Justice as regards the need to amend provisions governing the extraordinary appeal procedure of 5 March 2024.

²⁴⁴ This concerns decisions affecting the management and supervisory boards of the three main public service media outlets; see the ENNHRI contribution for the 2024 Rule of Law Report as regards Poland (p. 10). See also Pillar III above.

²⁴⁵ Global Alliance of National Human Rights Institutions (GANHRI), Sub-Committee on Accreditation (SCA), Accreditation Status as of 26 April 2023.

society²⁴⁶. Poland continues to have a broad and vibrant civil society, consisting of more than 120 000 CSOs, which engage in various activities related to the promotion of the rule of law²⁴⁷. According to CIVICUS, the civic space continues to be rated as obstructed²⁴⁸. The Government has started engaging with CSOs in the context of the law-making process²⁴⁹ and created the office of the Minister for the Civil Society²⁵⁰. CSOs had raised concerns about a significant worsening of the distribution of public funds notably before the October 2023 parliamentary elections²⁵¹. New initiatives are expected regarding the legal framework in which civil society operates²⁵². Significant positive²⁵³ changes relate to organisations defending the rights of the LGBTIQ community²⁵⁴, and to Government proposals to amend the criminal code to include among others bias against sexual orientation as one of the grounds for hate crimes²⁵⁵. In view of these developments, there has been significant progress on the recommendation made in the previous years.

²⁴⁶ 2023 Rule of Law Report, Country Chapter on the rule of law situation in Poland, p. 33. The Commission had assessed that overall no progress had been made on the recommendation in the 2022 Rule of Law Report to separate the function of the Minister of Justice from that of the Prosecutor-General and that some progress improve the framework in which civil society operates, taking into account European standards on civil society.

²⁴⁷ In 2023, the activities were primarily focused on educating the public about electoral integrity principles and the importance of scrutinizing election campaign conduct; see the contribution of five NGOs submitted in the context of the 2024 Rule of Law Report preparation (pp. 37-38) where also other initiatives are listed.

²⁴⁸ Rating given by CIVICUS. Ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

²⁴⁹ See above.

²⁵⁰ The Minister is also the Head of the Committee for Public Benefit Matters.

²⁵¹ Reportedly, public funds were directed towards Government-dependent organisations; see the contribution of five NGOs submitted in the context of the 2024 Rule of Law Report preparation (p. 36).

²⁵² See the contribution of the Polish Government to the 2024 Rule of Law Report preparation (p. 53).

²⁵³ Nevertheless, certain criminal cases concerning notably the authors of the so-called “Hate-Atlas” remain pending before courts (these cases were initiated by local governments against persons who informed the public that these local governments had adopted the so-called “LGBTI ideology-free zones”; see the 2023 Rule of Law Report: Country Chapter on the rule of law situation in Poland, p. 34. On positive developments, see in particular the joined contribution of the Center for Reproductive Rights, ILGA Europe and IPPF European Network to the 2024 Rule of Law Report: Country Chapter for Poland preparation (p. 7 ff.).

²⁵⁴ On 12 December 2023, in the judgment *Przybyszewska and Others v. Poland* (Applications nos. 1454/19 and 9 others), the ECtHR ruled that the lack of any form of legal recognition and procreation for same-sex couples in Poland breached the ECHR. On 27 February 2024, the Ombudsperson published a Handbook on legal rules governing the gender recognition; see the press release of the Ombudsperson of 27 February 2024.

²⁵⁵ The draft law is included in the legislative work of the government (draft no. UD29) with the tentative date of tabling in the parliament set to the second quarter of 2024. The Minister of Justice also officially apologised to the LGBTI community for any harm caused by the Polish State in the recent past. Similar apologies were made by the Polish State Television on 13 February 2024; see the press release of the Ministry of Justice of 1 February 2024 and WirtualneMedia.pl “Przeprosiny w TVP Info dla osób LGBT+”.

Annex I: List of sources in alphabetical order*

* The list of contributions received in the context of the consultation for the 2024 Rule of Law report can be found at https://commission.europa.eu/publications/2024-rule-law-report-targeted-stakeholder-consultation_en.

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Annex II: Country visit to Poland

The Commission services held virtual meetings in March 2024 with:

- Amnesty International
- Association of Judges ‘Iustitia’ (Stowarzyszenie Sędziów Polskich Iustitia)
- Association of Judges ‘Themis’ (Stowarzyszenie Sędziów Polskich Themis)
- Association of Polish Journalists (Stowarzyszenie Dziennikarzy Polskich)
- Association of Prosecutors ‘Lex Super Omnia’ (Stowarzyszenie Prokuratorów Lex Super Omnia)
- Batory Foundation (Fundacja Batorego)
- Central Anti-Corruption Bureau (Centralne Biuro Antykorupcyjne)
- Chamber of Press Publishers (Izba Wydawców Prasy)
- Civic Development Forum (Forum Obywatelskiego Rozwoju)
- Free Courts (Wolne Sądy)
- Helsinki Foundation for Human Rights (Helsinska Fundacja Praw Człowieka)
- Lewiatan Confederation (Konfederacja Lewiatan)
- Ministry of Culture (Minsiterstwo Kultury)
- Ministry of Justice (Ministerstwo Sprawiedliwości)
- National Chamber of Legal Councillors (Krajowa Izba Radców Prawnych)
- National Council for the Judiciary (Krajowa Rada Sądownictwa)
- National Media Council (Rada Mediów Narodowych)
- National Television and Radio Broadcasting Council (Krajowa Rada Radiofonii i Telewizji)
- Office of the Minister of European Affairs (Urząd Ministra ds. Europejskich)
- Ombudsperson’s Office (Biuro Rzecznika Praw Obywatelskich)
- Polish Media Association (Stowarzyszenie Polskich Mediów)
- Prosecutor General’s Office (Prokuratura Generalna)
- Society of Journalists (Towarzystwo Dziennikarskie)
- Supreme Administrative Court (Naczelny Sąd Administracyjny)
- Supreme Audit Office (Najwyższa Izba Kontroli)
- Supreme Bar Council (Naczelna Rada Adwokacka)
- Supreme Court (Sąd Najwyższy)
- Watchdog Polska

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

- Amnesty International EU
- Centre for Democracy and Technology Europe
- Centre for European Volunteering
- Civil Liberties Union for Europe
- Civil Rights Defenders
- Civil Society Europe
- Culture Action Europe
- Democracy Reporting International

- European Centre for Non-Profit Law
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Free Press Unlimited
- International Federation for Human Rights
- International Planned Parenthood Federation
- International Press Institute
- Irish Council for Civil Liberties
- JEF Europe
- Open Society Foundations
- Philanthropy Europe Association
- PICUM
- Reporters Without Borders
- SOLIDAR
- Transparency International EU