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## **COMMISSION STAFF WORKING DOCUMENT**

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

*Accompanying the document*

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

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

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

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## **ABSTRACT**

The comprehensive civil and criminal justice reforms, aiming at improving their efficiency of procedures, were complemented with the adoption of the implementing legislation. The full effect of the reform of the High Council for the Judiciary is being evaluated. The directly applicable provisions of this reform have been put to full use while concerns remain on the parts depending on implementing legislation, which is still to be adopted. The newly established tax courts started functioning, with some challenges regarding their full independence from the executive. Concerns have been raised by some stakeholders on the draft laws regarding the separation of careers of judges and prosecutors and reforming the Prosecution Service. The digitalisation of the justice system has significantly improved while the amended procedural rules allowing the digitalisation in criminal justice remain to be fully implemented. The length of proceedings, while improving, still remains a serious challenge.

The Anti-Corruption Authority approved a new National Anti-Corruption Plan (2023-2025). A draft law was tabled aimed at abrogating the offence of abuse of public office and limiting the scope of the offence of trading in influence. The impact of the criminal justice reform on corruption cases closed after the lapse of two years at appeal level is being monitored. Steps were taken to enhance digitalisation and interconnection of registries as investments in IT tools have increased and financial information is available to law enforcement authorities. Comprehensive legislation on conflicts of interest has not been adopted yet. A parliamentary inquiry on the need to adopt comprehensive rules on lobbying is underway. Hearings in the Senate to address the practice of channelling donations through political foundations and associations have started. The new law on whistleblower protection entered into force covering breaches of both EU and national law. A new public procurement code aimed at simplification and efficiency of procedures has been adopted and will enter into force in July 2023.

The legal framework regulating the media sector is robust and effective while the media regulator is independent and well-resourced. Actions have been taken to alleviate the economic distress in the sector although some improvements are needed to better support small players operating at local or regional level. Access to information is ensured although stakeholders stressed the need to improve its implementation. A legal framework for the protection of journalists is in place, while journalists continue to face different forms of intimidation, such as attacks, threats and harassment, including online. In particular, the increase in the number of strategic lawsuits against public participation targeting journalists is viewed with concern by several stakeholders. A reform of the regime on defamation, the protection of professional secrecy and journalistic sources has been initiated.

Two new draft legislation were tabled, one of which assigns the role of a National Human Rights Institution to the Data Protection Authority, while the other proposes to create a separate entity through a constitutional change. Public consultations in the legislative process allow online participation with concerns having been raised by stakeholders regarding their effectiveness and systematic use. Several new decrees that could further narrow the civic space have been introduced. Amendments to the rules of tax and financial concessions for CSOs have been adopted, which introduced several measures simplifying the tax regime applied to CSOs.

## **RECOMMENDATIONS**

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

- Significant progress on continuing the efforts to further improve the level of digitalisation of the justice system, particularly for criminal courts and prosecutors' offices.
- Significant progress on enhancing digitalisation and interconnection of registries thereby improving the police and prosecution operations against high-level corruption.
- Some progress on adopting comprehensive conflict of interest rules and some progress on adopting lobbying regulation to establish an operational lobbying register, including a legislative footprint.
- Some progress on effectively addressing the practice of channelling donations through political foundations and associations and introducing single electronic register for party and campaign finance information.
- Some progress on introducing legislative and other safeguards to reform the regime on defamation, the protection of professional secrecy and journalistic sources, taking into account the European standards on the protection of journalists.
- Some progress on establishing a National Human Rights Institution taking into account the UN Paris Principles.

On this basis, and considering other developments that took place in the period of reference, and in addition to recalling the commitments made under the national Recovery and Resilience Plan relating to certain aspects of the justice system and the anti-corruption framework, it is recommended to Italy to:

- Continue efforts to further improve the level of digitalisation for criminal courts and prosecutors' offices.
- Adopt comprehensive conflicts of interest rules and lobbying regulation to establish an operational lobbying register, including a legislative footprint.
- Effectively and swiftly address the practice of channelling donations through political foundations and associations and introduce a single electronic register for party and campaign finance information.
- Continue the legislative process to reform and introduce safeguards for the regime on defamation, the protection of professional secrecy and journalistic sources, taking into account the European standards on the protection of journalists.
- Continue efforts to establish a National Human Rights Institution taking into account the UN Paris Principles.

## **I. JUSTICE SYSTEM**

The structure of the justice system is set out in the Constitution, which enshrines its independence and autonomy. Ordinary courts have jurisdiction in civil and criminal matters and are organised in three instances. The first instance is composed of justices of the peace, ordinary courts, and juvenile courts. The second and third instances are made up of the courts of appeal and the High Court of Cassation, respectively. Administrative justice is organised in first and second instance courts. Jurisdiction in accounting matters is exercised by the Court of Auditors (with Regional and Central Chambers). Regarding fiscal matters and tax matters, the responsible courts are respectively the newly established tax courts at first and second instance, and for both of them, the High Court of Cassation at the highest level. The structure of the prosecution service mirrors that of the courts. Italy participates in the European Public Prosecutor's Office (EPPO). According to the principle of unity of the judiciary, ordinary judges and public prosecutors are all magistrates, have a common career structure, and are governed by the High Council for the Judiciary<sup>1</sup>. Administrative, accounting, and fiscal magistrates have their own self-government bodies. The National Bar Council is an independent and self-governing body established by law. The Constitutional Court decides in exclusivity on disputes regarding the constitutionality of laws.

### **Independence**

**While the level of perceived judicial independence in Italy slightly increased in the last years, continues to be low among the general public and is now equally low among companies.** Overall, 39% of the general population and 39% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2023<sup>2</sup>. The perceived judicial independence among the general public has consistently increased in the last years. This figure has increased in comparison with 2022 (37%), as well as in comparison with 2016 (25%). The perceived judicial independence among companies has decreased slightly in comparison with 2022 (40%), but it is higher than in 2016 (24%).

**The effect of the reform on the High Council for the Judiciary (CSM) is being evaluated, while concerns remain on the parts depending on implementing legislation, which is still to be adopted.** As mentioned in the 2022 Rule of Law Report<sup>3</sup>, the reform of the CSM, which was adopted on 16 June 2022, contains directly applicable provisions<sup>4</sup> and others requiring

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<sup>1</sup> Consiglio Superiore della Magistratura (CSM) in Italian.

<sup>2</sup> Figures 49 and 51, 2023 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

<sup>3</sup> See 2022 Rule of Law Reports, Country Chapter on the rule of law situation in Italy, pp. 3-6. On 16 June 2022, the Parliament approved a new law to reform the justice system, which includes, among others, provisions regarding the establishment and functioning of the High Council for the Judiciary.

<sup>4</sup> Input from Italy for the 2022 Rule of Law Report, p. 5. The provisions with direct applicability include: the reform of the electoral system of the CSM, which is supposed to make it more independent from the magistrates' associations; the reform of the functioning of the CSM, which is supposed to make it more efficient (incl. increasing the number of its members); the reform on the selection of the heads of judicial offices, which is supposed to introduce provisions of seniority increments for the selection procedure and provide a clear benchmark based on experience; the reform on the stricter rules on "revolving doors" for the judiciary.

implementing legislation<sup>5</sup> by the Government. The directly applicable provisions have already been put in use with the first election of the CSM under the new rules, which took place on 18-19 September 2022 for members elected by their peers and on 17-19 January 2023 for members elected by the Parliament<sup>6</sup>. More time will be needed to determine the full extent of their effect on the work of the CSM<sup>7</sup>. As regards the provisions requiring implementing legislation, the deadline for their adoption, initially indicated as being June 2023<sup>8</sup> has been extended until December 2023<sup>9</sup>. Consequently, concerns raised last year by stakeholders and by the CSM itself<sup>10</sup> as regards the combined effect that the new provisions<sup>11</sup> might have regarding the influence on judges' independence remain. The implementing legislation is expected to address these concerns by providing more detailed provisions on how judicial independence is ensured. According to European standards, the search for enhanced efficiency should not compromise judicial independence<sup>12</sup>.

**The newly established tax courts started functioning, with some challenges regarding their full independence from the Ministry of Economy and Finance.** The commitments under the Recovery and Resilience Plan (RRP) to adopt a comprehensive reform of the tax courts resulted in the adoption of a law on 31 August 2022<sup>13</sup>, which establishes new first and second instance tax courts, and introduced an autonomous and professional role of tax magistrates. According to the adopted law<sup>14</sup>, and similarly to the procedure for ordinary magistrates, the tax judges will be appointed by a decree of the Ministry of Economy and

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<sup>5</sup> Input from Italy for the 2022 Rule of Law Report, pp. 5-6. The provisions requiring implementing legislation include: the reform on the selection of the heads of judicial offices and chambers; the reform on the selection of the members of the Court of Cassation and of the General Prosecutor's Office at the Court of Cassation; the reform on the modernisation and adoption of measures to improve the efficiency of the justice system; the adoption of measures to make the organisation of judicial offices more effective; the adoption of measures in the disciplinary sector, including for the introduction of the institution of rehabilitation of a sanctioned magistrate.

<sup>6</sup> See Press release on CSM website – CSM elections 18-19 September 2022, with updates until 19 January 2023.

<sup>7</sup> Information received from the ANM and CSM in the context of the country visit to Italy.

<sup>8</sup> See 2022 Rule of Law Reports, Country Chapter on the rule of law situation in Italy, p. 4.

<sup>9</sup> This was approved by Law 21 April 2023, n. 41. Moreover, the Ministry of Justice has set up a committee of experts (consisting of magistrates, law professors, lawyers) with the task to conduct a comprehensive study of the subject matter.

<sup>10</sup> See 2022 Rule of Law Reports, Country Chapter on the rule of law situation in Italy, pp. 4-5.

<sup>11</sup> The new legislation regulates the organisational powers of court presidents: it introduces a professional evaluation of magistrates, which, among other things, will take into account the achievement of expected results set by presidents of courts and the possibility to initiate disciplinary action for non-compliance with instructions from presidents of courts as to the expected results; it envisages the reduction of the number of middle managerial positions and regulates powers for the First President of the High Court of Cassation; the professional evaluation for high-level positions will take into account the outcome of the ruling in subsequent instances, which may be seen as implicitly calling for a uniform ruling on certain topics. See 2022 Rule of Law Reports, Country Chapter on the rule of law situation in Italy, pp. 4-5.

<sup>12</sup> Recommendation CM/Rec(2010)12 of Committee of Ministers of Council of Europe, para. 22. The principle of judicial independence means the independence of each individual judge in the exercise of adjudicating functions. In their decision-making judges should be independent and impartial and able to act without any restriction, improper influence, pressure, threat or interference, direct or indirect, from any authority, including authorities internal to the judiciary. Hierarchical judicial organisation should not undermine individual independence. See also CM/Rec(2010)12 of Committee of Ministers of Council of Europe, para 37.

<sup>13</sup> Law no. 130 of 31 August 2022, which amends Legislative Decree 545/1992.

<sup>14</sup> See Art. 9(1) of Legislative Decree 545/1992 as amended by Law no. 130 of 31 August 2022.

Finance (MEF) on a proposal<sup>15</sup> by the Council for Tax Justice (CPGT)<sup>16</sup> following a competition organised by the Board for the Public Competition for Tax Judges<sup>17</sup>. The appraisal of the judges, including career progression, will be an exclusive competence of the CPGT<sup>18</sup>. As regards disciplinary proceedings against tax judges, they can be initiated by the Prime Minister or by the President of the Tax Court of Second Instance in the region where the judge is appointed<sup>19</sup>, and then the case is transferred to the disciplinary office of the CPGT. The administrative staff that work for the CPGT remain civil servants of the MEF, but the latter does not have a decision-making power over the organisation and management of the staff assigned to the CPGT<sup>20</sup>. Despite these safeguards for the functional and organisational independence of the new tax courts that are in place, some stakeholders have raised concerns due to the fact that the MEF, through one of its agencies<sup>21</sup>, could be a party in the cases before the new courts<sup>22</sup>.

**Several draft laws regarding the separation of careers of judges and prosecutors and reforming the Prosecution Service are under discussion.** On 2 February 2023, the Commission on Constitutional Affairs in the Parliament discussed several draft laws prepared by members of parliament, which aim to separate the careers of judges and prosecutors<sup>23</sup>. The draft laws also envisage the introduction of distinct self-government bodies and the removal of a provision in the Constitution, which establishes that magistrates are distinguished only by

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<sup>15</sup> The MEF would not have the power to overturn the proposal by the CPGT.

<sup>16</sup> *Consiglio di presidenza della giustizia tributaria* (CPGT). It is composed of 15 members. Out of them, 11 are tax judges elected by peer judges, out of these 11, four spots are reserved for each one each judiciary. There are also four members elected by the Parliament. Art. 17(2) of Legislative Decree 545/1992 as amended by Law no. 130 of 31 August 2022 provides for a composition of the CPGT, which takes into account the transition from honorary tax judges to full-time tax judges and the transition from other judiciaries to the newly created tax judiciary.

<sup>17</sup> See Art. 4-*quater* of Legislative Decree 545/1992 as amended by Law no. 130 of 31 August 2022. The Selection board is appointed by a decree of the Ministry of Economy and Finance with prior deliberation of the Council for Tax Justice. The Selection Board is composed of: the chairman of a tax Court of second instance, by five judges selected from ordinary, administrative, accounting and military judiciary with 15 years of experience and four tenured university professors, one who is teaching tax law, the others teaching subjects that are covered by the selection exams. Moreover, 2023 an *interpello* procedure has been organised to allow magistrates from other jurisdictions to pass to the tax courts (out of 100 posts, 34 judges applied according to the temporary ranking published in CPGT website).

<sup>18</sup> Art. 11 of Legislative Decree 545/1992 as amended by Law no. 130 of 31 August 2022.

<sup>19</sup> Art. 16 of Legislative Decree 545/1992 as amended by Law no. 130 of 31 August 2022.

<sup>20</sup> The CPGT has organisational and accounting autonomy.

<sup>21</sup> According to the Government, the MEF is never directly a party in the tax cases, and the relationships between the MEF and the tax agencies are governed by special agreements on services, objectives and resources.

<sup>22</sup> Information received from ANM in the context of the country visit to Italy. Written contribution from the CSM in the context of the country visit, pp. 10. In the case law of the Court of Justice of the EU and the European Court of Human Rights, the appearance of independence plays an important role, as the situation cannot give rise to reasonable doubts, in the minds of individuals, as to the imperviousness of the judges concerned to external factors and as to their neutrality with respect to the interests before them, once appointed as judges. See Judgment of the Court of Justice of 19 November 2019, *A.K. v Krajowa Rada Sądownictwa*, Joined Cases C-585/18, C-624/18 and C-625/18, ECLI:EU:C:2019:982, paras. 127-129. See also list of judgments in Independence and Impartiality of The Judicial System, Thematic factsheet, p. 3.

<sup>23</sup> See Meeting of the Permanent Commission for Constitutional Affairs in the Parliament of 2 February 2023. See also press conference on 14 February 2023, where several parties illustrated the main points of the draft laws and informed that take up the text of the constitutional reform on which in 2017 the Union of Italian criminal chambers discussed.

their different functions<sup>24</sup>. Stakeholders have raised concerns that a rigid separation of the careers could<sup>25</sup>, lead to a prosecutor becoming increasingly distant from the culture of jurisdiction, possibly making them more prone to potential political influences<sup>26</sup>. On 11 June 2023, the Minister of Justice informed the Assembly of the ANM any intervention from the Government to reform the justice system would be inspired by the constitutional values of independence and autonomy of all magistrates, judges and prosecutors. While there is no single model in the EU for the institutional set-up of the prosecution service, institutional safeguards are required to ensure that prosecutors are able to fulfil their professional duties and responsibilities under adequate legal and organisational conditions and without interference<sup>27</sup>. According to European standards, sufficient autonomy must be ensured to shield prosecutorial authorities from undue political influence<sup>28</sup>.

**Concerns have been raised as disciplinary proceedings were initiated against a panel of judges of the Court of Appeal of Milan based on the content of their decision.** The disciplinary proceedings were initiated on 19 April 2023 by the Minister of Justice considering that the judges did not take into account certain circumstances which, if properly considered, would have led to a different decision<sup>29</sup>. These proceedings are now being examined by the Prosecutor General at the Supreme Court of Cassation who will have to decide whether to charge the judges with a disciplinary offence or dismiss the case. It is recalled that according to the case-law of the Court of Justice, the requirement of independence and impartiality entails that a disciplinary regime against magistrates should include rules defining the forms of conduct which constitute a disciplinary offence<sup>30</sup>. Furthermore, according to the national legislation, ‘the activity of interpreting provisions of law and assessing facts and evidence shall not give rise to disciplinary liability’<sup>31</sup>.

## Quality

**The increasing recruitment of magistrates and non-judicial staff has continued, and the provisions on the competitions for magistrates have been changed to increase the number of candidates.** The trend of increasing recruitment of judicial and administrative staff has

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<sup>24</sup> Art. 107(3) of the Constitution. See also a referendum held in 2022, which did not concern Art 107(3) of the Constitution but touched, among others, upon on the topic of the separation of careers of judges and prosecutors. The referendum which managed a turnout of only 21% of those entitled to vote. The referendum was addressed to abrogate the current rules. However, the result proved that citizens did not want to change the rule, which is in line with stakeholders’ opinion. The referendum took place on 12 June 2022. It contained five questions, one of which was regarding the separation of the career of judges and prosecutors. For a referendum to be successful, it should have a turnout of at least 50%+1.

<sup>25</sup> See press releases from the ANM on 6 and 15 February 2023. Information also received from CSM and ANM in the context of the country visit to Italy. However, one association of lawyers (*Giunta Dell’unione Delle Camere Penali Italiane*) considers that such reform could be beneficial.

<sup>26</sup> See previous footnote.

<sup>27</sup> See 2022 Rule of Law Report, The rule of law situation in the European Union, p. 7.

<sup>28</sup> See Venice Commission’s Rule of Law Checklist, pp. 39-41.

<sup>29</sup> See position of ANM of 19 April 2023 on the disciplinary proceedings against the panel of judges from the Milan Court of Appeal; see also the position of the Association of Magistrates in Milan of 19 April 2023 on the same topic; see also the position of the Association of Lawyers in Milan of 19 April 2023 on the same topic.

<sup>30</sup> Judgment of the Court of Justice of 15 July 2021, *Commission v Poland*, Case C-791/19, ECLI:EU:C:2021:596, paras. 134-140.

<sup>31</sup> Art. 2(2) of Legislative Decree No 109/2006, which is without prejudice to the applicability of the provisions of paragraph l, subparagraphs g), h), l), m), n), o), p), cc) and ff).

continued over the past year. As regards judicial staff, 20 units (i.e. additional positions for magistrates) have been provided by further expanding the staff of the judiciary<sup>32</sup>. Furthermore, the state budget for 2022 provided for an increase of 82 units for the judiciary<sup>33</sup>. As regards other needs linked to the sectors of international protection and judicial offices supervising execution of criminal sanctions, two Ministerial Decrees<sup>34</sup> in 2022 provided for the allocation to supervising offices of 21 out of 82 posts added to the staff establishment plan of the judiciary and for a 52-unit increase in the number of magistrates to be assigned to the specialised Chambers on immigration, international protection, and free movement of EU citizens<sup>35</sup>. On 15 June 2023, the Council of Ministers adopted a draft law, which provides for an additional increase in the staff establishment plan of the judiciary by 250 units. As regards administrative staff, the staff selected by the relevant competitions took up their duties at the judicial and central administration offices in 2022<sup>36</sup>. As regards the Office of the Trial and the implementation of the commitments under the RRP, as of 30 October 2022, the Office have recruited 7 743 non-managerial personnel, and 3 209 more contracts were signed by 21 November 2022<sup>37</sup>. Finally, the rules for competitions have been changed as to allow for university graduates to apply directly to the competitions for magistrates without requiring the additional working experience, which was the case in the previous years<sup>38</sup>.

**Significant progress was made regarding the digitalisation of the justice system, in particular in the field of civil justice.** The 2022 Rule of Law Report recommended to Italy to “continue the efforts to further improve the level of digitalisation of the justice system, particularly for criminal courts and prosecutors’ offices”<sup>39</sup>. Further progress has been noted in the digitalisation of civil justice, which was already advanced<sup>40</sup> in 2022. Since January 2023, the use of electronic management of all documents has become compulsory<sup>41</sup>. It is now mandatory to file applications to the Court on a digital platform, thus enabling the processing of applications digitally and the digital access to the case files of all judges in the Court<sup>42</sup>. A

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<sup>32</sup> Input from Italy for the 2023 Rule of Law Report, p. 14. The 600-unit increase previously provided for by Law no. 145 of 30 December 2018 was followed by Decree-Law no. 118 of 24 August 2021, converted with amendments by Law No. 147 of 21 October 2021, which provided for a further expansion of the staff establishment plan of the judiciary by 20 units, aimed at ensuring the availability of the resources necessary for the implementation of domestic legislation on enhanced cooperation in the field of the European Public Prosecutor’s Office.

<sup>33</sup> Ibid. Lastly, with a view to increasing the effectiveness of the justice system, Article 1, paragraph 614, of Law no. 234, of 30 December 2021, (on the ‘State budget for the financial year 2022 and the multi-year budget for the three-year period 2022-2024’), provided for an increase of 82 units in the judiciary staff establishment plan, aimed at adapting the staff establishment plan to the increasingly burdensome activities related to international protection, to the supervision for the enforcement of criminal sanctions as well as to the competences related to the European Delegated Prosecutors at the Court of Cassation.

<sup>34</sup> Ministerial Decree of 23 November 2022 and Ministerial Decree of 22 December 2022.

<sup>35</sup> Input from Italy for the 2023 Rule of Law Report, p. 15.

<sup>36</sup> Ibid. With amendments to Law no. 113 of 6 August 2021, which had provided for 16500 clerks for the Office of the Trial, an additional quota of fixed-term administrative staff was introduced. This additional quota comprises of 5410 with a 3-year contract. This was done to ensure the full operation of the Office of the Trial and support the project lines included in the RRP. The clerks of the Office of the Trial started working in February, whereas the other types of staff in October and November 2022.

<sup>37</sup> Input from Italy for the 2023 Rule of Law Report, p. 15-16.

<sup>38</sup> Information received from the Ministry of Justice.

<sup>39</sup> See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 2.

<sup>40</sup> See 2022, Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 8.

<sup>41</sup> Input from Italy for the 2023 Rule of Law Report, p. 19. Also, information received from the High Court of Cassation in the context of the country visit to Italy.

<sup>42</sup> Written contribution from the High Court of Cassation in the context of the country visit, p. 4.



fully digitalised trial is yet to be established. Under the RRP, a reform to enable the digitalisation of the justice system is envisaged in the course of 2023 and that RRP targets will monitor its impact in terms of results until 2026. As regards the digitalisation of criminal justice, the realisation of some of the objectives of RRP planned for the end of 2023 are brought forward to 30 June 2023; in particular, the availability of documents on the Portal for the e-filing of the criminal case documents<sup>43</sup>. The e-portal allows the electronic transmission to the Judicial Offices of acts, documents and applications by authorised external parties<sup>44</sup>. Currently, 10 types of documents are available on the portal<sup>45</sup>. Furthermore, the communication between the High Court of Cassation and the Prosecution Service has been digitalised, and the procedural rules<sup>46</sup> that would allow for the use of electronic tools<sup>47</sup> have been clarified. Some efforts are still needed in the use of digital technology by the Prosecution service<sup>48</sup> and in the availability of electronic communication tools and digital tools to conduct and follow court proceedings in criminal cases<sup>49</sup>. Stakeholders reported that despite the significant progress and the existence of digital services for civil justice, and procedural rules for criminal justice, the overall digitalisation needs to be supported by further investments in materials and training to become fully operational<sup>50</sup>. Considering these developments, significant progress was achieved in fulfilling the recommendation from the 2022 Rule of Law Report.

## Efficiency

**The length of proceedings, while improving, still remains a serious challenge.** Following the temporary slowdown of judicial activity in 2020 and the return to pre-pandemic levels in 2021<sup>51</sup>, the efficiency continued improving both for civil<sup>52</sup> and criminal<sup>53</sup> proceedings in 2022. The disposition time for first instance civil and commercial litigious cases fell by 100 days from 2020 to 2021<sup>54</sup>, and further improvements could be observed in 2022, according to the data presented by the authorities. Nevertheless, this disposition time remains among the lengthiest in the EU, as in 2021, it still takes on average more than 550 days to resolve such cases. Some positive developments were reported by the High Court of Cassation, where the

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<sup>43</sup> Written contribution from the Ministry of Justice in the context of the country visit, p. 2.

<sup>44</sup> Primarily defence counsels. Ibid.

<sup>45</sup> The Ministry of Justice informed that by 30 June 2023 additional types of documents are expected to be distributed relating to fact-finding proceedings (*processo di cognizione*) up to the second instance. Ibid.

<sup>46</sup> Figure 42, 2023 EU Justice Scoreboard – it is now procedurally possible to hear experts and witnesses in criminal cases through distance communication technology.

<sup>47</sup> This clarification was done through Legislative Decree no. 150 of 2022. See also input from Italy for the 2023 Rule of Law Report, p. 20.

<sup>48</sup> Figure 43, 2023 EU Justice Scoreboard.

<sup>49</sup> Figure 45 and 47, 2023 EU Justice Scoreboard.

<sup>50</sup> Information received from ANM in the context of the country visit to Italy.

<sup>51</sup> See 2022, Rule of Law Report, Country Chapter on the rule of law situation in Italy, pp. 10-11.

<sup>52</sup> High Court of Cassation, Report on the Administration of Justice in 2022, p. 90. ‘For the civil sector, it can be noted that in January 2020 the number of pending appeals was 120.473, which by the end of 2022 was reduced to 104.872. A significant decrease, which is also reinforced by the significant reduction in the *disposition time*, which has fallen to 1.063 days and already not far from the 976-day target expected in June 2026’. See also Figure 5 and 6, 2023 EU Justice Scoreboard.

<sup>53</sup> High Court of Cassation, Report on the Administration of Justice in 2022, p. 90. ‘In the criminal sector, the most significant figure, which summarises the results of the whole reorganisation process, is *the evolution of the disposition time*, which has gradually declined over the year to reach the 132 days threshold, well below the 166 days target set in June 2026’. See also Figure 5, 2023 EU Justice Scoreboard.

<sup>54</sup> Figure 6, 2023 EU Justice Scoreboard.

clearance rate of criminal proceedings is currently 113%<sup>55</sup>. Tax cases make up 50% of the pending cases before the High Court of Cassation and a new incentive is envisaged to accelerate their closure. With this new scheme, the parties to the case would be allowed to pay in instalments the sum that they owe in taxes, with the first instalment being a substantial percentage of the whole sum. In case they would not pay the subsequent instalments, a new case could be brought before the first instance tax court, where they would be asked to pay the entire sum, including the instalments previously paid, in order to close the pending case at the level of the High Court of Cassation<sup>56</sup>. This scheme, combined with the new structure of tax courts, could allow for a more efficient dealing with tax cases and lowering the backlog at the last instance. Italy remains under the enhanced supervision of the Council of Europe's Committee of Ministers as regards length of proceedings in administrative and criminal cases<sup>57</sup>.

**The implementing legislation for the civil and criminal justice reforms has been adopted.**

As mentioned in the 2022 Rule of Law Report, two comprehensive and long-awaited reforms regarding civil<sup>58</sup> and criminal<sup>59</sup> justice have been adopted<sup>60</sup>. Both reforms included directly applicable provisions<sup>61</sup> but also empowered the Government to adopt implementing legislation. On 10 October 2022, two Legislative Decrees<sup>62</sup> were adopted to implement the civil and criminal justice reforms. As regards civil justice, the decree aims at improving the efficiency of the procedure and revises the alternative dispute resolution tools and urgent measures for the rationalisation of certain procedures<sup>63</sup>. As regards criminal justice, the decree also aims at improving the efficiency of proceedings and covers matters of restorative justice and provisions for the swift finalisation of judicial proceedings<sup>64</sup>. The criminal justice reform was referred to in a decision of the Committee of Ministers of the Council of Europe on the execution of a judgement on the absence of remedies for the offended person in cases of excessively long

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<sup>55</sup> Information received from the High Court of Cassation in the context of the country visit to Italy.

<sup>56</sup> Information received from the High Court of Cassation in the context of the country visit to Italy. Art. 5(2) of Law No. 130/2022 introduced temporary settlement arrangements (actionable up to 120 days after the entry into force of Law No. 130/2022) for pending tax proceedings at Cassation Court where the Tax Agency had been fully or partially succumbing, depending on litigation value, in previous instances.

<sup>57</sup> Judgment of the European Court of Human Rights of 2 September 1997, *Abenavoli v. Italy*, 24487/94 and Judgment of the European Court of Human Rights of 12 May 1999, *Ledonne v Italy*, 35742/97. Regarding the case *Abenavoli v. Italy* – concerning the length of proceedings before administrative courts – the latest decision of the Committee of Ministers adopted in September 2021 acknowledges the progress made by the authorities while highlighting remaining concerns and asks the authorities provide further information.

<sup>58</sup> Law 26 November 2021, no. 206.

<sup>59</sup> Law of 27 September 2021, no. 134.

<sup>60</sup> See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Italy, pp. 11-13.

<sup>61</sup> For example, in the civil justice reform, these were on family law, forced execution and citizenship rights; and in the criminal justice reform, these were related to the swift definition of criminal cases. Law No. 134 of 27 September 2021, Art. 1 (paras. 9 and 10) introduces incentives to extend the use of plea bargains, immediate proceeding and abbreviated proceedings.

<sup>62</sup> On the civil justice reform - Legislative Decree 10 October 2022, no.149, published in the Official Journal of 17 October 2022, no.243 (Ordinary Series); on the criminal justice reform - Legislative Decree of 10 October 2022, no.150, published in the Official Journal of 17 October 2022, no.243 (Ordinary Series).

<sup>63</sup> Input from Italy for the 2023 Rule of Law Report, p. 22. - Law 29 December 2022, No. 197 "State budget for the financial year 2023 and multi-annual budget for the three-year period 2023-2025", provided that. Law no. 149/2022 shall apply to proceedings instituted after 28 February 2023. The revisions would apply also to the rationalisation of urgent procedures related to family law, citizenship rights and matters of forced execution.

<sup>64</sup> Input from Italy for the 2023 Rule of Law Report, p. 22. - The reform came into force on 30 December 2022, pursuant to Article 6 of Decree-Law No 162 of 31 October 2022. For example, Art. 1 of the Decree provides for additional measures replacing short prison sentences (e.g. home detention, financial penalty, public service work etc.).

preliminary investigations<sup>65</sup>. The Committee of Ministers took note of the reform in a positive way and requested more information on the results of its implementation<sup>66</sup>. They also noted that the reform appears to respond to the shortcomings found by the Court although its effectiveness is still to be seen<sup>67</sup>. The entry into force of secondary sources of legislation necessary for the effective application of the civil and criminal reforms is expected in the course 2023 under the RRP.

## II. ANTI-CORRUPTION FRAMEWORK

The National Anti-Corruption Authority is the main entity in charge of the prevention of corruption within the public administration sector, coordinating the National Anti-Corruption Plan and supervising the adoption of the local three-year anti-corruption action plans. The Anti-Corruption Unit of the *Guardia di Finanza* is responsible for the investigation and prevention of corruption as a specialised law enforcement body. As an independent authority at the Bank of Italy, the Financial Intelligence Unit provides support to the competent prosecutor's office and cooperates with the *Guardia di Finanza* as the competent authority for receiving reports of suspicious financial transactions. To prevent and fight corruption in the allocation and implementation process of resources received under the Recovery and Resilience Plan, consultative and control tasks have also been assigned to the Court of Auditors<sup>68</sup>.

**The perception among experts and business executives is that the level of corruption in the public sector remains relatively high.** In the 2022 Corruption Perceptions Index by Transparency International, Italy scores 56/100 and ranks 16<sup>th</sup> in the European Union and 41<sup>st</sup> globally<sup>69</sup>. This perception has improved over the past five years<sup>70</sup>. The 2023 Special Eurobarometer on Corruption shows that 85% of respondents consider corruption widespread in their country (EU average 70%) and 33% of respondents feel personally affected by corruption in their daily lives (EU average 24%)<sup>71</sup>. As regards businesses, 92% of companies consider that corruption is widespread (EU average 65%) and 38% consider that that corruption is a problem when doing business (EU average 35%)<sup>72</sup>. Furthermore, 41% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU

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<sup>65</sup> Committee of Ministers Decision CM/Del/Dec(2022)1451/H46-18 of 6-8 December 2022 and Notes CM/Notes/1451/H46-18 6-8 December 2022.

<sup>66</sup> Committee of Ministers Decision CM/Del/Dec(2022)1451/H46-18 of 6-8 December 2022, paras. 4-6.

<sup>67</sup> Committee of Ministers Notes CM/Notes/1451/H46-18 6-8 December 2022, General measures.

<sup>68</sup> Article 46 of Law No. 238 of 23 December 2021.

<sup>69</sup> Transparency International (2023), Corruption Perceptions Index 2022. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

<sup>70</sup> In 2018, the score was 52, while, in 2022, the score is 56. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last five years.

<sup>71</sup> Special Eurobarometer 534 on Corruption (2023). The Eurobarometer data on citizens' corruption perception and experience is updated every year. The previous data set is the Special Eurobarometer 523 (2022).

<sup>72</sup> Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023). The Eurobarometer data on business attitudes towards corruption is updated every year. The previous data set is the Flash Eurobarometer 507 (2022).

average 32%)<sup>73</sup>, while 31% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 30%)<sup>74</sup>.

**A new National Anti-Corruption Plan for the years 2023-2025 was approved.** Italy's National Anti-Corruption Authority (ANAC) approved a new three-year National Anti-Corruption Plan on 16 November 2022 and adopted a corresponding resolution on 17 January 2023<sup>75</sup>. The new plan, based on the main corruption prevention law<sup>76</sup>, is Italy's overarching corruption prevention strategy<sup>77</sup>. ANAC supports the public administration in designing and implementing entity-specific three-year action plans<sup>78</sup>. Its human resources are expected to increase by 28 posts to help it deal with its increased tasks under the national recovery plan, in particular the digitalisation of public procurement procedures<sup>79</sup>. The Plan is divided into two parts. One part is the strengthening of public sector integrity and transparency through the setting up of Integrated Activity Plans and effective safeguards to prevent corruption in public administrations<sup>80</sup>. It also recommends that administrations take appropriate measures to mitigate the phenomenon of 'revolving doors'<sup>81</sup>. In view of the allocation and use of funds under the Recovery and Resilience Plan, the other part focuses on public procurement, for instance by assisting contracting authorities to identify and set up corruption-prevention measures to avoid maladministration and to regulate conflicts of interest<sup>82</sup>. The Plan recognises the nexus between anti-corruption and anti-money laundering measures concerning the obligation for public bodies to identify the beneficial owners of companies participating in public tenders, by using the official Ultimate Beneficial Ownership Register<sup>83</sup>, and to provide

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<sup>73</sup> Special Eurobarometer 534 on Corruption (2023).

<sup>74</sup> Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023).

<sup>75</sup> Input from Italy for the 2023 Rule of Law Report, p. 26 and written contribution from ANAC in the context of the country visit to Italy.

<sup>76</sup> Law No. 190 of 6 November 2012, Prevention and repression of corruption in public administrations, Official Gazette of the Italian Republic, General Series No. 265 of 13 November 2012.

<sup>77</sup> The Plan sets out the main policy objectives for a period of three years, to be updated every year, although municipalities and institutions with fewer than 50 employees are exempt from this requirement and need only update their policy every three years thus reducing their administrative burden.

<sup>78</sup> Each ministry, local government and municipality design and implement their own local plans. These aim at i.a., establishing rules for the appointment of a corruption prevention officer, specifying the public entities' role in evaluating and managing corruption risks, enhancing transparency, supporting whistleblowers, and monitoring privatization procedures. The plan also sets up rules on the drafting of three-year anti-corruption plans in the areas most exposed to corruption, such as healthcare. See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 14, footnote 125.

<sup>79</sup> Information and written contribution received from ANAC in the context of the country visit to Italy. Libera had expressed concerns about ANAC's capacity to deal with their new competences according to information received in the context of the country visit to Italy.

<sup>80</sup> This ties in with Italy's 2021 'Integrated Plan of Organisation and Activities', part of the Public Administrative Reform, that integrates and simplifies many of the public sectors' planning acts and programming tools, including the three-year plan for the prevention of corruption and enhancing transparency. Input from Italy for the 2023 Rule of Law Report, p. 24 and information and written contribution received from ANAC in the context of the country visit to Italy. See ANAC, 'Here is the National Anti-Corruption Plan approved by Anac', 6 December 2022.

<sup>81</sup> ANAC had carried out an in-depth study on the prohibition of so-called 'pantouflage' or 'revolving doors' to avoid possible conflicts of interest in public administration and will adopt guidelines. Input from Italy for the 2023 Rule of Law Report, p. 27 and ANAC's written contribution in the context of the country visit to Italy. See also ANAC, 'Here is the National Anti-Corruption Plan approved by Anac', 6 December 2022.

<sup>82</sup> Input from Italy for the 2023 Rule of Law Report, pp. 26-27 and information and written contribution received from ANAC in the context of the country visit to Italy. See also ANAC, 'Here is the National Anti-Corruption Plan approved by Anac', 6 December 2022.

<sup>83</sup> This register (referred to below on p.16) is set up under the anti-money laundering rules.

a declaration of absence of conflict of interest<sup>84</sup>. ANAC manages the National Database of Public Contracts which will be able to collect and keep up-to-date the information on beneficial owners for economic operators to ensure transparency once the Ultimate Beneficial Ownership Register is up and running and the two systems are inter-connected<sup>85</sup>.

**A draft law was tabled aiming at abrogating the offence of abuse of public office and limiting the scope of the offence of trading in influence.** On 15 June 2023, the Council of Ministers presented a draft law providing for some amendments to the provisions regulating the offences against public administration. In particular, the draft law provides for the abrogation of the offence of abuse of public office and limiting the scope of the offence of trading in influence<sup>86</sup>. These proposed changes would decriminalise important forms of corruption<sup>87</sup> and could impact the effective detection of and fight against corruption<sup>88</sup>. The draft law further proposes changes to several other provisions of the Code of Criminal Procedure on pre-trial incarceration, the possibility of appealing acquittals as well as on special investigative techniques. Judicial authorities are closely following developments on this reform and the potential impact on the investigation, prosecution and adjudication of certain corrupt practices such as trading in influence or abuse of office<sup>89</sup>. Civil society has voiced some concerns about these changes and their possible impact to effectively fight corruption<sup>90</sup>.

**The impact of the criminal justice reform on corruption cases closed after the lapse of two years at appeal level is being monitored.** The reduction of excessive disposition times<sup>91</sup>

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<sup>84</sup> Input from Italy for the 2023 Rule of Law Report, p. 28, which also refers to the guidelines issued by the Ministry of Economy and Finance annexed to Circular No. 30/2022 of 11 August 2022 relating to the money laundering legislation. Information also received from ANAC, Transparency International and Libera in the context of the country visit to Italy. ANAC has repeatedly called for a similar obligation to declare the beneficiaries for economic operators competing for public contracts. See ANAC, 'Here is the National Anti-Corruption Plan approved by Anac', 6 December 2022.

<sup>85</sup> Written contribution from ANAC in the context of the country visit to Italy. The Ultimate Beneficial Ownership Register is not yet operational (see below pp. 15-16).

<sup>86</sup> According to input from Italy for the 2023 Rule of Law Report, the draft law stems from the observation that in 2021, out of 5292 proceedings concluded for the offence of abuse of office, there were only 9 convictions, which indicates a reduced effectiveness of the achieved results and the disproportion compared to human and economic resources necessary for these procedural activities.

<sup>87</sup> For trading in influence, the intermediary's relations with the public official would have to be 'actual' and not merely 'alleged' while the promised or given advantage would have to be economic whereas currently non-economic benefits are covered.

<sup>88</sup> The proposal to repeal the criminal offence of abuse of office has been criticised by several representatives of the judiciary, including the National Magistrates Association, the National Anti-Mafia Prosecutor, the former President of the Italian Anti-Corruption Authority and current Chief Prosecutor in Perugia and the Deputy Prosecutor in Rome.

<sup>89</sup> During the country visit to Italy, police and judicial authorities noted that they were also following the proposed reforms being debated at the time in relation to their ability to use special investigative measures and to investigate certain corrupt practices such as abuse of office and trading in influence. The use of investigative measures, e.g., is vital to demonstrate the so-called 'pactum sceleris' or criminal conspiracy. The use of interceptions as an investigative tool has proved particularly useful for offences against the public administration. Information received from the *Guardia di Finanza* and the National Anti-Mafia Directorate, and the written contribution from the Court of Auditors in the context of the country visit to Italy.

<sup>90</sup> Information received from Libera in the context of the country visit to Italy. See also Libera (6 December 2022), 'Dichiarazioni del Ministro Nordio sulla corruzione' and *Il Fatto Quotidiano* (30 March 2023), 'Meno intercettazioni, revisione dell'abuso d'ufficio e della Severino: senza controlli il nuovo Codice appalti incentiva la corruzione'.

<sup>91</sup> In the context of the Recovery and Resilience Plan, Italy committed to reducing by 25% the disposition time at three instances of criminal justice by late 2026. RRP, MIC1-46 related to criminal cases compared to 2019.

by improving the efficiency and effectiveness of the prosecution and adjudication of criminal offences, including corruption, was part of the criminal justice reform adopted in September 2021<sup>92</sup>. While limitation periods were suspended for first instance trials, including for corruption cases, time limits were set for subsequent appeal proceedings<sup>93</sup>. At appeal level, corruption proceedings would automatically close after a lapse of two years unless the judge requests an extension<sup>94</sup>. As the reform is recent and will only fully enter into force in 2025<sup>95</sup>, it is not yet possible to ascertain its impact on corruption cases, including at the appeal level<sup>96</sup>. Italy has committed to proactively monitor the impact under its Recovery and Resilience Plan<sup>97</sup>.

**There has been significant progress on enhancing digitalisation and interconnection of registries as investments in IT tools have increased and financial information is available to law enforcement authorities.** The 2022 Rule of Law Report recommended to Italy to ‘continue effective operations of police and prosecution service against high-level corruption, including by enhancing digitalisation and interconnection of registries’<sup>98</sup>. Cooperation and coordination in practice between the various national police and prosecution services, the tax authorities and the Anti-Corruption Authority continues to be effective as was the case last year<sup>99</sup>, as is the cooperation between the police and law enforcement agencies and EPPO<sup>100</sup>. All competent authorities underlined the importance of ready access to financial and other data and technical tools to investigate and prosecute corruption and foreign bribery<sup>101</sup>. The *Guardia*

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See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 12. See also written contribution from the *Guardia di Finanza* in the context of the country visit to Italy.

<sup>92</sup> The justice reform responds to recommendations made under the European Semester; see the Council Recommendation of 9 July 2019 on the 2019 National Reform Programme of Italy, Country specific recommendation 4, p. 11, and Recommendation for a Council Recommendation, Recital 27.

<sup>93</sup> A positive aspect of the so-called ‘Cartabia reform’ is that certain (minor) corruption offences were not decriminalized (‘exemption from punishment for particularly tenuous acts’) unlike other minor offences that were decriminalized in order to reduce the need for frequent and lengthy trials. This recognizes the importance of tackling corruption offences irrespective of the amounts of money involved. Even if the police will focus on structured crimes or those involving significant amounts, this does not exclude the possibility to prosecute lesser crimes if there are capacities to do so. Written contribution and information received from the *Guardia di Finanza* in the context of the country visit to Italy.

<sup>94</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 15.

<sup>95</sup> As reported in the 2022 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 15, footnote 129.

<sup>96</sup> Information received from the Ministry of Justice in the context of the country visit to Italy. The National Anti-Mafia Directorate considers it too soon to assess the effects of the reform. According to information received from the National Bar Council in the context of the country visit to Italy, while the changes in procedural criminal law were positive, they are yet to be tested, and opined that the reform would have benefited from a more flexible administrative sanctions regime in relation to the liability of legal persons.

<sup>97</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 15.

<sup>98</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 2.

<sup>99</sup> Such as the *Guardia di Finanza*, the Financial Intelligence Unit, the Prosecutor’s Office at the Court of Auditors and the National Anti-Mafia Directorate. Information received from these authorities in the context of the country visit to Italy. See also 2022 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 15.

<sup>100</sup> Cooperation between EPPO and the national prosecution offices is more complex, however, due to the (fragmented) national structure. Input from EPPO for the 2023 Rule of Law Report.

<sup>101</sup> Information received from the Anti-Mafia Directorate and the *Guardia di Finanza* and written contribution from the *Guardia di Finanza* in the context of the country visit to Italy. See also 2022 Rule of Law Report, Country Chapter on the rule of law situation in Italy, pp. 15-16. The OECD has recognized Italy’s efforts to improve enforcement of the Anti-Bribery Convention e.g. by creating the 3rd Department in the Milan prosecutor’s office to tackle foreign bribery and by strengthening the legislative framework in the field of

*di Finanza* has invested considerable resources in developing and improving IT technologies and has signed specific protocol agreements with several financial entities to share information and access to their respective databases<sup>102</sup>. The Ultimate Beneficial Ownership Register set up in June 2022<sup>103</sup>, laying down rules for companies with legal personality, private legal persons, trusts and similar legal institutions to register their beneficial ownership, is an important development to fight corruption and organised crime groups<sup>104</sup> once it is in operation<sup>105</sup>. In the context of the use of RRP funds, the sharing of information on public expenditure and the access to certain databases by investigative bodies should allow more timely interventions to intercept anomalous financial movements and investigate unlawful enrichment<sup>106</sup>. Therefore, there has been significant progress on the implementation of the recommendation made in the 2022 Rule of Law Report.

**There has been some progress made to adopt comprehensive legislation on conflicts of interest.** The 2022 Rule of Law Report recommended to Italy to ‘adopt comprehensive conflict of interest rules [...]’<sup>107</sup>. Previous efforts to adopt comprehensive legislation on conflicts of interest for political office holders, including parliamentarians, have stalled over the years<sup>108</sup>. A draft law containing provisions on conflicts of interest of holders of state, regional or local government offices, as well as the President and members of independent supervisory and regulatory authorities is under discussion at the Parliament<sup>109</sup>. The bill provides a delegation to the Government to adapt the regulations on local government office holders and members of independent guarantee, supervisory and regulatory authorities, as well as provisions concerning the prohibition of foreign payments by holders of public office. So far, legislation on conflicts of interest remains fragmented<sup>110</sup>. Although the Chamber of Deputies had been working to formalise and integrate its Code of Conduct into its Rules of Procedure<sup>111</sup>, it did not complete

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judicial cooperation but remains seriously concerned that foreign bribery cases litigated in Italy have yielded a high number of dismissals. OECD (2022), Implementing the OECD Anti-Bribery Convention, Phase 4 Report for Italy, pp. 6-7 and 86-87.

<sup>102</sup> Written contribution from the *Guardia di Finanza* in the context of the country visit to Italy.

<sup>103</sup> Instituted by Ministerial Decree No. 55 of March 11, 2022. A number of regulatory decrees necessary to implement decree n.55 are still under approval.

<sup>104</sup> Information received from the National Anti-Mafia Directorate in the context of the country visit to Italy.

<sup>105</sup> According to the Registry’s website, it will soon be possible to register beneficial ownership and to consult data.

<sup>106</sup> Written contribution from the *Guardia di Finanza* in the context of the country visit to Italy. To guarantee the correct use of RRP funds and track financial movements it will be possible to access and interconnect databases such as Re.Gi.S (monitoring, reporting and control of projects financed by RRP funds), ARACHNE (Anti-Fraud IT System), BORIS (Beneficial Ownership Registers), Open-BDAP’ (Public Administration Database) and the BDNCP (ANAC National Database of Public Contracts) amongst others. See also above concerning the need to register beneficial ownership in the public procurement sector and to interconnect the BDNCP with the Ultimate Beneficial Ownership Register.

<sup>107</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 2.

<sup>108</sup> Legislative proposal No. 1461, Macina and others, presented in 2019, would have amended and replaced almost entirely the provisions of Law No. 215/2004 on Conflicts of Interest. The entry into force was planned for 1 July 2021. See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 16. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Italy, pp. 11-12; and 2020 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 11.

<sup>109</sup> Law A.C 304, presented on 13 October 2022.

<sup>110</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 16. See also 2021 Rule of Law Report, Country Chapter on the rule of law situation in Italy, pp. 11-12 and 2020 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 11.

<sup>111</sup> This would have included the codification of certain key transparency provisions e.g., an obligation to declare financial interests, parallel employment, ownership of assets or receipt of funding, and setting out sanctions

its work under the previous legislature and resumed discussions under the current legislature, without a timeframe for completion<sup>112</sup>. The Senate adopted a Code of Conduct for its members on 26 April 2022<sup>113</sup>. However, the text is not publicly available and no detailed guidance has yet been issued<sup>114</sup>. As last year, no further developments were reported concerning the mandatory publication of asset declarations for members of the Chamber of Deputies and the Senate, which remains fragmented and non-transparent<sup>115</sup>. In the absence of substantive legislative developments, there has therefore been some progress on the implementation of the recommendation made in the 2022 Rule of Law Report.

**Some progress has been made to address the need to adopt comprehensive lobbying rules and establish a legislative footprint as a parliamentary inquiry is underway.** The 2022 Rule of Law Report recommended to Italy to ‘adopt comprehensive [...] lobbying regulation to establish an operational lobbying register, including a legislative footprint’<sup>116</sup>. Although the Chamber of Deputies has rules on lobbying<sup>117</sup> and a lobbying register of interest representatives, comprehensive lobbying rules are lacking for both parliamentary chambers<sup>118</sup>. As of mid-March 2023, there were only 318 legal persons and 62 natural persons registered<sup>119</sup> (275 and 52 respectively in April 2022). In January 2022, the Chamber of Deputies had passed a new lobbying law<sup>120</sup> that envisaged the establishment of an electronic, mandatory register of interest representatives. The Senate was expected to approve the draft law in early 2023<sup>121</sup>. However, this did not take place due to early general elections held in September 2022. At its meeting of 8 March 2023, the First Standing Committee on Constitutional Affairs decided to conduct a fact-finding inquiry into the activities of interest representation and assess the need to draw up new rules. It will take account of the parliamentary work carried out in previous

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for violation of the Code, as recommended by GRECO. See GRECO (2022) Fourth Evaluation Round, Addendum to the Second Compliance Report for Italy, p. 3.

<sup>112</sup> Information received from the Parliament in the context of the country visit to Italy. The revisions would also have included provisions relating to gift policy and possibly the application of stricter sanctions.

<sup>113</sup> Information received from the Parliament in the context of the country visit to Italy. The Code of Conduct is made up of eight chapters, including provisions relating to transparency, conflict of interest, gifts, and sanctions.

<sup>114</sup> As also noted by GRECO, pp. 3 and 9. The Good Lobby is critical of the Senate’s Code which it considers to be weak and without any impact on preventing conflicts of interest. Information received in the context of the country visit to Italy.

<sup>115</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 16. This refers also to members of the Government and senior civil servants. See for more details the 2021 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 12 and the 2020 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 11.

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

<sup>117</sup> Decision No. 208/2017 on Lobbying in the Chamber of Deputies establishes a mandatory public register of lobbyists for any individual or legal entity representing collective interests. This only regulates activities of the Chamber of Deputies, not of the Senate. Across the national territory, the situation remains fragmented with no national register for the government and no systematic or standardised approach. 2022 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 17, footnote 151.

<sup>118</sup> As GRECO had noted, Decision No. 208/2017 only tackles the lobbyists part of the issue and had underlined the need for Italy to develop targeted guidance which would give deputies clear directions on how to engage with lobbyists and the expected conduct of behaviour. GRECO urged the Senate to regulate on this matter too. GRECO (2021) Fourth Evaluation Round, Second Compliance Report for Italy, p. 6.

<sup>119</sup> Information received from the Parliament in the context of the country visit to Italy.

<sup>120</sup> During the 18th parliamentary term, draft Law S. 2495 was approved by the Chamber of Deputies at first reading at its sitting of 12 January 2022 but not finally approved by the Senate.

<sup>121</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 17.



legislatures, particularly those proposals which had reached a more advanced stage<sup>122</sup>. The inquiry is expected to be ready by the end of June 2023. Four draft bills have been tabled by individual members in both chambers, but these have not been debated so far<sup>123</sup>. Until an operational lobby register, including a ‘legislative footprint’, is set up, regulation of lobbying vis-à-vis the government will remain fragmented<sup>124</sup>. Since a parliamentary inquiry is ongoing to address the need to adopt comprehensive lobbying rules and establish an operational lobbying register, including a legislative footprint, there has been some progress on the implementation of the recommendation in the 2022 Rule of Law Report.

**Some progress has been made to address the practice concerning political party and campaign finance as hearings on a draft law have started in the Senate.** The 2022 Rule of Law Report recommended to Italy to ‘effectively address the practice of channelling donations through political foundations and associations and introduce a single electronic register for party and campaign finance information’<sup>125</sup>. The practice of channelling donations through political foundations and associations before they are transferred to political parties presents an obstacle to public accountability, as such transactions are difficult to trace and monitor<sup>126</sup>. Debates on the issue over several parliamentary terms had not resulted in any change<sup>127</sup>. A centralised, single, machine-readable register to help ensure that political party and campaign finance information is made available in a coherent, understandable, and timely manner is still lacking<sup>128</sup>. Various draft laws have now been tabled under the current legislature<sup>129</sup> in both houses of parliament to amend or replace the current rules on political parties’ public funding,

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<sup>122</sup> The enquiry by the First Standing Committee for Constitutional Affairs will focus on four main issues: defining the scope of the rules i.e., defining the ‘public decision-maker’ and of the ‘stakeholder’; (interested parties and lobbyists); the different methods of regulating the issue (e.g., need for a mandatory register and the information to include in it; the identifying a supervisory authority (e.g., an independent administrative authority); and the system of sanctions and penalties. Apart from previous draft legislative proposals, the inquiry will also take account of the measures taken or under consideration in the European Union and in France, Germany, the United Kingdom and the United States. See Chamber of Deputies (XIX Parliamentary Term) Documentation and Research Service, ‘Rules on interest representation’ No. 25, 23 March 2023. Information also received from the Parliament in the context of the country visit to Italy. The Good Lobby and Libera lamented the lack of legislative progress on this topic, were aware that a new cycle of hearings should be taking place but noted that nothing concrete has been tabled yet.

<sup>123</sup> Written contribution from the Presidency of the Council of Ministers in the context of the country visit to Italy.

<sup>124</sup> Furthermore, it is to be noted that GRECO has now reversed its initial assessment of its recommendation v concerning lobbying regulation for both chambers from ‘partly implemented’ to ‘not implemented’. GRECO (2022) Fourth Evaluation Round, Addendum to the Second Compliance Report for Italy, p. 7.

<sup>125</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 2.

<sup>126</sup> Italy prohibits direct public funding to political parties, including for political campaigns. Political parties are therefore required to finance themselves almost exclusively through private donations from individual donors or legal entities. Ibidem, pp. 17-18. 2022 Rule of Law Report, Country Chapter on the rule of law situation in Italy, pp. 17-18.

<sup>127</sup> See input from Italy for the 2023 Rule of Law Report, p. 28. Information also received from Transparency International and The Good Lobby in the context of the county visit to Italy.

<sup>128</sup> GRECO Third Evaluation Round - Second Addendum to the Second Compliance Report, para. 37, recommending introducing a coordinated approach for the publication of information on the financing of political parties and election campaigns, and to ensure that such information is made available in a coherent, understandable and timely manner. According to information received from Transparency International in the context of the country visit to Italy, only around 10% of associations report financial interests on their website. Another shortcoming is that the quality of the data is not unified in a central source and not available as open data and not coherent.

<sup>129</sup> Written contribution from the Presidency of the Council of Ministers in the context of the country visit to Italy.

and hearings have started in the Senate<sup>130</sup>. Some of the ideas put forward include reducing the maximum limit for financial contributions from legal persons from EUR 100 000 to EUR 50 000<sup>131</sup>. There still is no centralised, single, machine-readable register in place to help ensure that political party and campaign finance information is made available in a coherent, understandable, and timely manner. Given these developments, there has been some progress regarding the implementation of the recommendation made in the 2022 Rule of Law Report.

**The new law on whistleblower protection entered into force covering breaches of both EU and national law.** In March 2023, the Council of Ministers approved Legislative Decree No. 24/2023<sup>132</sup>. The law aims to implement the EU Whistleblowers Directive<sup>133</sup> and will apply from 15 July 2023. It covers whistleblowers in both the public and the private sectors and consolidates protections under existing laws<sup>134</sup>. It applies to reports of breaches of both EU and national law that may harm the public interest<sup>135</sup>. It obliges entities with more than 50 employees to establish internal and external reporting channels. The National Anti-Corruption Authority (ANAC) is the competent authority to receive external reports for both the public and private sectors and to issue administrative sanctions<sup>136</sup>. ANAC is expected to receive additional funding and 28 more staff posts<sup>137</sup> to deal with these new competences and improve its existing complaints platform. The law provides for various protections, such as a prohibition on retaliation. These protections also cover anonymous whistleblowers and persons connected to the whistleblowers, such as those who help them come forward. The law allows non-profit entities to provide support measures, which is welcomed by civil society<sup>138</sup>. The new law is seen as a key tool in fighting corruption as reports of certain illegal acts, which may not be corruption offences as such, may well point to the presence of corruption<sup>139</sup>.

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<sup>130</sup> Discussions on Senate Act No. 552, ‘Amendment to Law no. 6 of 2012 July 96 on the discipline of the Commission for the verification of statutes and the control of the accounts of political parties’ took place on 4, 12 and 19 April. The deadline for tabling amendments was 26 April 2023. Written contribution from the Presidency of the Council of Ministers in the context of the country visit to Italy. Information also received from the Parliament in the context of the country visit to Italy.

<sup>131</sup> Information received from the Parliament in the context of the country visit to Italy.

<sup>132</sup> Information received from the Ministry of Justice in the context of the country visit to Italy. Input from Italy for the 2023 Rule of Law Report, pp. 29-30 and 32.

<sup>133</sup> Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law.

<sup>134</sup> Namely Legislative Decree Nos. 165/2001 and 231/2001 and Law No. 179 of November 30, 2017. Law No. 179 of 30 November 2017 and Legislative Decree No. 231 of 8 June 2001. The protection of whistleblowers in the private sector was limited under these rules as it was based on voluntary compliance programmes.

<sup>135</sup> A possibility allowed under the Directive and encouraged by the European Commission. Transparency International and Libera noted that public sector whistleblowers can report breaches of both national and EU law whereas the private sector is limited to EU law breaches (unless already allowed under existing whistleblowing laws, and as the lack of financial support for whistleblowers. The Good Lobby expressed a generally positive view of the law despite some (non-specified) shortcomings. Information received in the context of the country visit to Italy.

<sup>136</sup> The existing competence of the Court of Audit to examine whistleblower reports referred to it, including from the Guardia di Finanza or ANAC, remains unchanged. The Court only acts on qualified and detailed reports. Information received from the Court of Audit in the context of the country visit to Italy.

<sup>137</sup> Information received from ANAC in the context of the country visit to Italy. ANAC obtains around 90% of its resources through self-financing but receives some state funding too. Input from Italy for the 2023 Rule of Law Report, p. 26.

<sup>138</sup> Information received from Libera in the context of the country visit to Italy. In February 2023, Libera opened a web platform to enable whistleblowing reporting.

<sup>139</sup> Information received from the National Anti-mafia Directorate in the context of the country visit to Italy.

**A new Public Procurement Code aimed at simplification and efficiency has been established.** The Flash Eurobarometer on Businesses' attitudes towards corruption in the EU shows that 10% of companies in Italy (EU average 26%) think that corruption has prevented them from winning a public tender or a public procurement contract in practice in the last three years<sup>140</sup>. A new Public Procurement Code entered into force on 1 April 2023 and will apply to new public tenders from 1 July 2023<sup>141</sup>. It aims to simplify and streamline certain procedures and to accelerate and liberalise the procurement process<sup>142</sup>. It includes the complete digitalisation of procedures and the establishment of a procurement database as well as an increase in the thresholds within which the contracting authorities can proceed with direct awards<sup>143</sup>. As reported last year<sup>144</sup>, law enforcement and judicial authorities continue to see an increased potential for organised crime to infiltrate the legal economy and the future procurements of public funds under the RRP particularly due to its size which could have a significant impact on the misuse of public money<sup>145</sup>.

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

In Italy, media freedom and pluralism find legal and formal protection in the Constitution, which guarantees press freedom and the right to freedom of expression<sup>146</sup>. Secondary legislation<sup>147</sup> provides for a comprehensive and robust framework ensuring media pluralism while the *Autorità per le Garanzie nelle Comunicazioni* (AGCOM) assumes the role of the independent regulator for the media sector. The right of access to information is ensured by the

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<sup>140</sup> Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023). This is 16 percentage points below the EU average.

<sup>141</sup> Legislative decree n.36, March 31, 2023 (Decreto Legislativo 31 marzo 2023, n. 36) implementing Article 1 of Law No. 78/2022 of 21 June 2022. The reform of the Code was carried out as part of the implementation of Italy's National Recovery and Resilience Plan, including Milestones no. MIC1-73 and MIC1-74.

<sup>142</sup> Press release by the Ministry of Infrastructure and Transport, 'Procurement Code approved by the Council of Ministers', 28 March 2023.

<sup>143</sup> For amounts up to EUR 5.3 million, contracting authorities will be able to decide to activate negotiated procedures or direct awards, respecting the principle of rotation. For works contracts up to EUR 500 000 small contracting authorities will be able to proceed directly without going through qualified contracting authorities. See MIT press release of 28 March 2023. The National Anti-Corruption Authority has acknowledged some the positive elements of the new code but has equally cautioned against raising thresholds that do not oblige the contracting authority to carry out a competitive comparison of operators. Written contribution from ANAC in the context of the country visit to Italy. See also 'ANAC's observations in relation to the Government Act submitted to parliamentary opinion', 2 February 2023 and made before the Senate.

<sup>144</sup> See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Italy, pp. 19-20. Public procurement in the renewable energy, health, waste-management, and construction sectors remain areas where most cases of corruption occur and where organised crime is deeply rooted.

<sup>145</sup> Information received from the National Anti-Mafia Directorate, the Guardia di Finanza and the Court of Auditors/Prosecutor's Office at the Court of Auditors and the National Bar Council in the context of the country visit to Italy. See also written contribution from the Court of Auditors and the Intervention of 26 January 2023 by the Prosecutor General of the Supreme Court of Cassation at the General Assembly of the Court on the administration of justice in 2022. The potential for simplified procedures to be vulnerable to corrupt practices and organised crime infiltration was a recurrent point. Civil society and other organisations have also raised concerns about the potential risks of corruption and infiltration of organised crime into the licit economy. Information received from Libera in the context of the country visit to Italy. See Libera (31 March 2023) 'Oversimplification implies the risk of a significant increase in corruption and mafia infiltration' and Libera (14 March 2023), 'Ensuring legality, transparency, competition, effective protection of health and safety in a general framework of simplification of rules and procedures'.

<sup>146</sup> Constitution of Italy, Article 21. Italy ranks 41st in the 2023 Reporters without Borders World Press Freedom Index compared to 58th in the previous year.

<sup>147</sup> Legislative Decree no. 208/2021.

Freedom of Information Act, which allows citizens to access data and documents held by the public administration that are relevant to public and private interests<sup>148</sup>.

**Italy has an independent and effective media regulator with extensive powers.** The Italian Communication Regulatory Authority (AGCOM) oversees audiovisual, press, electronic communications and postal service sectors, and is entrusted with regulatory, monitoring, enforcement and sanctioning powers in the media sector.<sup>149</sup> Over the previous two years, following the transposition in the Italian legal framework of several pieces of EU legislation, including the Audiovisual Media Services Directive<sup>150</sup>, the Copyright Directive<sup>151</sup>, and the Electronic Communication Code<sup>152</sup>, AGCOM's competences have been extended to matters related to digital and media literacy initiatives as well as to the regulation and supervision of digital media and online platforms, including digital advertising and pluralism, disinformation and hate speech issues in the online environment<sup>153</sup>. In order to fulfil its extensive functions, AGCOM relies on a self-financing system based on contributions collected from the undertakings that operate under its regulatory remit<sup>154</sup>. Rules aimed at safeguarding AGCOM's independence vis-à-vis political and economic actors are in place<sup>155</sup>. In particular, according to a cooling-off period rule, for two years after the end of their terms in the authority, former AGCOM's President, Board Members and managers cannot engage in any direct or indirect relationship with undertakings operating in the sectors falling under AGCOM's regulatory remit<sup>156</sup>. Moreover, the rules governing the appointment of the Commissioners and the President of AGCOM have also been strengthened in the context of the transposition of the Electronic Communications Code<sup>157</sup>.

**Public service media play a major role in the media landscape while safeguards for their editorial and financial independence need to be strengthened.** There have been no developments concerning the legislative framework regulating the governance and funding

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<sup>148</sup> Legislative Decree no. 97/2016.

<sup>149</sup> Law of 31 July 1997 n. 249 on the establishment of Communication Regulatory Authority (AGCOM); Input from Italy for the 2023 Rule of Law Report, p. 35.

<sup>150</sup> Directive (EU) 1808/2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, transposed by legislative decree n. 208/2021.

<sup>151</sup> Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, transposed by legislative decree n. 177/2021.

<sup>152</sup> Directive (EU) 2018/1972 establishing the European Electronic Communication Code, transposed by legislative decree n. 207/2021.

<sup>153</sup> The Law of 31 July 1997 n. 249 on the establishment of AGCOM has been amended several times to broaden its remit. As for the media sector, the Law Decree no. 63/2012 has conferred AGCOM new competences on the online information system including online press and online advertising. More recently, new competences have been entrusted to AGCOM by the Legislative Decree no. 177/2021 and the Legislative Decree 181/2021 on collective societies (on online copyright) and by the national implementation of the revised Audiovisual Media Services Directive by the Legislative Decree 208/2021.

<sup>154</sup> Input from Italy for the 2023 Rule of Law Report, p. 35.

<sup>155</sup> 2022 Media Pluralism Monitor, country report for Italy, p. 13.

<sup>156</sup> Input from Italy for the 2023 Rule of Law Report, pp. 35-36.

<sup>157</sup> Article 3, Section V – final provisions of legislative decree n. 207/2021 establishes a set of criteria that candidates must fulfil in order to be eligible as members of the AGCOM Board and requires the publication of the candidates' curricula on the websites of the three institutions involved in the appointment procedure, notably the Chamber of Deputies, the Senate, and the Presidency of the Council.

system of the public service media RAI-Radiotelevisione Italiana S.p.a (RAI)<sup>158</sup>, notwithstanding the need, as mentioned in the 2022 Rule of Law Report and MPM 2023, of a reform allowing RAI to be better equipped vis-à-vis risks of political influence and financial dependence on the Government<sup>159</sup>. In particular, RAI pointed to the need of more adequate and stable financial resources, as well as a more coherent and up-to-date legislative framework in order to effectively fulfil its public mission and better address the challenges posed by digitalisation<sup>160</sup>. This is required also in view of the role the public service media in the Italian media landscape. In fact, RAI has the largest audience in the linear television sector, accounting for 37,9% of the audiences on an average day<sup>161</sup> and reaching weekly more than 90% of citizens over 14 years old<sup>162</sup>, and is the main player in the radio sector, holding 23,5% of market share in terms of revenues<sup>163</sup>. RAI has also been active in fostering social cohesion, promoting cultural diversity, as well as enhancing media freedom and pluralism, including by means of debunking and media literacy initiatives aimed to fight disinformation<sup>164</sup>. Similarly, RAI has recently reformed and reinforced its strategies and governance in view of raising its engagement in the field of sustainability. In particular, the new directorate “RAI per la Sostenibilità – ESG” has been established in order to identify and develop good practices needed to meet the sustainability and accountability goals required for the fulfilment of RAI’s public service remit<sup>165</sup>.

**The Government has adopted measures to support media under economic distress although there is a need for more structural interventions to promote media pluralism.**

Following the COVID-19 crisis, the indicators of economic sustainability have improved, and revenues of traditional media have started to grow<sup>166</sup>. Nevertheless, the recovery of the media sector is slower than that of the overall economy and has not reversed the structural decline of the sector, in particular as regards the press, where stakeholders fear an upsurge of unemployment<sup>167</sup>. Over the last few years, the Government has adopted a series of ordinary and extraordinary initiatives aimed at alleviating economic distress in the media sector, which included measures to foster and support technological innovation and digital transition in the

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<sup>158</sup> According to European Parliament’s Flash Eurobarometer: News & Media Survey 2022, 45% of respondents in Italy stated that they trust public TV and radio stations, below the EU average of 49%.

<sup>159</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Italy, pp. 21-22; 2023 Media Pluralism Monitor, country report for Italy, pp 32-33, and 41. In particular, the 2023 Media Pluralism Monitor considers the independence of public service media at high risk, with a risk score of 71%, due to the appointment of RAI’s management bodies being influenced by the Government and negotiations between the political parties in the Parliament, 2023 Media Pluralism Monitor, country report for Italy, pp. 11 and 32.

<sup>160</sup> Information received from RAI in the context of the country visit to Italy.

<sup>161</sup> 2023 Media Pluralism Monitor, country report for Italy, p. 8.

<sup>162</sup> Written contribution received by RAI in the context of the country visit in Italy.

<sup>163</sup> 2023 Media Pluralism Monitor, country report for Italy, p. 22.

<sup>164</sup> For example, RAI has produced programmes aimed to educate citizens in countering disinformation and collaborated with universities and research institutes like the Italian Digital Media Observatory (IDMO) in the development of digital and media literacy initiatives, including the mapping of the relevant best practices in the fight against disinformation adopted in the Italian media sector, Italian Digital Media Observatory (2022), Media Literacy Versus Fake News. Esperienze e best practice in Italia, as confirmed by information received from RAI in the context of the country visit to Italy.

<sup>165</sup> Written contribution received by RAI in the context of the country visit in Italy.

<sup>166</sup> 2022 Media Pluralism Monitor, country report for Italy, p. 9; AGCOM Relazione Annuale 2022 sull’attività svolta e sui programmi di lavoro, pp. 43-44.

<sup>167</sup> 2022 Media Pluralism Monitor, country report for Italy, p. 9; Contribution from the European Federation of Journalists for the 2023 Rule of Law Report, p. 42, as confirmed by information received from Federazione nazionale stampa italiana, AGCOM, and RAI in the context of the country visit to Italy.

press, TV and radio sectors, as well as financial contribution schemes aimed to foster the recruitment of young professionals with media-specific competences and the stabilisation of journalistic employment through the conversion of temporary contracts into fixed-term contracts<sup>168</sup>. Nevertheless, there is a need, as also indicated by several stakeholders, of more structural interventions, designed in such a manner as to prevent concentration of funding with large and medium-size media outlets, and ensure a fairer distribution of resources to non-profit, small or local media outlets in view of better supporting the regional and local news industry, where journalists are more vulnerable, and the effects of the economic distress have a more severe impact on media freedom and pluralism<sup>169</sup>.

**There is a specific legal framework in place ensuring a certain degree of media ownership transparency.** In Italy, the principle of transparency is enshrined in the Constitution<sup>170</sup> and is further regulated in the law which requires radio and audiovisual service providers to make easily, directly, and permanently accessible information on their media ownership<sup>171</sup>. AGCOM manages the Register of Communication Operators<sup>172</sup>, to which every operator in the media sector, including search engines and online intermediary services, is compelled to apply and where information on the ownership structure of media companies is collected<sup>173</sup>. However, the 2023 Media Pluralism Monitor pointed out that the framework in relating to the transparency of media ownership needs to be further strengthened, particularly as regards the access to information that could help to identify beneficial owners<sup>174</sup>. As regards media concentrations, according to specific anti-concentration rules applicable to the media sector, AGCOM is tasked with the assessment of media market concentrations and has the power to prohibit those leading to the formation of significant market power positions detrimental to media pluralism<sup>175</sup>.

**Rules ensuring access to information are in place although stakeholders voiced concerns regarding their practical effectiveness.** The right of access to information held by public bodies is ensured by the Freedom of Information Act (FOIA), the implementation of which is monitored annually<sup>176</sup>, and which includes rules regulating cases of restrictions to the access

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<sup>168</sup> 2023 Media Pluralism Monitor, country report for Italy, pp. 23-24. In 2016, the Government established the Fund for pluralism of information aimed at supporting the publishing as well as the radio and TV sectors, the resources allocated to such fund in 2023 amount to around EUR 159 million. On top of such ordinary measure, the Government also established an extraordinary fund in 2022 in order to sustain employment levels and foster the digital transition in the media sector. The resources allocated to this extraordinary fund in 2023 amount to EUR 140 million, information received from the Italian Government in the context of the country visit to Italy.

<sup>169</sup> Contribution from the European Federation of Journalists for the 2023 Rule of Law Report, pp. 41-42; Contribution from Osservatorio Balcani e Caucaso Transeuropa and Centro per la Cooperazione Internazionale for the 2023 Rule of Law Report, p. 21; Contribution from Civil Liberties Union for Europe on Italy for the 2023 Rule of Law Report, p. 15, as confirmed by information received from Federazione nazionale stampa italiana in the context of the country visit to Italy.

<sup>170</sup> Constitution of Italy, Article 21, paragraph 5.

<sup>171</sup> Legislative Decree no. 208/2021, Article 29 and Law no. 47/1948, Art. 5.

<sup>172</sup> Law of 31 July 1997 n. 249 and Delibera n. 666/08/CONS - Regolamento per l'organizzazione e la tenuta del Registro degli operatori di comunicazione.

<sup>173</sup> Input from Italy for the 2023 Rule of Law Report, p. 43; 2023 Media Pluralism Monitor, country report for Italy, p.20.

<sup>174</sup> 2023 Media Pluralism Monitor, country report for Italy, pp. 21 and 41.

<sup>175</sup> Legislative decree n. 208/2021, Art. 51.

<sup>176</sup> The most recent data on the monitoring refer to 2020 and show that on a total of 1,776 requests, access was partially or fully granted in 62% of cases. The data also recorded an increase in the number of appeal requests

and requiring public authorities to duly justify access denials<sup>177</sup>. However, some stakeholders stressed the need to improve the implementation of the FOIA and its effectiveness to ensure that public authorities handle the requests of access consistently and in a timely manner<sup>178</sup>. As regards the right of access to judicial information and the journalistic coverage of crimes, the Council of Ministers presented on 15 June 2023 a draft law including amendments limiting the possibility for newspapers and journalists to access and publish the content of wiretaps<sup>179</sup>.

**Despite relevant rules and initiatives in place, attacks, threats and other forms of intimidation against journalists remain a source of concern.** Italy has been active in the field of protection of journalists against threats and attacks through several legislative interventions, which include the provision, in case of threats of violence against journalists, of specific protection protocols involving police and judicial authorities as well as local governments<sup>180</sup>, and regulatory initiatives of AGCOM, such as the Hate speech Regulation<sup>181</sup>, aimed to strengthen the protection of journalists targeted by verbal threats, smear campaigns and other forms of online harassment<sup>182</sup>. Furthermore, in 2022 Italy hosted the third edition of the Journalists in Residence programme<sup>183</sup>, which is aimed to provide journalists and media professionals experiencing risks or threats related to their journalistic work with a safe place where they can continue their investigative and reporting activities<sup>184</sup>. Italy also has a specialised Coordination Centre established within the Ministry of the Interior and dedicated to monitoring cases of violence and abuses against journalists and media outlets<sup>185</sup>. Nevertheless, stakeholders<sup>186</sup> have stressed that attacks and threats against journalists continue

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related to alleged arbitrary denials or a lack of answers. 45% of appeals requests were accepted, FOIA Centro nazionale di competenza (2021), Monitoraggio sull'attuazione del FOIA nel 2020.

<sup>177</sup> Legislative Decree no. 97/2016.

<sup>178</sup> 2023 Media Pluralism Monitor, country report for Italy, p. 14; Article 19 Europe (2022), Italy: Improving protections for freedom of expression and information; International Press Institute (2022), Italy: New government must improve legal framework for media freedom.

<sup>179</sup> DDL – “Modifiche al codice penale, al codice di procedura penale e all’ordinamento giudiziario. Interpretazione autentica dell’articolo 9 della legge 10 aprile 1951, n. 287”. On a similar issue, see also 2022 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p.22.

<sup>180</sup> In particular, the protocols foresee four different levels of protection going from providing an armoured car up to a round-the-clock police escort, depending on the seriousness of the risks to the journalist’s life, Input from Italy for the 2023 Rule of Law Report, p. 45.

<sup>181</sup> AGCOM, Delibera n. 157/19/CONS “Regolamento recante disposizioni in materia di rispetto della dignità umana e del principio di non discriminazione e di contrasto all’hate speech”.

<sup>182</sup> Input from Italy for the 2023 Rule of Law Report, p. 46.

<sup>183</sup> The programme is organised in the framework of the Media Freedom Rapid Response project, and is managed by the newspaper Q Code magazine, in coordination with the think tank Osservatorio Balcani e Caucaso Transeuropa and the non-profit organisation European Centre for the Press and Media Freedom, with the financial support of the European Union.

<sup>184</sup> Franet (2023), Country research – An update on developments regarding civic space in the EU and an overview of the possibilities for human rights defenders to enter EU territory– Italy, p. 6.

<sup>185</sup> Centro di coordinamento sul fenomeno degli atti intimidatori nei confronti dei giornalisti, Centro di coordinamento sul fenomeno degli atti intimidatori nei confronti dei giornalisti | Ministero dell’Interno.

<sup>186</sup> Contribution from the European Federation of Journalists for the 2023 Rule of Law Report, p. 42; Contribution from the Committee to Protect Journalists, pp. 16-17; Contribution from Osservatorio Balcani e Caucaso Transeuropa and Centro per la Cooperazione Internazionale for the 2023 Rule of Law Report, p. 21; Contribution from Civil Liberties Union for Europe on Italy for the 2023 Rule of Law Report, p. 14, as confirmed by information received from Federazione nazionale stampa italiana in the context of the country visit to Italy.

to be a source of concern<sup>187</sup>. Since the 2022 Rule of Law Report, 30 alerts concerning Italy where registered by the Council of Europe’s Platform to promote the protection of journalism and safety of journalists<sup>188</sup>, while the Mapping Media Freedom platform reported 46 incidents in 2022 and 34 incidents in the first five months of 2023<sup>189</sup>. According to the latest available statistics published by the Italian authorities, covering the first three months of 2023, 28 acts of intimidation were recorded, of which 7% concerned organised crime and 43% were of a ‘political-social nature’, while 10 out of 28 cases (36%) occurred online<sup>190</sup>. In addition, several stakeholders have pointed to an increasing trend with respect to SLAPPs instigated by political figures and targeting media professionals, with a chilling effect on freedom of information and the journalistic work<sup>191</sup>. As in previous years<sup>192</sup>, several stakeholders also continued to refer to the deterioration of working conditions in the media sector as a further challenge to journalists’ independence and safety<sup>193</sup>.

**Some progress has been achieved as a reform of the regime on defamation and the protection of professional secrecy and journalistic sources has been initiated.** The 2022 Rule of Law Report recommended to Italy to ‘introduce legislative and other safeguards to reform the regime on defamation, the protection of professional secrecy and journalistic sources, taking into account the European standards on the protection of journalists’<sup>194</sup>. The recommendation stemmed from the fact that, as reported in previous reports<sup>195</sup>, the Italian legislator had not taken action with respect to the long-standing issue of criminalisation of

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<sup>187</sup> 2023 Media Pluralism Monitor, country report for Italy, p. 16. Currently, round-the-clock police protection is provided to 20 journalists because of death threats, attacks or other forms of intimidation they received for their work, Reporters without Borders (2022), Italy Country Section available on <https://rsf.org/en/country/italy>.

<sup>188</sup> Council of Europe, Platform to promote the protection of journalism and safety of journalists, Italy.

<sup>189</sup> Mapping Media Freedom, Italy country profile.

<sup>190</sup> Dipartimento della Pubblica sicurezza (2023), Atti intimidatori nei confronti di giornalisti – primo trimestre 2023. It must be noted that several stakeholders have stressed the need to improve the scope and effectiveness of the Coordination Centre as it only takes into account data based on police reports and does not include certain types of intimidations such as legal threats and SLAPPs, Contribution from the European Federation of Journalists for the 2023 Rule of Law Report, p. 43; Contribution from Osservatorio Balcani e Caucaso Transeuropa and Centro per la Cooperazione Internazionale for the 2023 Rule of Law Report, p. 22; Contribution from Civil Liberties Union for Europe on Italy for the 2023 Rule of Law Report, pp. 15-16.

<sup>191</sup> 2023 Media Pluralism Monitor, country report for Italy, pp. 10,14, and 16. In particular, such SLAPPs cases involved freelancers as well as well-known journalists, editors in chiefs and media outlets sued or threatened to be sued by local and national politicians or high-level government officials, International Press Institute (2023), Italy: Prosecutor issues seizure order for article published by newspaper Domani; Contribution from the European Federation of Journalists for the 2023 Rule of Law Report, p. 44; Contribution from Osservatorio Balcani e Caucaso Transeuropa and Centro per la Cooperazione Internazionale for the 2023 Rule of Law Report, p. 24; Contribution from Civil Liberties Union for Europe on Italy for the 2023 Rule of Law Report, pp. 16-17.

<sup>192</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p.23; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p.16.

<sup>193</sup> Contribution from the European Federation of Journalists for the 2023 Rule of Law Report, p. 42; Contribution from Osservatorio Balcani e Caucaso Transeuropa and Centro per la Cooperazione Internazionale for the 2023 Rule of Law Report, p.21; Contribution from Civil Liberties Union for Europe on Italy for the 2023 Rule of Law, pp. 14-15, as confirmed by information received from AGCOM and Federazione nazionale stampa italiana in the context of the country visit to Italy; the 2023 Media Pluralism Monitor considers the indicator of media viability at high risk, with a risk score of 76%, 2023 Media Pluralism Monitor, country report for Italy, p. 21.

<sup>194</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 2.

<sup>195</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 22; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 16.



defamation<sup>196</sup> even though the Constitutional Court<sup>197</sup> had held that the penalty of imprisonment for press defamation provided for in Article 13 of the Press Law was unconstitutional and incompatible with Article 10 of the European Convention of Human Rights, and had invited the Italian Parliament to reform the defamation regime<sup>198</sup>. Moreover, the recommendation also took into account the need to strengthen the Italian legal framework on professional secrecy in order to provide more effective protection to journalists and their sources<sup>199</sup>. On 16 January 2023, a legislative proposal to amend the defamation law was presented at the Italian Senate<sup>200</sup>, where it is currently under examination in the Justice Committee<sup>201</sup>. The proposal abolishes the penalty of imprisonment for press defamation and substitutes it with a fine from EUR 5 000 to EUR 10 000, increased from EUR 10 000 to EUR 50 000 in cases where the defamation concerns false information that the journalist knew to be false<sup>202</sup>. The proposal also amends the rules on corrections and apologies<sup>203</sup>, extends the regime of press defamation to online press as well as to television and radio newscasts<sup>204</sup>, lays down a procedure for notification and removal of offensive content published on online platforms and the corresponding activation of a conciliation mechanism between the parties before an independent self-regulatory body established by AGCOM<sup>205</sup>. The proposal also addresses the issue of the protection of professional secrecy and journalistic sources as it extends the relevant regime also to non-professional journalists.<sup>206</sup> However, some challenges remain regarding the protection of journalists in the context of their reporting activities, including in criminal investigations<sup>207</sup>. In particular, the conduct of criminal investigations should not impinge on

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<sup>196</sup> In October 2022, in the context of a defamation lawsuit related to reporting by three journalists on a case involving a former minister, an Italian prosecutor demanded a prison sentence of six months for the concerned journalists, Contribution from the European Federation of Journalists for the 2023 Rule of Law Report, p. 44; Contribution from Osservatorio Balcani e Caucaso Transeuropa and Centro per la Cooperazione Internazionale for the 2023 Rule of Law Report, p.24; Contribution from Civil Liberties Union for Europe on Italy for the 2023 Rule of Law Report, p. 17; Contribution from the Committee to Protect Journalists, p. 17.

<sup>197</sup> Decision of the Constitutional Court of 22 June 2021, No. 150/2021.

<sup>198</sup> The 2023 MPM registered an increase of the risk level for the indicator on the protection of freedom of expression, whose risk indicator changed from low risk of 29% to medium risk 34%, mainly related to the disproportionate recourse to defamation lawsuits and the long-standing delay of the Parliament in amending the defamation law in line with the Constitutional Court's decision, 2023 Media Pluralism Monitor, country report for Italy, p. 13.

<sup>199</sup> In particular, a strict interpretation of the relevant provisions may exclude freelance and non-professional journalists from the protection of journalistic sources while wiretapping of journalists is still formally lawful under Italian criminal procedural law, even if carried out while they were talking to their sources, 2022 Media Pluralism Monitor, country report for Italy, p. 13; Contribution from the European Federation of Journalists for the 2023 Rule of Law Report, p. 42; Contribution from Osservatorio Balcani e Caucaso Transeuropa and Centro per la Cooperazione Internazionale for the 2023 Rule of Law Report, p. 21; Contribution from Civil Liberties Union for Europe on Italy for the 2023 Rule of Law Report, p. 15; Contribution from the Committee to Protect Journalists, p. 16; International Press Institute (2021), Wiretapping of journalists in Italy must be thoroughly investigated.;

<sup>200</sup> Atto Senato n. 466.

<sup>201</sup> Information available on the Italian Senate's website: <https://www.senato.it/leg/19/BGT/Schede/Ddliter/56433.htm>.

<sup>202</sup> Atto Senato n. 466, Article 1 (e).

<sup>203</sup> Ibidem, Article 1(b), (c), and (e).

<sup>204</sup> Ibidem, Article 1(a).

<sup>205</sup> Ibidem, Article 4.

<sup>206</sup> Ibidem, Article 5.

<sup>207</sup> 2023 Media Pluralism Monitor, country report for Italy, p. 16.

the journalists' right to engage with relevant sources securely and safely<sup>208</sup>. Considering these developments, there was some progress on implementing the recommendation made in the 2022 Rule of Law Report, as the work on the relevant legislative proposal is still at an early stage.

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

Italy is a unitary parliamentary republic with an indirectly elected President<sup>209</sup>. The Parliament is bicameral: it comprises the Chamber of Deputies and the Senate, both having the same powers. The right of legislative initiative is vested in the Government, the members of Parliament, 50 000 citizens, the National Council for Economics and Labour<sup>210</sup>, and the Regional Council. The Constitutional Court decides in exclusivity on disputes regarding the constitutionality of laws. There is currently no national human rights institution, and several regional ombudspersons are responsible for safeguarding the freedoms and rights of persons<sup>211</sup>. The Inter-ministerial Committee for Human Rights (CIDU) is the coordinating national institution interacting with civil society, academia, and all relevant stakeholders to ensure reporting and follow-up on human rights issues.

**Public consultations in the legislative process allow online participation while challenges regarding their effectiveness in practice have been pointed out.** Regulatory impact assessments (RIA) and public consultations are a mandatory part of the legislative process<sup>212</sup>. Improvements can be noted in the area of RIAs, where *ex post* evaluations have become more common across a wider range of policy areas, and the public is now informed in advance of *ex post* evaluations that will take place through two-year plans posted on the website of each ministry<sup>213</sup>. However, even though the *ex post* evaluations are now conducted more often, they are not conducted systematically<sup>214</sup>. The public consultation processes have been improved by the creation of a single online access point<sup>215</sup>. However, stakeholders report that there is no systematic consultation carried out by the Government<sup>216</sup>. The process seems to allow the participation of many but there is no information as to what has been taken into account from the consulted stakeholders<sup>217</sup>. It also appears that public consultations are not consistent across different ministries, and that feedback from consultations is not systematically responded to,

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<sup>208</sup> This issue has been also raised by some stakeholders, see Article 19 Europe (2022). The need to strengthen the protection of the right to freedom of expression and information through legal reforms in Italy – Legal briefing, pp. 13-14; International Press Institute (2022), Italy: New government must improve legal framework for media freedom.

<sup>209</sup> The President is elected by Parliament, meeting in joint session, together with 58 regional electors.

<sup>210</sup> The National Council for Economics and Labour is also vested with the right to propose legislation in the economic and social field.

<sup>211</sup> For more information, see Ombudsman of Tuscany website, <http://www.difensorecivicotoscana.it>.

<sup>212</sup> See 2020 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Italy, pp. 16-18.

<sup>213</sup> OECD, Better Regulation Practices across the European Union 2022, p. 174.

<sup>214</sup> OECD, Better Regulation Practices across the European Union 2022, p. 174.

<sup>215</sup> *ParteciPa* - <https://partecipa.gov.it/> is the Italian Government public consultation and participation platform. The website [Consultazione.gov.it](https://www.consultazione.gov.it/) <https://www.consultazione.gov.it/> is the access point to public consultations carried out by public administrations.

<sup>216</sup> Written contribution from CILD in the context of the country visit to Italy, p. 2.

<sup>217</sup> See previous footnote.

nor taken into account<sup>218</sup>. The Civic Observatory<sup>219</sup> for the implementation of the Recovery and Resilience Plan (RRP) has also stressed the need for more transparency of data regarding projects financed through the RRP and more openness of the decision-making process to civil society bodies. To achieve this, in November 2022, they launched the campaign “Well communicated data”<sup>220</sup>. Through this campaign, there are currently more than 45 thousand signatories and 298 promoting organisations that ask the Government and Parliament for open and machine-readable data on the main issues of interest to citizens, starting with the RRP data. Moreover, the Government created a position of a Minister for Institutional Reforms and Regulatory Simplification who is tasked with promoting the reduction of the stock of existing regulation, as part of the ongoing process for simplification and reorganisation of the regulatory framework.

**On 1 January 2023, Italy had 59 leading judgments of the European Court of Human Rights pending implementation, an increase of one compared to the previous year<sup>221</sup>.** At that time, Italy’s rate of leading judgments from the past 10 years that remained pending was at 63% (compared to 58% in 2022) and the average time that the judgments had been pending implementation was over 6 years and 2 months (compared to over 5 years and 10 months in 2022)<sup>222</sup>. The oldest leading judgment, whose implementation is pending for 25 years, concerns the excessive length of administrative proceedings<sup>223</sup>. On 15 June 2023, the number of leading judgments pending implementation had increased to 61<sup>224</sup>.

**Some progress has been made on establishing a National Human Rights Institution, as two new draft laws are under discussion.** The 2022 Rule of Law Report recommended to Italy to “increase efforts to establish a National Human Rights Institution taking into account the UN Paris Principles”<sup>225</sup>. On 9 November 2022, the Government tabled a new draft law to create a National Human Rights Institution (NHRI)<sup>226</sup>. This new draft envisages to attribute additional powers to the already existing Data Protection Authority (DPA), which would then be responsible for ensuring the respect and protection of human rights, including online, going

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<sup>218</sup> OECD, *Better Regulation Practices across the European Union 2022*, p. 174.

<sup>219</sup> The Civic Observatory – a coalition of more than 30 CSOs created in 2021 to monitor the transparency and inclusiveness of the decision-making process – participated in all meetings of the RRP advisory body with governmental, regional and local authorities, representatives of academia and of trade associations.

<sup>220</sup> *Dati Bene Comune* – [www.datibenecomune.it](http://www.datibenecomune.it).

<sup>221</sup> The adoption of necessary execution measures for a judgment by the European Court of Human Rights is supervised by the Committee of Ministers of the Council of Europe. It is the Committee’s practice to group cases against a State requiring similar execution measures, particularly general measures, and examine them jointly. The first case in the group is designated as the leading case as regards the supervision of the general measures and repetitive cases within the group can be closed when it is assessed that all possible individual measures needed to provide redress to the applicant have been taken.

<sup>222</sup> All figures are calculated by the European Implementation Network and are based on the number of cases that are considered pending at the annual cut-off date of 1 January 2023. See the Contribution from the European Implementation Network for the 2023 Rule of Law Report, p. 5.

<sup>223</sup> Judgment of the European Court of Human Rights of 2 September 1997, *Abenavoli v. Italy*, 24487/94, pending implementation since 1997.

<sup>224</sup> Data according to the online database of the Council of Europe (HUDOC).

<sup>225</sup> See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 2.

<sup>226</sup> As mentioned in the 2020, 2021 and 2022 Rule of Law Reports, several draft laws had been tabled through the years to address this long-standing commitment. They were focusing on creating a new, self-standing institution to address the commitment. However, none of these draft laws resulted in the creation of a National Human Rights Institution. Finally, the new Government decided to propose a completely new draft law that builds upon an already existing institution.

beyond the mere protection of personal data<sup>227</sup>. Nevertheless, the draft law does not envisage any further expansion of the resources (human or financial) for this authority<sup>228</sup>. While the Paris Principles<sup>229</sup> do not specify the type of institution that could be a NHRI, and they allow for a multi-mandated bodies, they require any such institution is independent from the government; has adequate resources, so that NHRIs have the funding, staffing, infrastructure and institutional capacity to perform their functions and discharge their responsibilities. While, from the perspective of the EU Data Protection Regulation<sup>230</sup>, it is accepted for a DPA to take on additional competences this is provided that the conditions under the Regulation are met<sup>231</sup>. On 16 May 2023, a new draft law was tabled in Parliament by one of the political parties<sup>232</sup>. This is a one-article proposal, which inserts a provision into the Constitution, establishing the independent national body, outlining its functions, articulation and composition<sup>233</sup>. This brings the number of pending legislative proposals for the creation of an NHRI to five. As in previous years, while draft laws are being tabled, there is no follow-up. Therefore, there are still no further concrete actions taken to establish a National Human Rights Institution in practice, which was also confirmed by stakeholders<sup>234</sup>. Therefore, only some progress was achieved so far in fulfilling the recommendation made in the 2022 Rule of Law Report.

**Several new decrees were adopted that might negatively affect the work of civil society organisations, while amendments improved the rules of tax and financial concessions for CSOs.** The civic space continues to be assessed as narrowed<sup>235</sup>. Between October 2022 and January 2023, three decrees<sup>236</sup> have been introduced (dealing with migration and conduct of CSOs). Stakeholders noted that these decrees could have or already have a negative effect on the work of civil society organisations (CSOs) as they may impose significant fines if some of them are not respected, and may restrict freedom of association and the protection of civil society space as pointed out by the Council of Europe<sup>237</sup>. Moreover, stakeholders report an

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<sup>227</sup> Contribution from Civil Liberties Union for Europe, report on Italy, for the 2023 Rule of Law Report p. 15.

<sup>228</sup> Information received from CILD and *A buon diritto* in the context of the country visit to Italy.

<sup>229</sup> Principles Relating to the Status of National Human Rights Institutions.

<sup>230</sup> Regulation (EU) 2016/679 of The European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

<sup>231</sup> The DPA's independence, as well as its tasks and powers deriving from the GDPR are fully preserved; the staff dealing primarily with data protection has the necessary specialised expertise in this field; the DPA has been given adequate resources to carry out its additional competences so that there is no impediment to the efficient completion of its work in the data protection field.

<sup>232</sup> Information received from the Government.

<sup>233</sup> The Authority is given legislative initiative, advisory, impulse and monitoring powers, as well as jurisdictional powers over human rights violations. This text can be found at the following link: <http://documenti.camera.it/leg19/pdl/pdf/leg.19.pdl.camera.580.19PDL0.010990.pdf>.

<sup>234</sup> Contribution from OHCHR on Italy for the 2023 Rule of Law Report, p. 2

<sup>235</sup> See the rating given by CIVICUS, lastly updated on 31 January 2023. Ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

<sup>236</sup> Decree aimed at limiting the search and rescue activities of humanitarian ships of NGOs; Decree introducing urgent provisions for the management of migratory flows; Decree introducing a compulsory code of conduct for NGOs; a fourth decree, the so-called "Rave Decree", introduced limits to illegal rave parties. It was amended before being confirmed as a law on 30 December 2022, The changes clarifying the scope of the provisions with the aim not to affect the right to freedom of assembly. Information received from CILD, *A buon diritto* and *Associazione per gli Studi Giuridici sull'Immigrazione* in the context of the country visit to Italy. See also contribution from Civil Liberties Union for Europe, report on Italy, for the 2023 Rule of Law Report p. 17.

<sup>237</sup> Information received from CILD, *A buon diritto* and *Associazione per gli Studi Giuridici sull'Immigrazione* in the context of the country visit to Italy. See Expert Council on NGO Law, Opinion on the Compatibility with

increase in rhetorical attacks against CSOs and media, in particular against humanitarian CSOs working on migration issues, including smear campaigns against their work<sup>238</sup>. In its 2022 concluding observations the UN Committee on Economic, Social and Cultural Rights expressed its concerns about repeated allegations of harassment, physical threats and verbal attacks by politicians and the press on human rights defenders and journalists defending economic, social and cultural rights, particularly in the context of the protection of refugees<sup>239</sup>. At the same time, positive amendments to the rules of tax and financial concessions for CSOs have been adopted<sup>240</sup>. These amendments introduced several measures simplifying the tax regime applied to CSOs. More specifically, the amendments provided clarifications related to the application of criteria to establish when an activity is carried out in a commercial or non-commercial manner<sup>241</sup>. The amendments also clarified that CSOs and volunteering organisations can obtain an income exemption for real estate used for carrying out their general interest activities<sup>242</sup>.

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European Standards Of Italian Decree Law No. 1 Of 2 January 2023 on the Management of Migratory Flows Prepared by the Expert Council on NGO Law of the Conference of INGOs of the Council of Europe. Three of the four Decrees are containing provisions related to the work of CSOs dealing with migration, search and rescue operations. Some of the decrees envisage fines up to EUR 50 000.

<sup>238</sup> Written contribution from CILD in the context of the country visit to Italy, p. 1.

<sup>239</sup> Contribution from OHCHR on Italy for the 2023 Rule of Law Report, p. 2.

<sup>240</sup> Law-Decree No. 73 of 21 June 2022 on “Urgent measures on tax simplifications” was approved. The Law-Decree was converted with amendments into Law No. 122 of 4 August 2022.

<sup>241</sup> Franet (2023), Country research - Legal environment and space of civil society organisations in supporting fundamental rights – Italy, p. 4. This is a tax definition of crucial importance for civil-society organisations since it also affects the choices related to the legal status to be assumed and the subsequent applicable tax regime. As a general rule, an activity of general interest is non-commercial if it is carried out in substantial economic break-even, taking into account the comparison between the consideration received and the costs incurred, also considering the possibility of achieving a profit margin that, within certain limits, would in any case remain non-taxable.

<sup>242</sup> Franet (2023), Country research - Legal environment and space of civil society organisations in supporting fundamental rights – Italy, p. 5.

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

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

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## Annex II: Country visit to Italy

The Commission services held virtual meetings in March 2023 with:

- A buon diritto
- AGCOM (Media Authority)
- Associazione Studi Giuridici Immigrazione
- National Association of Magistrates (ANM)
- Anti-corruption Agency (ANAC)
- Anti-corruption Unit of the *Guardia di Finanza*
- Anti-mafia and Anti-terrorism National Directorate (DNAA)
- Articolo 21
- CILD
- Constitutional Court (Corte Costituzionale)
- Council of State (Consiglio di Stato)
- Court of Auditors and Prosecutor's Office at the Court of Auditors
- High Court of Cassation
- High Council for the Judiciary
- In difesa di
- Italian Bar Association (Consiglio Nazionale Forense)
- Libera
- Ministry of Interior
- Ministry of Justice
- National Press Association and European Union of Journalists
- Parliament (Senate and Chamber of Deputies)
- Presidency of the Council of Ministers, Department for European Policies
- Prosecution Service of the High Court of Cassation
- Rai Radiotelevisione italiana, Relazioni istituzionali
- The Good Lobby
- Transparency International - Italy

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

- ALDA (European Association for Local Democracy)
- Amnesty International
- Civil Liberties Union for Europe
- Civil Society Europe
- Culture Action Europe
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Free Press Unlimited
- Front Line Defenders
- ILGA Europe
- International Commission of Jurists
- International Federation for Human Rights (FIDH)

- International Planned Parenthood Federation European Network
- International Press Institute
- JEF Europe
- Osservatorio Balcani e Caucaso Transeuropa
- Philea
- Reporters Without Borders
- SOLIDAR
- Transparency International EU