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

*Accompanying the*

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

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

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## **ABSTRACT**

The Italian justice system continues to undergo a number of reforms aimed at improving its quality and efficiency, including draft laws to streamline civil and criminal procedures, which are still discussed by the Parliament. Digitalisation of the justice system continues to be developed and human resources have been increased with plans to further expand them. These measures are particularly important to address the serious challenges related to the efficiency of the justice system, including backlogs and length of proceedings. The draft law regarding the High Council for the Judiciary and other aspects of the justice system, aiming at strengthening judicial independence, is still under discussion in Parliament. This draft law intends in particular to modify the way in which the members of the Council are elected. It is important that these reforms take into account Council of Europe recommendations.

Italy continues strengthening its legislative framework to fight corruption and corruption-related crimes. Cooperation, specialisation and resources for investigators and prosecutors of corruption and corruption-related crimes are generally considered sufficient to repress corruption, including high-level corruption. A lack of resources and limited experience and legal expertise affect the capacity of law enforcement authorities to pursue and prosecute foreign bribery effectively. Excessive disposition time, in particular at the appeal level, continues to constitute an obstacle to the fight against corruption, and comprehensive reforms to streamline criminal procedures are still pending in Parliament. Several legislative proposals and amendments to strengthen preventative measures against corruption are pending, including on conflicts of interest, lobbying and 'revolving doors'. The COVID-19 pandemic significantly increased the risk of corruption and corruption-related crimes being committed to further infiltrate the legal economy of Italy.

Italy has a robust legislative framework regulating the media sector as well as an independent, well-resourced and effective media regulator. Italy's scheduled reform of its defamation laws remains pending in Parliament and the political independence of the Italian media remains an issue of concern in particular in the audio-visual sector. Rescue packages provided in 2020 by the Government to counteract the financial impact of the COVID-19 pandemic included some media-specific measures. Numerous physical attacks and death threats as well as other forms of intimidation against journalists remain an issue of concern.

As regards checks and balances, the emergency regime related to the COVID-19 pandemic is still in place, but the Government is adopting measures to progressively reduce restrictions. A new proposal is under discussion to strengthen the role of Parliament during emergency situations. The use of public consultations and *ex post* regulatory impact assessments has been slightly improved but they are still not systematically applied. A draft law establishing an independent human rights institution is being examined in Parliament. Some progress has been reported on the legislation on civil society organisations dealing with migrants, such as provisions governing the activities of civil society organisations carrying out search-and-rescue operations at sea, although concerns remain within an overall context where migration management in the EU is challenging.

## I. JUSTICE SYSTEM

The structure of the justice system<sup>1</sup> is set out in the Constitution, which enshrines its independence and autonomy<sup>2</sup>. The Constitutional Court decides on disputes regarding the constitutionality of laws<sup>3</sup>. Ordinary courts have jurisdiction in civil and criminal matters and are organised in three levels of instances. The first level is composed of justices of the peace, ordinary courts and juvenile courts. The second and third level are made up of the Courts of appeal and the High Court of Cassation respectively. The administrative justice is organised in first-instance courts and second-instance courts. Jurisdiction in accounting matters is exercised by the Court of Auditors (with Regional and Central Chambers). Regarding fiscal matters, the responsible courts are fiscal courts at first and second instance and the High Court of Cassation at the highest level. The structure of the prosecution service<sup>4</sup> mirrors that of the courts. Italy participates in the European Public Prosecutor's Office. 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 (*Consiglio Superiore della Magistratura - CSM*). 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.

### **Independence**

**The level of perceived judicial independence in Italy remains low.** Despite a slight increase since last year, only 34% among the general public consider it to be 'fairly or very good'. Among companies, there is a new decrease, which confirms the downward trend of the past 2 years, and now only 29% consider judicial independence to be 'fairly or very good'<sup>5</sup>. Over the past five years, the level of perceived judicial independence remained consistently low.

**The draft law addressing challenges faced by the High Council for the Judiciary (CSM), including the way in which the members of the Council are elected, is still under discussion in Parliament.** The High Council for the Judiciary had to face several challenges relating to the representativeness of its members and to the transparency of its procedure for appointment at high judicial positions<sup>6</sup>. The draft law proposed by the Government in August 2020 aims at ensuring the independence of the members of the CSM<sup>7</sup> vis-à-vis the professional associations, including by changing the rules for the election of its members and

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<sup>1</sup> 2020 Rule of Law Report, country chapter on the rule of law situation in Italy, p. 2.

<sup>2</sup> The Italian Constitution, Art. 104 and 107. Both judges and prosecutors, as members of the judiciary, are independent from other constitutional powers.

<sup>3</sup> The Constitutional Court also decides on conflicts arising from allocation of powers of the State and those powers allocated to State and Regions, and between Regions, and on charges brought against the President of Republic.

<sup>4</sup> With respect to organised crime and other serious criminal offences, prosecutorial functions are carried out by District Anti-Mafia Directorates.

<sup>5</sup> Figures 48 and 50, 2021 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

<sup>6</sup> 2020 Rule of Law Report, country chapter for Italy, pp. 3 and 4. Draft Law AC 2681, approved by the Council of Ministers on 7 August 2020. Recently, further integrity challenges have been reported by media and are now investigated by several prosecutor's offices.

<sup>7</sup> 2020 Rule of Law Report, country chapter on the rule of law situation in Italy, p. 3, where integrity challenges have been explained. Recently, further integrity challenges have been reported by media and are now investigated by several prosecutor's offices.

by enhancing the diversity of the Council's members in terms of territorial origin and gender equality. Furthermore, the draft law also aims at drawing a stricter line between judicial and political functions<sup>8</sup>. In April 2021, the CSM issued several opinions<sup>9</sup> on the draft law, noting positive elements (e.g. the organisation of judicial offices<sup>10</sup>, including the prosecutor's office, a greater transparency in the appointment procedure for high positions<sup>11</sup> and in some rules related to the professional evaluations procedure for magistrates<sup>12</sup>). It also raised some concerns, notably regarding the election system, where the CSM emphasised the risk of marginalisation of minorities, the discretionary power of the Ministry of Justice to build electoral colleges ahead to the election, and the potential reduction of pluralism among judicial members<sup>13</sup>. Regarding the disciplinary regime, the CSM noted the risk of vagueness of the new disciplinary offences<sup>14</sup>. On 26 March 2021, GRECO<sup>15</sup> adopted its Second Compliance Report which discussed the direct participation of magistrates in political life. Despite progress achieved by the draft law, the recommendation assessed to be only partially implemented due to the fact that the draft law remains to be adopted<sup>16</sup>. In March 2021, new policy lines on justice<sup>17</sup> have been presented to Parliament by the Minister of Justice<sup>18</sup>. It is important that these reforms take into account Council of Europe recommendations relating to the Council for the Judiciary, including the selection of their members<sup>19</sup>, and to the status,

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<sup>8</sup> The draft law aims to avoid conflict of interest and enhance judicial independence by limiting the participation of magistrates in political activities. See GRECO Fourth Evaluation Round – Second Compliance Report, recommendation x.

<sup>9</sup> Six opinions dated from 21 to 29 April 2021 issued by the CSM on the request by the Ministry of Justice pursuant to article 10 of the Law n. 195 of 24 March 1958.

<sup>10</sup> Opinion of the CSM dated 21 April 2021 (on judicial offices).

<sup>11</sup> Opinion of the CSM dated 29 April 2021 (on high and middle management positions);

<sup>12</sup> Opinion of the CSM dated 29 April 2021 (on how the members of the High Council are elected).

<sup>13</sup> In particular, marginalisation of minority is associated to majority systems; the Minister of Justice would decide three months ahead of the election how to build the territorial colleges thus potentially entailing a risk for judicial independence; as to pluralism, Art. 104 of the Constitution states that judicial members in the Council are elected by all magistrates belonging to all categories, while the draft law would limit this possibility.

<sup>14</sup> Opinion of the CSM of 21 April 2021 (on disciplinary offenses and functioning of the CSM).

<sup>15</sup> GRECO Fourth Evaluation Round – Second Compliance Report, recommendation x. See also the opinion of the CSM, of 21 April 2021.

<sup>16</sup> The abovementioned report, while noting that a draft legislation has been prepared to provide for stricter regulation to limit the participation of magistrates in political life, it also mentions that it is a long-awaited reform, which concerns a particularly sensitive issue in Italy, and thus requires more resolute action.

<sup>17</sup> Issued by the new Minister of Justice and presented to the Parliament on 15 and 18 March 2021.

<sup>18</sup> As regards to the reform of the Council for the Judiciary, besides the electoral system, it is considered a two-yearly renewal of half of the lay and judicial members. The CSM positively assessed this proposal in its opinion to the Ministry of Justice. With Ministerial Decree of 26 March 2021, the Minister of Justice established a “Commission for the preparation of proposals for action to reform the judiciary and the regulation of the establishment and functioning of the High Council for the Judiciary”. This Commission ended its work on 31 May 2021 and is in the process to deliver its report. The report would be taken into account for possible amendments to the draft law discussed at Parliament.

<sup>19</sup> Recommendation CM/Rec(2010)12 of Committee of Ministers of Council of Europe, paras 25, 26, 27. See also the Opinion No. 23 (2020) of the Consultative Council of European Judges (The role of associations of judges), paras 31 and 32: “*In several member States, the association of judges has a certain influence on the selection of members of the Council for the Judiciary. Provided that it does not infringe the independence of the work of the Council for the Judiciary, such participation in the selection of its members could be welcomed. Care must be taken, however, that such a system does not lead to the politicisation of the election and the following work of the Council. In any case, there should be no discrimination and members of an association of judges should be free to become members of a Council for the Judiciary in supporting judicial independence*”.

career, liability and disciplinary regime for magistrates<sup>20</sup>. Italy is cooperating with the Council of Europe in this respect.

**Further measures have been taken to address integrity challenges<sup>21</sup>.** The CSM has continued to introduce rules aimed to foster transparency and merit-based appointment in high positions<sup>22</sup>. In addition, to further strengthen judicial independence, the CSM took measures to establish detailed provisions for magistrates on asset disclosure and systematic control, which have been welcomed by GRECO<sup>23</sup>. The CSM has also opened a number of disciplinary proceedings<sup>24</sup>, and in addition is taking into account in view of future professional assessments and appointment to managerial positions<sup>25</sup>, any integrity challenge disclosed in 2020 by the criminal investigation which led to the resignation of five members of the CSM<sup>26</sup>. Furthermore, the National Association of Magistrates has started applying disciplinary sanctions towards its members in case of violation of the ethical code of magistrates<sup>27</sup>.

## Quality

**Human resources are being increased and further recruitment of both judicial and administrative staff is planned.** Following the opinion of the CSM<sup>28</sup>, in September 2020 the Ministry of Justice<sup>29</sup> distributed the additional 600 magistrates posts among highest courts and prosecution service (70 units), first and second instance courts (422 units) and task force for flexible plants<sup>30</sup> (176 units), and in March 2021 new staff (285 magistrates) started their traineeship. After a first suspension due to Covid-19 pandemic, competitions now resumed<sup>31</sup>. Recruitments of more than 2000 members of administrative staff have been carried out through digitalised procedures in 2020 and 2021<sup>32</sup>. Following the 2020 Rule of Law Report which identified human resources as a particular challenge for Italy with an impact on the efficiency of the justice system, the Government has planned extraordinary measures<sup>33</sup> to

<sup>20</sup> Recommendation CM/Rec(2010)12 of Committee of Ministers of Council of Europe, paras 50, 52, 58, and 69. See also as regards disciplinary proceedings against judges: judgement of the Court of Justice of 19 November 2019, *LM*, C-216/18, para. 67; as regards liability of judges see also judgment of the Court of Justice of 18 May 2021 in joint cases C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, paras. 228-239.

<sup>21</sup> 2020 Rule of Law Report, country chapter on the rule of law situation in Italy, pp. 3-4.

<sup>22</sup> CSM Decision of 9 September 2020 modifying Decision no. 13778 of 24 July 2015.

<sup>23</sup> GRECO Fourth Evaluation Round – Second Compliance Report, recommendation xi.

<sup>24</sup> Twenty three disciplinary proceedings are on-going at the CSM and one has ended with the highest disciplinary sanction of placement out of the permanent role of the judiciary (Information received during the country visit). In addition, compulsory transfers are also under evaluation by the CSM whenever there are no more the conditions enabling a magistrate to work with independence and impartiality in a given office.

<sup>25</sup> Most severe disciplinary sanctions impede appointments to some high judicial positions.

<sup>26</sup> 2020 Rule of Law Report, country chapter on the rule of law situation in Italy, pp. 3-4.

<sup>27</sup> Contribution from the National Association of Magistrates and information received in the context of the country visit to Italy.

<sup>28</sup> Input from Italy for the 2021 Rule of Law Report, p. 14.

<sup>29</sup> Written contribution received by the Ministry of Justice in the context of the country visit to Italy.

<sup>30</sup> Building upon similar experience in other European legal systems (e.g. France and Spain), a flexible tool was set up to deal with temporary difficult situations and unify performances across courts. In October 2020, the Explanatory Technical Report regarding flexible plants was sent to the High Council of the Judiciary for its opinion.

<sup>31</sup> Decree-law n. 44 of 1 April 2021, article 11.

<sup>32</sup> Written contribution received by the Ministry of Justice in the context of the country visit to Italy (1.187 units in 2020 and 1056 in 2021 till 13 April).

<sup>33</sup> Announced in the National Recovery and Resilience Plan (NRRP).

reinforce the Office of the Trial<sup>34</sup> where administrative and judicial staff will cooperate in synergy through revised organisational modules<sup>35</sup>. These measures plan the recruitment<sup>36</sup> on fixed-term three-year contracts of about 16.500 graduates in law, economics and business and political science in order to provide magistrates with technical support<sup>37</sup>, and of 1.600 young graduates, 750 specialised and 3.000 general high school graduates to support the judiciary and monitor projects of the Ministry of Justice such as digitalisation of proceedings and reforms. A proportion of this newly recruited staff will be assigned to the High Court of Cassation to reorganise civil chambers, including the ones dealing with tax cases. As far as administrative justice is concerned, there is still a relevant number of vacancies especially for first instance judges. However, in February 2021 a new procedure for the recruitment of 40 judges (further extended to 60) has been published and an increase of 130 administrative posts is planned<sup>38</sup>. New recruitments for administrative justice are also envisaged<sup>39</sup> with the aim to reinforce judicial offices, enhance digitalisation and monitor projects activity. The new measures to reduce backlogs and length of proceedings<sup>40</sup> aim at addressing a long-standing country specific recommendation on the efficiency of the justice system<sup>41</sup>.

**Digitalisation of the justice system continues to improve in civil and administrative courts, while challenges remain for the criminal sector<sup>42</sup>.** The digitalisation of proceedings at first and second instance civil courts has been completed<sup>43</sup>, and has been launched at the Court of Cassation (civil section)<sup>44</sup> and at Judges of Peace<sup>45</sup>. However, it is less developed for criminal proceedings<sup>46</sup>, where it is expected to start by the end of May 2021. A first step is envisaged through the digitalisation of the register used for the wiretapping procedure. As to administrative justice, during the Covid-19 pandemic, further progress was achieved in

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<sup>34</sup> The Office of the Trial was established in 2014 (Art. 50 of Decree law no. 90 of 2014, converted into Law no. 114/2014) to support judges with a team of clerks, trainees and other staff in the preparatory activities for the hearings.

<sup>35</sup> Announced in the NRRP.

<sup>36</sup> *Ibidem*; recruitments are planned to be completed by the end of 2022.

<sup>37</sup> Research, study, monitoring, role management, preparation of draft measures.

<sup>38</sup> Contribution from the Council of State for the 2021 Rule of Law Report. Written contribution received by the Council of State in the context of the country visit to Italy.

<sup>39</sup> *Ibidem*, 250 officials on fixed-term contracts and 90 technical assistants are envisaged to be hired.

<sup>40</sup> Announced in the context of the National Recovery and Resilience Plan (NRRP), Milestones and targets: decrease of 90% for backlogs for first and second instance civil courts and 70% for administrative courts, by the second quarter of 2026; reduction of 40% of the disposition time for civil and commercial litigious cases (all instances) and of 25% of the disposition time for criminal cases (all instances).

<sup>41</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 8, footnote 71.

<sup>42</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Italy, p. 5

<sup>43</sup> Figures 40 and 44, 2021 EU Justice Scoreboard.

<sup>44</sup> On 15 October 2020 the Ministry of Justice, the Court of Cassation, the General Attorney, the National Bar Council and the Lawyers' Congress Body signed a Protocol for e-filing through a new management module on an experimental basis starting from 26 October 2021. In addition, for High Court Judges a desk for the Judge of the Court of Cassation allows remote access to the file of the proceedings, drafting of decisions and electronic filing. The same module is planned to be extended to the Prosecution Service at the High Court dealing with civil sector.

<sup>45</sup> Input from Italy for the 2021 Rule of Law Report, p.18: More than two hundred offices of the Judge of Peace have experimented e-service of documents and started further steps in the procedure towards a full digitalisation. 145 offices of the Justice of the Peace have concluded the relevant administrative procedure and are currently operational.

<sup>46</sup> Input from Italy for the 2021 Rule of Law Report, p. 18. Information received by the Ministry of Justice in the context of the country visit to Italy.

digitalised administrative proceeding by remote hearings<sup>47</sup>. Besides civil and criminal decisions of High Court<sup>48</sup>, online access to first and second instance rulings is moving slowly and is scheduled to be completed by 2023 only for civil rulings<sup>49</sup>. Further digital improvements are on-going to increase online services with Judicial Offices by updating Portal of e-Services, PEC Registers and e-payment, and improve access to some services through SPID, the National Service Card and the Electronic ID Card. Remote working during Covid-19 pandemic sped up the implementation of remote access to some registers (civil litigious cases, voluntary jurisdiction and labour disputes, at first and second instance<sup>50</sup>). In addition, a relevant amount of training is envisaged for the development of IT skills for managers, and for permanent and temporary staff recruited to support digitalisation and address backlogs<sup>51</sup>. As to civil procedure draft law, the Government has prepared amendments to the draft text to address efficiency challenges, including by increasing the level of digitalisation of justice systems<sup>52</sup>, which when finalised will be transmitted to the Parliament.

**The reform of the tax courts is still ongoing.** The Commission of experts set up by the Ministry of Justice and the Ministry of Economics and Finance should end its works for the preparation of the reform of the tax courts at first and second instance by 30 June 2021<sup>53</sup>. The reform would also aim at decreasing the high number of incoming cases at the High Court<sup>54</sup>. In addition, several prevention, supervision and enforcement actions taken by the Presidency Council of Fiscal Courts to enhance professionalism and integrity of members of fiscal justice, as well as training and further digitalisation, were taken to address GRECO's recommendation<sup>55</sup>.

**Existing standards to improve the quality of judicial decisions are planned to be included in law.** As noted in the 2020 Rule of Law Report<sup>56</sup>, these standards are currently enshrined in a Memorandum of Understanding between the CSM and the National Bar Association and aim at improving the clarity and conciseness of judicial decisions. The Government has prepared amendments to include these standards in the draft laws for civil procedure<sup>57</sup>.

**The envisaged increase of digitalised services at proximity offices could further improve access to justice.** As noted in the 2020 Rule of Law Report, a proximity office project is pursued by the Ministry of Justice aiming at improving access to courts by enhancing a service of justice closer to the citizens. Proximities offices<sup>58</sup> are now established in fourteen

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<sup>47</sup> Figure 2, 2021 EU Justice Scoreboard. See also Written contribution received by the Council of State in the context of the country visit to Italy: despite a complete digitalised administrative proceedings during the emergency, there is no provision which would allow remote hearings when the emergency will end; Contribution from the Council of State for the 2021 Rule of Law Report: Administrative judges could consult files remotely, deliver rulings and use electronic signature.

<sup>48</sup> Figure 46, 2021 EU Justice Scoreboard.

<sup>49</sup> Announced in the NRRP.

<sup>50</sup> Input from Italy for the 2021 Rule of Law Report, p. 17 and 18.

<sup>51</sup> Announced in the NRRP.

<sup>52</sup> Information received by the Ministry of Justice in the context of the country visit to Italy.

<sup>53</sup> 2020 Rule of Law Report, country chapter on the rule of law situation in Italy, p. 6. See also GRECO Fourth Evaluation Round – Second Compliance Report, recommendation VII, para 54.

<sup>54</sup> Announced in the NRRP.

<sup>55</sup> GRECO Fourth Evaluation Round – Second Compliance Report, recommendation VII.

<sup>56</sup> 2020 Rule of Law Report, country chapter on the rule of law situation in Italy, p.6.

<sup>57</sup> Information received by the Ministry of Justice in the context of the country visit to Italy.

<sup>58</sup> 2020 Rule of Law Report, country chapter on the rule of law situation in Italy, p. 6.

regions out of twenty and are able to offer homogeneous services directed above all to vulnerable groups by enhanced involvement of local authorities and use of digitalised tools<sup>59</sup> (e.g. sending of electronic documents to judicial offices and accessing information relating to pending proceedings through the use of digital platform).

## Efficiency

**Length of proceedings remains a serious challenge<sup>60</sup>.** Notwithstanding an increased clearance rate already above 100%<sup>61</sup> in the civil sector, the estimated time needed to resolve civil and commercial litigious cases remains very high<sup>62</sup>. Disposition time at first and second instance has decreased in 2019<sup>63</sup>, while there was an increase at the High Court of Cassation, mainly due to tax and international protection cases<sup>64</sup>. In 2020, the High Court registered a substantial decrease in incoming cases in the field of international protection, while incoming tax court cases<sup>65</sup> with high rates of annulments<sup>66</sup>, remain a serious challenge. Inadmissibility rates remain high<sup>67</sup>. In 2020, administrative courts have continued to decrease the disposition time at all instances, while remaining above average<sup>68</sup>. Positive results have continued in the area of public procurement<sup>69</sup>. Italy remains under enhanced supervision of the Council of Europe's Committee of Ministers as regards length of proceedings in administrative cases<sup>70</sup>. In criminal proceedings, the High Court reported a general increase of pending cases in

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<sup>59</sup> Written contribution received by the Ministry of Justice in the context of the country visit to Italy.

<sup>60</sup> 2020 Rule of Law Report, country chapter on the rule of law situation in Italy, pp. 7 and 8.

<sup>61</sup> Figure 12, 2021 EU Justice Scoreboard, meaning that the justice system is able to deal effectively overall with the number of incoming cases. See also CEPEJ (2021), Study on the functioning of the judicial systems in the EU Member States: clearance rate for civil and commercial litigious cases 104.5% in 2019 (102.9% in 2018).

<sup>62</sup> Figures 8 and 9, 2021 EU Justice Scoreboard.

<sup>63</sup> In line with a long-standing Council recommendation to reduce length of proceedings. See 2020 Rule of Law Report, country chapter on the rule of law situation in Italy, p.8.

<sup>64</sup> Written contribution received by Ministry of Justice in the context of the country visit to Italy. The Ministry underlined that disposition time in 2020 may not be an accurate indicator because of strong discontinuities in the series due to the COVID-19 pandemic. For this reason, data are not reported for 2020. CEPEJ (2021), Study on the functioning of the judicial systems in the EU Member States, latest data (2019) on disposition time shows a slight increase at first instance (for the civil sector, 532 days at first instance, 791 days at second instance and 1302 days at the High Court of Cassation).

<sup>65</sup> 2021 Report of the First President at the High Court of Cassation: at the end of 2020, in total 120.473 civil cases are pending at the High Court of Cassation, among which 53.482 tax cases.

<sup>66</sup> 2021 Report of the First President at the High Court of Cassation: for 2020, 45,6% of tax court decisions brought at the High Court resulted in annulments, compared to 17.2% of annulments of all decisions brought at the High Court.

<sup>67</sup> 2021 Report of the First President at the High Court of Cassation: for 2020, 24.7% of all civil appeals to the High Court were declared inadmissible, compared to 18.7% in 2019 (Court of Cassation, Statistical Yearbook 2020 and 2019).

<sup>68</sup> Figures 9 and 10, 2021 EU Justice Scoreboard; See also CEPEJ (2021), Study on the functioning of the judicial systems in the EU Member States that reported a disposition time decrease in 2019 by 7.7% at first instance and by 12.3% at highest instance. As regards 2020 data; Contribution from the Council of State for the 2021 Rule of Law Report (667 days at first instance in 2020 compared to 820 days in 2019; 862 days at highest instance in 2020 compared to 821 days in 2019).

<sup>69</sup> Contribution from Council of State for the 2021 Rule of Law Report and information received from the Council of State in the context of the country visit to Italy (113 days at first instance and 182 days at highest instance in 2020). The same also for electoral proceedings (from 3 to 211 days at first instance, and from 3 to 201 at second instance in 2020).

<sup>70</sup> 2020 Rule of Law Report, country chapter on the rule of law situation in Italy, p. 7, footnote 63. *Abenavoli group* will be examined by the Committee of Ministers before the end of the year.

2020<sup>71</sup>, especially at highest level. This confirms an urgent need for measures to increase efficiency, especially at the appeal level<sup>72</sup>. In addition, it has been reported that half of the ordinary procedure trials at first instance courts ends with an acquittal<sup>73</sup>. Italy remains under enhanced supervision of the Council of Europe's Committee of Ministers also as regards length of proceedings in criminal cases<sup>74</sup>.

**The draft laws to address the efficiency challenges are still under discussion in Parliament<sup>75</sup>.** The Government has presented amendments to the draft law aiming at efficiency gains in civil proceedings<sup>76</sup>. These amendments include, amongst others, an increase of alternative dispute resolution<sup>77</sup>, arbitration, assisted negotiation, a better focus on the preparatory and introductory phase of the proceedings, an enhanced digitalisation through remote hearings, a review of admissibility filters at appeal level, simplification of the appeal procedure and reorganising the office of the trial. In the field of criminal justice, the envisaged measures<sup>78</sup> may include, amongst others, an improvement in the notification system, an extended access to special procedures (e.g. plea bargain), a wider intervention of the judge within the preliminary investigation phase, a selective access to appeal procedures, a reduction of overcriminalisation and novelties as regards criminal sanctions as well as restorative justice with a focus on victims<sup>79</sup>. In addition, specific amendments may be introduced by the Government for the Office of the Trial to increase efficiency. The draft reform concerning the CSM and other aspects of the justice system is likely to further include provisions to support and facilitate efficiency gains (e.g. obligation for magistrates on managerial position to cover a certain time horizon to ensure an adequate planning of the office)<sup>80</sup>.

## II. ANTI-CORRUPTION FRAMEWORK

The National Anti-Corruption Authority is the main entity in charge of the prevention of corruption within the public administration supervising the adoption of the local three-year anti-corruption plans. The Anti-Corruption Unit of the Financial Police is responsible for the

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<sup>71</sup> 2021 Report of the First President at the High Court of Cassation, p. 25.

<sup>72</sup> 2020 Rule of Law Report, country chapter on the rule of law situation in Italy, p. 7

<sup>73</sup> 2021 Report of the First President at the High Court of Cassation: 50.5% of ordinary procedure trial at first instance court and 69.7% of opposition to the criminal decree end in acquittals.

<sup>74</sup> 2020 Rule of Law Report, country chapter on the rule of law situation in Italy p. 7, footnote 68. See also Council of Europe, Supervision of the execution of the European Court's judgments, Committee of Ministers Decision CM/Del/Dec(2021)1406/H46-15 of 9 June 2021 and CM/Notes/1406/H46-15.

<sup>75</sup> 2020 Rule of Law Report, country chapter on the rule of law situation in Italy, p. 8

<sup>76</sup> Amendments to the draft law for civil procedure presented on 16 June 2021 to Parliament. These amendments were announced in National Recovery and Resilience Plan (NRRP). Information received by the Ministry of Justice in the context of the country visit to Italy.

<sup>77</sup> One of the amendment aims at establishing mandatory out-of court settlement. In that respect it has to be noted that compulsory requirements to use ADR before going to court, may raise concerns about their compatibility with the right to an effective remedy before a tribunal enshrined in the EU Charter of Fundamental Rights; Judgment of the Court of Justice of 18 March 2010, *Rosalba Alassini v Telecom Italia SpA* (C-317/08) EU:C:2010:146).

<sup>78</sup> Announced in the NRRP. In addition, the technical Commission established by the Ministry of Justice on 16 March 2021 to evaluate the draft law regarding criminal procedure, has delivered its Report on 24 May 2021.

<sup>79</sup> On 8 July 2021 the Council of Ministers approved the text of the reform to be submitted to the Parliament, including a new proposal for the statute of limitations.

<sup>80</sup> Ministerial Decree of 26 March 2021 establishing a technical commission for the preparation of amendments for the reform of the judiciary and the establishment and functioning of the High Council for the Judiciary.

investigation and prevention of corruption as a specialised law enforcement body. As an independent authority at the Bank of Italy, the Financial Intelligence Unit for Italy provides support to the competent prosecutor's office and cooperates with the Financial Police as the competent authority for receiving reports of suspicious financial transactions.

**The perception among experts and business executives is that the level of corruption in the public sector remains relatively high.** In the 2020 Corruption Perceptions Index by Transparency International, Italy scores 53/100 and ranks 15<sup>th</sup> in the European Union and 52<sup>th</sup> globally<sup>81</sup>. This perception has significantly increased<sup>82</sup> over the past five years<sup>83</sup>.

**Italy has a National Anti-Corruption Plan in place for the years 2019-2021.** The central coordinating body for the plan<sup>84</sup> is the National Anti-Corruption Authority. The plan, which is the overarching strategy for the prevention of corruption in the public administration, establishes the main policy objectives to prevent corruption, which are updated every year. The central themes of the 2021 update of the plan focus on public procurement as well as on the role and function of local anti-corruption officers that exist as focal points in every local administration<sup>85</sup>. According to the Anti-Corruption Authority, these two issues will also be the main topics of the next three-year plan beyond 2021<sup>86</sup>. The National Anti-Corruption Plan provides support to public administrations in the design and implementation of their entity-specific three-year action plans<sup>87</sup>, with a current focus on public procurement and corruption risk mitigation. A monitoring system exists and main stakeholders consider it to function well<sup>88</sup>. In November 2020, the Anti-Corruption Authority has launched an evaluation to assess the extent of the implementation of these local plans adopted by the public administrations<sup>89</sup>.

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<sup>81</sup> Transparency International, Corruption Perceptions Index 2020 (2021), pp. 2-3. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

<sup>82</sup> In 2015 the score was 44, while, in 2020, the score is 53. 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>83</sup> The Eurobarometer data on corruption perception and experience of citizens and businesses as reported last year is updated every second year. The latest data set is the Special Eurobarometer 502 (2020) and the Flash Eurobarometer 482 (2019).

<sup>84</sup> The National Anti-Corruption Plan was established as the main anti-corruption law in Italy by the 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. The latest plan covers the period 2019-2021, Italian Anti-Corruption Authority, National Anti-corruption Plan, Resolution No. 1064, 13 November 2019.

<sup>85</sup> The anti-corruption officers have the responsibility to design and monitor the local anti-corruption plans over the period of three years. Information received in the context of the country visit to Italy.

<sup>86</sup> Information received by the National Anti-Corruption Agency in the context of the country visit to Italy.

<sup>87</sup> Each ministry and each local government and municipality or entity design and implement their own local plans. Among others, such plan helps those entities to establish rules for the appointment of the person in charge of corruption prevention in the relevant interested public entities; specify the roles of public entities in evaluating and managing corruption risks, enhancing transparency in the administration, supporting whistleblowers, and in the monitoring of privatisation 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.

<sup>88</sup> Information received by Transparency International in the context of the country visit to Italy.

<sup>89</sup> Italian Anti-corruption Authority has designed and brought into practice an electronic platform for administrations to send to ANAC data and the annual Report of the Responsible for the prevention of corruption and transparency of the specific administration. For the previous evaluation, a sample of 536

**Legislative amendments to repress corruption and corruption-related crimes in a more consistent manner have entered into force.** Notably, the amendments<sup>90</sup> to the Criminal Code introduced stricter sanctions on fraud<sup>91</sup> and widened the personal scope for international corruption<sup>92</sup>. In addition, the legislation on abuse of office was modified by the decree to exclusively cover violations of rules of conduct provided for by law (or acts having the force of law) in order to reduce the level of discretion previously provided<sup>93</sup>.

**Cooperation between the institutions fighting corruption works well, especially in the context of organised crime.** Cooperation between the Financial Police, the Financial Intelligence Unit, the Prosecutor's Office at the Court of Auditors, the National Anti-Mafia Directorate and the Anti-Corruption Authority on flagging suspicious activities has proved to be effective, particularly with regard to corruption in public tender procedures and illegality in the public administration<sup>94</sup>. Similarly, the cooperation with customs and monopoly agencies is considered useful to uncover corruption in the larger context of organised crime infiltrating the economy and the public administration<sup>95</sup>. According to the financial police and prosecutors, the resources and the level of specialisation of investigators and prosecutors as well as their access to information in relevant registries and databases is generally sufficient to carry out their tasks in the repression of corruption. Despite important recent legislative developments on the legal framework<sup>96</sup>, a lack of resources and limited experience and legal expertise affect the capacity of law enforcement authorities to pursue and prosecute foreign bribery effectively<sup>97</sup>. As a major exporter, Italy has recently dropped from active to

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public administrations had been assessed with regard to the general level of implementation of the local three-year plans as established by the 2016 National Anti-Corruption Plan. Most of the administrations (approximately 87%) carried out inadequate analyses to assess the risk of corruption in their entity. In particular, 27.1% of administrations had neglected the analysis of the socio-economic context. Compared to previous assessments, the general capacity of risk assessments has however improved across the country.

<sup>90</sup> Legislative Decree no. 75 of 14 July 2000, which entered into force on 30 July 2020, amended a wide range of existing legislation, including the Criminal Code, Legislative Decree no. 74 of 2000 (on tax offences), Presidential Decree 43/1973 and Legislative Decree 8/2016 (on customs matters), and Legislative Decree 231/2001 (on the liability of entities for administrative offences resulting from a criminal offence).

<sup>91</sup> Amendments introduced to the Criminal Code include: an aggravated case of embezzlement by taking advantage of another person's error (Art. 316); undue receipt of funds to the detriment of the State (Art. 316-ter); undue inducement to give or to promise advantages (Article 319-quarter C.C.), in the event that the act is detrimental to the financial interests of the European Union and the damage or profit exceeds EUR 100,000. A maximum sentence of four years imprisonment (instead of previously three years) was introduced for the aforementioned offences. Input from Italy for the 2021 Rule of Law Report, p. 35.

<sup>92</sup> Art. 322-bis of the Criminal Code was amended in order to include, among those punishable for international corruption, also persons exercising functions or activities corresponding to those of public officials and persons in charge of public service in non-EU Member States, when the act affected the financial interests of the European Union.

<sup>93</sup> Input from Italy for the 2021 Rule of Law Report, p. 36.

<sup>94</sup> Information received by the Financial Police/ Prosecutor's Office at the Court of Auditors/ National Anti-Mafia Directorate/ Anti-Corruption Authority in the context of the country visit to Italy.

<sup>95</sup> See above, Information received in the context of the country visit to Italy.

<sup>96</sup> In 2019, new legislation extended prescription periods and increased sanctions for bribery. Cf. also OECD, Statement of the OECD Working Group on Bribery on Italy's implementation of the Anti-Bribery Convention (2017).

<sup>97</sup> Information received in the context of the country visit to Italy.

moderate enforcement regarding foreign bribery<sup>98</sup>, although attention to this form of crime has significantly increased compared to ten years ago<sup>99</sup>.

**Efforts to fight corruption continue to be hampered by excessive disposition times, in particular at the appeal level.** A draft law of March 2020 to improve the efficiency of criminal trials and to speed up proceedings in the Courts of Appeal continues to be examined at the Chamber of Deputies<sup>100</sup>. Positive results in containing trial length had previously been recorded by first instance courts and the Court of Cassation<sup>101</sup>. Up-to-date statistics on investigations of corruption by the police as well as on prosecutions and convictions by the courts for the year 2020 are not available and are expected to be published in the course of 2021<sup>102</sup>.

**Amendments to the stand-alone whistleblowers law are at the final legislative stage.** Until adoption<sup>103</sup>, the protection of whistleblowers in the private sector remains limited as it is based on voluntary compliance programmes that not all companies have instituted<sup>104</sup>. In practice, the Anti-Corruption Authority does not have the mandate to receive whistleblowers disclosures from private sector employees or to issue sanctions<sup>105</sup>. The extension of the scope of application to all companies with more than 50 workers will therefore be an important new level of protection for private sector whistleblowers. In June 2021, the Anti-Corruption Authority issued a new set of guidelines on whistleblowing<sup>106</sup>.

**A legislative proposal on conflicts of interest for parliamentarians is still pending in Parliament.** The draft law<sup>107</sup> presented in May 2019 would amend and replace almost

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<sup>98</sup> In the period 2016-2019, Italy opened 23 investigations, commenced nine cases and concluded four foreign bribery cases with sanctions. Transparency International, *Exporting Corruption* (2020), p. 73.

<sup>99</sup> Information received by the Prosecution Service at the High Court in the context of the country visit to Italy.

<sup>100</sup> Draft law No. 2435, 'Delegation to the Government on the efficiency of the criminal trial and provisions to speed up judicial proceedings pending in the Courts of Appeal. The justice reform is part of Italy's National Recovery and Resilience Plan responding to recommendations made under the European Semester cycle; see the Council Recommendation of 9 July 2019 on the 2019 National Reform Programme of Italy and delivering a Council opinion on the 2019 Stability Programme of Italy, Country specific recommendation 4., p. 11, and Recommendation for a Council Recommendation on the 2020 National Reform Programme of Italy and delivering a Council opinion on the 2020 Stability Programme of Italy, Recital 27; See also section I: Justice system.

<sup>101</sup> Information received in the context of the country visit to Italy. Cf. also 2020 Rule of Law Report, Country chapter on the rule of law situation in Italy, p. 7. Notable in this context is also the reform providing for the interruption of prescription periods after a first-instance ruling, in line with a long-standing European Semester country-specific recommendation, which entered into force as of 2020. On disposition times, see also chapter I: Justice system pp. 6-7.

<sup>102</sup> Information received by the Financial Police in the context of the country visit to Italy.

<sup>103</sup> Amendments were approved in a second reading on 31 March 2021 and were sent to the senate for final approval.

<sup>104</sup> With the adoption of Law No. 179/2017, the whistleblowing regulation, which is generally applicable to the private sector, came into force on in December 2018. The protection scheme for whistleblowers provided by the law is voluntary and applicable only to those companies where the employer has adopted an organisational model for crime prevention pursuant to Decree No. 231/2001 relating to corporate criminal liability. The law requires only from those companies that have the Decree 231 model in place to set up a whistleblower reporting system for the protection of whistleblowers.

<sup>105</sup> In turn and as reported last year in the 2020 Rule of Law report, country chapter on the rule of law situation in Italy, p. 11, public sector reports to the Anti-Corruption Authority have significantly increased following the revision of the legal framework in 2017.

<sup>106</sup> According to the Italian authorities, this set of guidelines takes into account the principles of the Directive (EU) 2019/1937.

<sup>107</sup> Cf. Legislative proposal No. 1461, Macina and others, Legislative Proposal of interest (2018).

entirely the provisions of Law No. 215/2004 on Conflicts of Interest<sup>108</sup>. It was approved by the Constitutional Affairs Committee of the Chamber of Deputies in October 2020, with an indicative timeline for the entry into force on 1 July 2021<sup>109</sup>. The proposal includes the introduction of stricter measures for members of national, regional and local government offices<sup>110</sup>. The adoption of a formalised Code of Conduct Ethics has still not been achieved<sup>111</sup>. Until the new law enters into force, legislation on conflicts of interest remains fragmented<sup>112</sup>. Similarly, the publication of asset declarations for members of the Chamber of Deputies and the Senate remain fragmented and non-transparent<sup>113</sup>.

**There is no law on lobbying towards members of the Government in place, but several draft laws have been presented to Parliament.** The draft laws<sup>114</sup> present the general framework for dealings with interest representatives based on the experience with the Transparency Registers of the Ministry for Economic Development and the Ministry of Labour<sup>115</sup>. There is no specific reference to the introduction of a ‘legislative footprint’ but the Government has committed in the 4th National Action Plan for Open Government to establish a working group on the development of a unified national transparency register, including the public agendas of all decision-makers disclosing meetings with lobbyists<sup>116</sup>. Until an operational lobby register, including a legislative footprint, is in place, regulation of lobbying vis-à-vis the government remains fragmented<sup>117</sup>.

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<sup>108</sup> Input from Italy for the 2021 Rule of Law Report, p. 30.

<sup>109</sup> Information received in the context of the country visit to Italy.

<sup>110</sup> The proposal provides for additional cases of ineligibility for the office of deputy senator and senator and regional Councillor. It includes new rules on the ineligibility of magistrates and provisions on the regulatory regime to be applied to magistrates who are candidates in the elections. It delegates the Government to define a more stringent discipline for the prevention of conflicts of interest in the public administration, entrusting the Anti-Corruption Authority with specific powers to intervene and to impose sanctions, providing for greater forms of transparency with respect to the current regulatory framework. The proposal enlarges the provisions on non-transferability of offices (currently governed by Legislative Decree no. 39/2013), and limits the possibility of accumulating roles in administrative and control bodies in publicly controlled companies and the extension of the subjective scope of the rules on conflicts of interest. Cf. GRECO, Fourth Evaluation Round, Second Compliance Report – Italy, paras. 15-19.

<sup>111</sup> Cf. GRECO, Fourth Evaluation Round, Second Compliance Report – Italy, paras. 10-11, recommending also to further develop the range of non-criminal sanctions for unethical behaviour.

<sup>112</sup> As reported last year in the 2020 Rule of Law Report, country chapter on the rule of law situation in Italy, p. 11.

<sup>113</sup> This refers also to members of the Government and senior civil servants, see for more details the 2020 Rule of Law Report, Country chapter on the rule of law situation in Italy, p. 11. This is despite Italy’s open data commitment in the G20 context, cf. also G20 Anti-Corruption Open Data Principles (2015).

<sup>114</sup> According to information received by the Government, nine draft laws have been presented to the Chamber and the Senate. Three of those have been sent to the Committee on Constitutional Affairs. Notably, the draft laws before the Senate were presented in 2018 and 2019.

<sup>115</sup> Information received by the Chancellery of the Presidency Office in the context of the country visit to Italy. As part of commitments of the Italian Government under the 3<sup>rd</sup> Open Government Action Plan, the Ministry for Economic Development and the Ministry of Labour adopted a Transparency Registry and a Code of Conduct in September 2018.

<sup>116</sup> Italian Government, 4<sup>th</sup> National Action Plan for Open Government (2019-2021), p. 19.

<sup>117</sup> Decision No. 208/2017 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. Some regions and municipalities have taken positive steps forward and implemented regulation (e.g. Milan and Rome publish meetings between stakeholders and public decision-makers online for some of their departments) but there is no systematic or standardised approach. Cf. GRECO, Fourth Evaluation Round, Second Compliance Report, paras. 30-37.

**The legislative proposal on conflicts of interest presented in 2020 provides for revised rules on post-employment (‘revolving doors’).** In terms of scope, the proposal<sup>118</sup> covers members of Parliament as well as top executive officials but does not extend to public officials directly related to ministers, such as heads of cabinets. The length of the proposed cooling-off period of one year is currently still under discussion<sup>119</sup>.

**Italy prohibits direct public funding to political parties, including for political campaigns.** Consequently, political parties need to finance themselves almost exclusively through private donations from individual donors or legal entities<sup>120</sup>. This has created a significant reliance on parliamentarians to fund political campaigns from their own resources, making political actors more dependent on private donations and more vulnerable to undue influence<sup>121</sup>. There is a relatively high ceiling for private donations at EUR 100,000 per year. However, the rules on the transparency of financing to political organisations in force since 2019 oblige parties to publish data on donations<sup>122</sup>. Donations over EUR 500 received, in money or in-kind, need to be published along with the donor’s identity within one month from the date of reception. Failure to comply with the publication requirement is punishable with an administrative fine of three to five times the value of the non-reported donation. Foreign donations are banned. Concerns exist as to the capacities and resources of the oversight and supervisory bodies<sup>123</sup>. The practice of channelling donations through political foundations and associations before they are transferred to political parties may present an obstacle to public accountability, as such transactions are difficult to trace and monitor<sup>124</sup>.

**The COVID-19 pandemic significantly increased the risk of corruption and corruption-related crimes being committed to further infiltrate the legal economy of Italy.** According to the police, criminals have benefitted in particular from purchases of small private enterprises, such as restaurants in economic difficulties due to the COVID-19

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<sup>118</sup> Chamber of Deputies, 6 October 2020, Bulletin of Parliamentary Constitutional, Prime Minister’s and Interior Affairs Committees, ‘Provisions on conflicts of interest. C. 702 Fiano, C. 1461 Macina and C. 1843 Boccia’.

<sup>119</sup> Information received in the context of the country visit to Italy. Cf. GRECO, Fourth Evaluation Round, Second Compliance Report, para. 28. Notably, the National Anti-Corruption Authority entrusted with the powers of assessing infringements and imposing sanctions had called on the government to improve the legislation on revolving doors, cf. Italian Anti-Corruption Authority (2020), Reporting act No. 6, 27 May 2020 on revolving doors. No data is available so far on cases of revolving doors, as the Anti-Corruption Authority is still at an early stage in the assessment, according to information received by the Anti-Corruption Authority in the context of the country visit to Italy.

<sup>120</sup> Following a referendum in 1993 and the consequent measures adopted from 1993 to 2013, direct public funding to political parties was banned.

<sup>121</sup> Data published by the Chamber of Deputies, who mapped donations during the period of February to November 2019, indicates that 72.7% of funds allocated to Italian parties came from members of parliament, 22.9% from physical persons and 4.9% from private companies. See also Transparency International, *Soldi e politica: cosa ci dicono i dati?* (Nov. 2020).

<sup>122</sup> Law No. 3/2019. A centralised, machine-readable register is not in place. Cf. GRECO, Third Evaluation Round, Second Addendum to the Second Compliance Report, para. 37, recommending to introduce 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.

<sup>123</sup> Oversight bodies include the Committee for the Transparency and Control of Financial Statements of Parties and Political Movements, the Court of Audit and the Regional Electoral Guarantee Board.

<sup>124</sup> This practice has reportedly raised the attention of investigators and prosecutors at the outset of 2020. Donations made to third-party associations accounted for nearly EUR 10 million, or 37 per cent of the total volume of political funding in 2019. Cf. Transparency International, *Debugging Democracy, Open data for political integrity in Europe* (2020), pp. 4 and 19-20.

pandemic, and of sanitary products, including face masks, protective equipment and medical gadgets, which can serve as a means to facilitate other corruption-related crime, such as money laundering<sup>125</sup>. Furthermore, the Law Decree on measures for administrative simplification and digitalisation adopted in July 2020 also introduced a special regime for the award of public contracts<sup>126</sup>. The measures focus on fast procedures and direct awards without official competition<sup>127</sup>, on simplified award procedures and on sanctions for those who suspend or slow down the award and execution of public works, all of which risk to facilitate corruption<sup>128</sup>. The Anti-Corruption Authority updated its public contracts' database in September 2020 and produced new corruption risk indicators in the public procurement sector in December 2020<sup>129</sup>.

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

Freedom of expression and information, press freedom as well as the principle of transparency of media financing are enshrined in the Italian Constitution<sup>130</sup>. Secondary legislation establishes a robust framework geared at ensuring media pluralism in the country while the independent converged media regulator, the Authority for Guaranteeing Communications (AGCOM), is established by law. The criminal penalty for defamation, which is of up to one year of imprisonment, is currently under review by the legislature while legislation is pending to transpose the AVMS Directive. Journalists must be registered in the Order of Journalists, which provides for self-government by the profession.

**The regulator for audiovisual media services, AGCOM, continues to function independently and effectively.** In November 2020, AGCOM's Observatory on Journalism

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<sup>125</sup> Information received by the Financial Police in the context of the country visit to Italy. Information received in the context of the country visit to Italy.

<sup>126</sup> Law Decree No. 76/2020.

<sup>127</sup> The measures raise the ceiling for direct awards from EUR 40,000 to EUR 150,000 to simplify procedures relating to works contracts, and from EUR 40,000 to EUR 75,000 relating to services and supplies.

<sup>128</sup> The Anti-Corruption Authority emphasised that the choice to derogate from "any provision of the law other than criminal law" appears disproportionate to the objective of encouraging public investments and of coping with the negative COVID-19 related economic repercussions, see Anti-Corruption Authority, 'Analysis of the articles of the Law Decree 16 July 2020' (*Esame e commento degli articoli del decreto-legge 16 luglio 2020, n. 76 «Misure urgenti per la semplificazione e l'innovazione digitale» in tema di contratti pubblici, trasparenza e anticorruzione*) (2020). In addition, in order to address the emergency related to the COVID-19 pandemic, in April 2020 the Italian National Anti-Corruption Authority issued a Handbook with a systematic overview of the national relevant law provisions to accelerate and simplify tender procedures.

<sup>129</sup> The database includes information on 51.9 million procurement procedures, 38,500 contracting authorities and 234,000 bidders. Cf. data published on the website of the Anti-Corruption Authority. Data that previously used to be less accessible or required ad-hoc extractions - for example on sub-contracts, variations in the execution of works, or lists of companies that qualified to execute certain categories of works - is systematically made available on the Authority's website, including now also descriptive statistics. A working paper of the Authority presents a new corruption risk index with indicators built on the data of the National Database of Public Contracts to measure corruption risks at the local level and to promote transparency in public procurement. See Anti-Corruption Authority, 'Data analysis and construction of corruption risk indicators for the National Database of Public Contracts', Working paper n. 5 (2020), <http://www.anticorruzione.it/portal/rest/jcr/repository/collaboration/Digital%20Assets/anacdocs/Attivita/Pubblicazioni/Collana%20scientifica%20Autorita/Collana%20scientifica%20Anac%20-%20Matteo%20Tro%20C3%83%20ACa%20WP%20n.5.pdf>

<sup>130</sup> Constitution of Italy, Article 21. Italy maintains its relatively low ranking at 41st place worldwide in the Reporters without Borders 2021 World Press Freedom Index (and 20th in the EU) due to the significant number of journalists who live under police protection.

published a report related, among others, to the journalistic profession during the COVID-19 pandemic<sup>131</sup> and the many challenges journalists faced before and during the pandemic. It documents deteriorating working conditions, the increase in freelance work and other precarious work and a lack of a specialist knowledge among journalists, not least on COVID19-related subjects<sup>132</sup>.

**The Government provided financial support to the media sector to mitigate the impact of the COVID-19 pandemic.** In 2021, the Italian government introduced a series of economic measures to mitigate the impact of the COVID-19 pandemic which have included certain media-specific measures, namely a tax credit for advertising expenditures; a tax credit for kiosks; a tax credit for technological investments in digital media and a tax credit for paper purchases<sup>133</sup>. Parliament also approved the postponement of budgetary cuts which were scheduled to be made to the Fund for pluralism of information<sup>134</sup>. Access to this fund is based on a series of objective criteria, i.e. only newspapers edited by cooperatives of journalists, non-profit publications and those catering for linguistic minorities, should be entitled to the public support. The Constitutional Court has held that in such a fundamental area, a transparent regulatory framework is required while the allocation of resources must be based on clear and objective criteria<sup>135</sup>.

**The political independence of the Italian media remains an issue of concern in the absence of an effective law regulating conflicts of interest.** Draft reforms are still pending in parliament in spite of the fact that the issue remains a key political topic in the country<sup>136</sup>. While Italy's leading newspapers are not directly or indirectly owned by politicians or political parties, editorial lines reflect the strong polarization of the Italian political scene. For these reasons, MPM2021 considers political independence in general and editorial autonomy in particular to be at medium risk<sup>137</sup>. In Italy, we observe high concentration levels in all news media sub-sectors<sup>138</sup>.

**Issues inhibiting effective access to information were reported.** Italy's Freedom of Information Act (FOIA)<sup>139</sup> regulates 'civic access' to data and documents held by the public administration. MPM 2021 refers to independent reports which point out that the justifications provided by the authorities to refuse access to information are occasionally vague and not clearly grounded in the exemptions provided by the law. During the COVID-

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<sup>131</sup> Autorità per le Garanzie nelle Comunicazioni (AGCOM), *Osservatorio sul Giornalismo III edizione - La professione alla prova dell'emergenza Covid-19 - documento di consultazione pubblica*, November 2020.

<sup>132</sup> NGOs consulted during the country visit have confirmed that precarious work has become a real problem impacting the profession and that the sector's economic prospects had been seriously deteriorating prior to the COVID-19 pandemic.

<sup>133</sup> Law 27/2020 and Budget Law 178/2020.

<sup>134</sup> Department for Information and Publishing, *Fondo per il pluralismo e l'innovazione dell'informazione*.

<sup>135</sup> Constitutional Court, Decision 206/2019 (ECLI:IT:COST:2019:206).

<sup>136</sup> Amendments to Law 215/2004 known as the "Legge Fratтини".

<sup>137</sup> 2021 Media Pluralism Monitor, pp. 15-16.

<sup>138</sup> See MPM 2021, p. 12 for the market shares of leading players in different news media sub-sectors. Italian law sets limits to market share for each media market (technical limit) and for the overall media market (economic limit). No infringements of the technical limit have been established by AGCOM so far (MPM 2021, p. 13). Lack of standardized and comparable data and metrics on audience of the digital media is an issue (MPM 2021, p. 21).

<sup>139</sup> Decree-law 97/2016.

19 pandemic, the suspension of the FOIA regime between 28 February and 15 April 2020 was motivated on operational grounds rather than on public health protection grounds<sup>140</sup>.

**The laws on defamation have not been amended and remain subject to parliamentary scrutiny.** However, in the light of the pronouncements of the Constitutional Court on the matter<sup>141</sup> described in detail in the 2020 Rule of Law Report<sup>142</sup> and which were welcomed by press freedom organisations, MPM 2021 has lowered the risk level for this particular indicator<sup>143</sup>. On 22 June 2021, the Constitutional Court found Article 13 of the Press Act - as far as it provides for the penalty of imprisonment for press defamation - to be unconstitutional and incompatible with Article 10 of the European Convention on Human Rights<sup>144</sup>.

**Physical attacks, death threats and other forms of intimidation against journalists remain an issue of concern.** Since the last rule of law report eight alerts concerning Italy were registered by the Council of Europe's Platform to promote the protection of journalism and safety of journalists<sup>145</sup>. They have included arson attacks, physical attacks, cases of serious intimidation and online threats sent to the President of the Italian Press Association. One of the alerts, dated April 2021, refers to alleged wiretapping of at least 15 journalists working on migration issues as part of a public prosecutors' investigation into relations between NGOs and traffickers. European and Italian associations representing journalists have described this as a very serious case and a "massive violation of the confidentiality of journalists' sources"<sup>146</sup>. Despite the repeated requests made by the Italian Press Association, the protection of journalistic sources and the framework law on the professional secrecy of journalists remain inadequate<sup>147</sup>. As a result, MPM, once again scores the indicator on journalistic profession, standards and protection as medium risk. Both MPM 2021 and several stakeholders<sup>148</sup> have flagged the deterioration of journalists' working conditions, characterised by a growing gap between employed journalists and freelancers and a generalised reduction in newsroom staff, as an issue of major concern<sup>149</sup>. The Italian Coordination Centre dealing with acts against journalists set up in 2017 and considered a best practice at EU level - registered a significant number of acts of intimidation, namely 163 such acts in 2020<sup>150</sup> and 63 such acts between January and March 2021<sup>151</sup>.

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<sup>140</sup> 2021 Media Pluralism Monitor, p.10.

<sup>141</sup> Constitutional Court, Ordinance n. 132/2020.

<sup>142</sup> 2020 Rule of Law Report, country chapter for Italy, p. 14.

<sup>143</sup> 2021 Media Pluralism Monitor, pp. 9-1011.

<sup>144</sup> Official Press Release of the Italian Constitutional Court dated 22 June 2021 published on its website.

<sup>145</sup> Council of Europe, Platform to promote the protection of journalism and safety of journalists, Italy. Italy has replied to six of those alerts.

<sup>146</sup> Council of Europe, Platform to promote the protection of journalism and safety of journalists.

<sup>147</sup> Contribution from the Italian National Press Federation for the 2021 Rule of Law Report and information received in the context of the country visit to Italy.

<sup>148</sup> Contribution from Ossigeno per l'informazione for the 2021 Rule of Law Report.

<sup>149</sup> 2021 Media Pluralism Monitor p. 10-1 and stakeholder contributions mentioned in footnotes 145 and 146

<sup>150</sup> Representing an increase of 87% over 2019.

<sup>151</sup> Ministry of Interior - Department of Public Security, Central Direction of the Criminal Police, Intimidatory Acts Perpetrated against journalists, 2020.

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

Italy is a unitary parliamentary republic with an indirectly elected President<sup>152</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>153</sup>, and the Regional Council. Several regional ombudspersons are responsible for safeguarding the freedoms and rights of persons<sup>154</sup>. The Inter-ministerial Committee for Human Rights (CIDU) interacts with civil society, academia, and all relevant stakeholders to promote and protect human rights.

***Ex ante* regulatory impact assessments are regularly used, however public consultations and *ex-post* regulatory impact assessments are still limited<sup>155</sup>.** The Decree of the President of the Council of Ministers no. 169/2017 requires all public administrations to publish a six-month forward publication of information for each regulatory initiative. Yet, standardised procedures for stakeholder analysis have not been put in place<sup>156</sup>. The increased use of digital tools for public consultations has slightly improved the effectiveness of the process. In particular, innovative and interactive tools that allow for a greater participation<sup>157</sup> of users have been experienced through the use of platforms<sup>158</sup>. In some cases, users also receive the public administration's feedback<sup>159</sup>. However, consultations are mainly carried out using traditional techniques<sup>160</sup>. *Ex-ante* impact assessments are regularly used, and the use of *ex-post* assessments has started. In particular, in 2020, *ex-post* evaluations have been carried out on the acts which have been identified by the two-year plans of 2019<sup>161</sup>.

**The emergency situation regime related to the COVID-19 pandemic is still in place and a new parliamentary commission is to be set up to strengthen the role of Parliament during emergency situations.** In April 2021, the Government extended the emergency situation regime until 31 July 2021, while adopting measures to progressively reduce restrictions<sup>162</sup>. Measures to tackle the pandemic situation continued to be adopted by Government through decree-laws<sup>163</sup>, which are immediately effective and are then converted

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<sup>152</sup> The President is elected by Parliament, meeting in joint session, together with 58 regional electors.

<sup>153</sup> The National Council for Economics and Labour is also vested with the right to propose legislation in the economic and social field.

<sup>154</sup> For more information, see Ombudsman of Tuscany website: <http://www.difensorecivicotoscana.it>.

<sup>155</sup> 2020 Rule of Law Report, country chapter on the rule of law situation in Italy, p. 16.

<sup>156</sup> Contribution from the Department for public administration and the Department for institutional reforms for the 2021 Rule of Law Report.

<sup>157</sup> Users can comment on a draft document and display others participants' contributions.

<sup>158</sup> Compared to dedicated websites, digital platforms widely expand on simultaneous and interactive participation of users in call for proposal and ideas, and text commenting.

<sup>159</sup> For instance, with specific regard to the consultations carried out on the platform "Partecipa", in 5 cases, final reports on the consultation process have been published. The final reports give information about the results of the initiatives (e.g. number of respondents, content of their submissions, and in some cases, the public administrations' feedback on their acceptance).

<sup>160</sup> Such as notice and comment via e-mail or supported by forms (about 60%) or online questionnaires (about 20%). Less frequent is the use of more innovative techniques such as online fora (about 15%) and online text-commenting tools (about 5%). See also Consultazione Platform for public consultations.

<sup>161</sup> To date, 4 *ex-post* evaluations have been produced, of which 1 in 2020 and 3 in the first quarter of 2021.

<sup>162</sup> Decree law no. 65 of 18 May 2021.

<sup>163</sup> Between 25 February 2020 and 31 March 2021, 49 decree-laws were adopted.

by Parliament into Law<sup>164</sup>. The President of the Council of Ministers may also directly adopt emergency measures, which take the form of a decree of the President of the Council of Ministers. In these cases, before the adoption, the Government has to present the content and main objectives of the decree to the Parliament. Where this presentation is not possible for reasons of urgency, a follow-up communication to the Chambers is provided, in general, every 15 days<sup>165</sup>. Due to the COVID-19 pandemic, in the first months of the emergency situation regime, Parliament decided to examine only urgent acts and any subject linked to the health emergency. Ordinary works were resumed in May 2020. In order to ensure a central role for Parliament during the COVID-19 pandemic and, more generally, during emergencies, the Senate proposed to set up a special bicameral Commission<sup>166</sup> to be consulted on any act of the Government related to the pandemic emergency. This Commission, which remains to be established, would have a consultative function and would act as a link with the local entities<sup>167</sup>. Some measures adopted by decree of the President of the Council of Ministers have been challenged before administrative courts, which had to assess on their proportionality with respect to limitation of fundamental rights<sup>168</sup>. The provision related to the suspension of the course of the statute of limitation was challenged before the Constitutional Court<sup>169</sup>, which did not find a risk of abuse of legislative power<sup>170</sup>.

**No progress regarding the establishment of an independent human rights institution has taken place<sup>171</sup>.** The creation of an Independent National Human Rights Institution (NHRI) remains subject to debate<sup>172</sup>. In October 2020, the two original draft proposals for the creation of a NHRI, tabled in 2018, were merged into one single proposal by the Parliament. The new text is currently being discussed in the Commission for the promotion and protection of fundamental rights of the Chamber of Deputies<sup>173</sup>. The proposal would establish a NHRI, in line with the Paris Principles and the recommendations from the United Nations.

**The civic space continues to face challenges but certain aspects of the legislation regarding civil society organisations dealing with migrants have been improved.** In October 2020, some improvements to the legislation regarding civil society organisations

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<sup>164</sup> Between 25 February 2020 and 31 March 2021, 69 laws and 51 legislative decrees were adopted. Decree-laws are Government acts with the value of laws adopted in case of urgency, which need to be converted into law by Parliament within 60 days or otherwise lose effect.

<sup>165</sup> The Ministry of Health, on a weekly basis, communicates to Parliament the results of the monitoring of epidemiological data. The decrees adopted of the President of the Council of Ministers have to be communicated to the Chambers within the day following their publication pursuant to Art. 2 of Decree-law no° 19 of 2020.

<sup>166</sup> The Parliamentary Commission on the epidemiological emergency of COVID-19 is composed of 10 Members from the Senate and 10 Members from the Chamber of Deputies.

<sup>167</sup> Senato della Repubblica, XVIII Legislatura, *Il 'Governo in Parlamento' in tempo di pandemia, Una proposta della Commissione Affari costituzionali del Senato*, April 2021.

<sup>168</sup> For example, a relevant number was related to the use of masks at school and scientific data regarding sufficient level of oxygen (Council of State, decree n. 1804 of 2 April 2021). Others relate to distance learning (Council of State, sez. III, decree, 07/04/2021, n. 1832, Pres. Est. Frattini).

<sup>169</sup> See also 2020 Rule of Law Report, country chapter for Italy, p. 15.

<sup>170</sup> The Constitutional Court in its ruling no. 278/2020 noted that the short duration was compatible with the reasonable duration of the trial and the measure was justified by the aim of protecting public health.

<sup>171</sup> 2020 Rule of Law Report, country chapter on the rule of law situation in Italy, p. 16.

<sup>172</sup> For instance, on 25 of January 2021, the Bocconi University, together with the EU Fundamental Rights Agency and the Italian Inter-ministerial Committee for Human Rights (CIDU), held a Webinar on the issue.

<sup>173</sup> Chamber of Deputies, Preparatory work of draft proposal for the creation of a NHRI, <https://www.camera.it/leg18/126?tab=4&leg=18&idDocumento=1323&sede=&tipo>.

dealing with migrants were put in place<sup>174</sup>, in particular provisions<sup>175</sup> governing the activities of CSOs carrying out search-and-rescue operations at sea<sup>176</sup>. Despite the pandemic, the cooperation with civil society organisations has been strengthened<sup>177</sup>. However, concerns remain as regards the complexity of the registration process for NGOs and delays in the implementation of the law harmonising rules on the non-profit sector<sup>178</sup>. Despite recent positive developments with the dismissal of the case against a human right defender<sup>179</sup> active in the migration and asylum field, some concerns remain in this field<sup>180</sup>. Moreover, the civic space is still considered as narrowed<sup>181</sup>.

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<sup>174</sup> Following the Conference of INGOs of the Council of Europe, Civil participation in the decision-making process, Fact Finding Mission to Italy, May 2019.

<sup>175</sup> Decree-law no. 130 of 21 October 2020.

<sup>176</sup> It now limits the possibility to prevent disembarkation in Italian ports only to solid reasons of public safety or the violation of anti-trafficking legislation. This law also no longer allows confiscation of a vessel in case of non-compliance with official refusal to disembark. Information received in the context of the country visit to Italy.

<sup>177</sup> The Inter-ministerial Committee for Human Rights (CIDU) has involved Civil Society in the elaboration of both the first National Plan of Action on Business and Human Rights and the third and fourth National Action Plan on Women, Peace and Security, under which an open-ended 1325 Working Group has been established; Input from Italy for the 2021 Rule of Law Report; the Open Government Forum resumes its work in April 2021 to foster dialogue and promote responsibility between member governments and citizens. Information received in the context of the country visit to Italy.

<sup>178</sup> 2020 Rule of Law Report, country chapter on the rule of law situation in Italy, p. 16.

<sup>179</sup> Dismissal of the case on 19 May 2021 by the Judge for Preliminary Investigation.

<sup>180</sup> See pillar III, p. 16 regarding the alert dated April 2021 on Council of Europe, Platform to promote the protection of journalism and safety of journalists, Italy, and related to the criminal investigation carried out by the Public Prosecutor Office of Trapani in 2016, disclosed in 2021, during which wiretapping had been put in place against journalists and CSOs. The Ministry of Justice opened formal checks on the activities of the Prosecution Office in April 2021.

<sup>181</sup> Ratings given by Civicus, Italy.

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

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

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(<https://www.transparency.org/en/cpi/2020/index/nzl>)

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

The Commission services held virtual meetings in April 2021 with:

- AGCOM (Media Authority)
- Anti-corruption Agency (ANAC)
- Anti-corruption Unit of the Financial police
- Antigone
- Article 21
- Association of European Journalists
- Council for the Judiciary
- Council of State
- Court of Auditors and Prosecutor's Office at the Court of Auditors
- High Court of Cassation
- Infonodes
- Libera
- Ministry of Justice
- National Anti-mafia and Anti-terrorism Directorate (DNAA)
- National Association of Magistrates (ANM)
- National Bar Association
- National Federation of the Italian Press
- Ossigeno per l'informazione
- Parliament
- Presidency of the Council of Ministers
- Prosecution Service at the High Court of Cassation
- The good lobby
- Transparency International

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

- Amnesty International
- Center for Reproductive Rights
- CIVICUS
- Civil Liberties Union for Europe
- Civil Society Europe
- Conference of European Churches
- EuroCommerce
- European Center for Not-for-Profit Law
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Front Line Defenders
- Human Rights House Foundation
- Human Rights Watch
- ILGA-Europe
- International Commission of Jurists
- International Federation for Human Rights
- International Planned Parenthood Federation European Network (IPPF EN)
- International Press Institute

- Netherlands Helsinki Committee
- Open Society European Policy Institute
- Philanthropy Advocacy
- Protection International
- Reporters without Borders
- Transparency International EU