

2023 Rule of Law Report: comments on the draft country chapterBelgium

Please indicate proposed changes (factual corrections/updates) to the current wording in the table below in a clearly visible manner and in a word format (e.g. in track changes or changes highlighted in colours).

Abstract		
Page	<u>Proposed change</u>	<u>Explanation</u>
1	On integrity policy, the overall Code of Conduct for federal public office holders is to be extended to all members of ministerial private offices, and a formal integrity policy for Ministers is <del>expected to be</del> put in place	See proposed changes below.
<b>Pillar I – Justice system</b>		
Page	<u>Proposed change</u>	<u>Explanation</u>
3, footnote 15	[...]Therefore, if it appears that an entity requires more magistrates than foreseen in the numbers of staff fixed by law and that another entity requires less of them, the College of courts and tribunals, the College of the public prosecutor's office, <del>as well as the Entity Cassation</del> may propose to the King to deviate from the numbers of staff fixed by law, within certain limits, by using the so-called flexible numbers of staff; Input from Belgium for the 2023 Rule of Law Report.	<p>Art. 186, § 1/1. C.J. "Le Roi peut, sur la base d'un avis conforme selon le cas du Collège des cours et tribunaux ou du Collège du ministère public, déroger provisoirement aux cadres des magistrats ou des greffiers visés au paragraphe 1er, alinéa 8, <b>exceptés les cadres de la Cour de cassation</b>, dans une limite de maximum 20 pourcent ou, lorsque le cadre ne prévoit que cinq personnes ou moins, à raison d'une unité, et considérant que les cadres contenant une seule entité ne peuvent jamais être supprimés au profit d'une autre entité.</p> <p>L'avis conforme doit établir que l'augmentation de cadre et la diminution qui en découle dans une autre entité repose sur les résultats de la mesure de la charge de travail la plus récente à ce moment et sur les données concernant les flux de dossiers entrants et sortants des entités concernées et que la dérogation temporaire tend à rétablir un équilibre dans la répartition des moyens humains entre les entités à la suite de l'évolution de la charge de travail des entités concernées. Cette dérogation provisoire aux cadres s'effectue sans dépassement du total national des cadres.</p> <p>Le membre de l'ordre judiciaire nommé à une place temporaire est nommé en surnombre dans la juridiction, le parquet ou le greffe qui bénéficie de l'augmentation de cadre temporaire.</p> <p>Aucune personne nommée sur la base du présent paragraphe ne peut être déplacée sans une nouvelle nomination et sans son consentement."</p> <p>(<a href="http://www.ejustice.just.fgov.be/eli/loi/1967/10/10/1967101053/justel">http://www.ejustice.just.fgov.be/eli/loi/1967/10/10/1967101053/justel</a>)</p>
6	In the context of its follow up to the backlog of cases first mentioned in the 2008 European Court of Human Rights case of <i>Bell v. Belgium</i> <sup>41</sup> , the Committee of	Typing error: an "i" is missing: "judicial"

	Ministers of the Council of Europe calls for 'a long-term structural perspective' on judicial staff and budget for Justice <sup>42</sup> .	
7, footnote 49	Change the reference to Figure 23 of the 2023 Justice Scoreboard. Should not it be Figure 24 ?	The footnote 49 refers to Figure 23 of the 2023 Justice scoreboard. It is not correct as Figure 23 is about corruption/bribery. It should refer to another Figure, maybe 24.
7	The sentence "However, from a comparative perspective, the 2023 EU Justice Scoreboard shows that in consumer cases, the thresholds for accessing legal aid remain above the Eurostat poverty threshold <sup>49</sup> " should be clarified.	It is not very clear what it actually means. The At-risk-of-poverty thresholds in Belgium in 2022 is 16 388 euros on an annual basis so 1365 euros on a monthly basis. In the footnote 63 of the EU justice scoreboard, the applicant's situation is a single 35-year-old employed applicant without any dependant or legal expenses insurance. To access legal aid (totally free) in Belgium from sept 2022- sept 2023, this applicant should be under the threshold of 1426 euros per month. So the use of the word "however" would be correct if the threshold for legal aid was <b>under</b> the threshold of at-risk-of-poverty threshold. Which is not the case for at least one part of the year 2022.  It was the case for the previous year by 40 euros (sept 2021-sept 2022) because the threshold to access legal aid was at 1326 euros per month.
7	[...] Furthermore, a draft law for virtual hearings in judicial proceedings in civil and criminal matters <sup>55</sup> has been approved by the Government on 23 December 2022 and will be submitted to Parliament for discussion, after receiving opinions from the Council of State and the Data Protection Authority. The legal basis for the Central Register for judicial decisions was published in the Belgian Official Gazette on 24 October 2022 <sup>56</sup> . <b>Royal decrees are prepared to implement <i>Just Restart</i>, the digital counterpart in collective debt settlement, before the end of this year.</b> Whilst recognising the considerable efforts made to increase the digitalisation of justice, practitioners consider that the justice system remains insufficiently digitalised <sup>57</sup> .	Typing error in "discussion" +  Update concerning <i>Just Restart</i> which is going to be implemented before the end of 2023. It establishes a digital alternative for procedures of collective debt settlement. First Royal Decree was published on 2 <sup>nd</sup> of august 2022. A second draft royal decree was submitted to the Council of State and the Data Protection Authority.  There are a number of outstanding legislative issues that need to go hand in hand with technical development. Some legislative amendments are currently being examined by the Council of State. A Royal Decree to regulate access has obtained all opinions (Council of State and Data Protection Authority) and is ready for publication. A Royal Decree for financing in 2023 has obtained all opinions and is ready for publication. A Royal Decree on the management of the register is in preparation. An amendment to the Royal Decree on debt mediators' fees is in preparation and under discussion with the FPS Economy.
<b>Pillar II – Anti-Corruption Framework</b>		
<b>Page</b>	<b>Proposed change</b>	<b>Explanation</b>
9	The Integrity and Culture Unit within the Federal Public Service for Policy and Support (FOD BOSA) will be transformed into an "Integrity Bureau" which will be in charge of developing the federal integrity policy and integrity management.	Clarification regarding the (future) new denomination of the Integrity and Culture Unit in view of the adoption of the forthcoming royal decree on federal integrity policy and integrity management that will be adopted in 2023.

11-12	<p>Recently, the system of the appointment of "honorary consuls" in the Belgian diplomatic network has been questioned, with allegations of conflicts of interest, corruption and fraud made in some cases.</p>	<p>All the cases cited were refuted and none could be substantiated. The journalist acknowledged that Belgium applied due diligence in all cases mentioned. Therefore, we request to delete this phrase.</p>
12	<p>Some progress has been made as regards the Code of Conduct for federal public office holders, which is to be extended to all members of ministerial private offices. A Ministerial Code of Conduct was adopted by the Government in June 2023. Nevertheless, integrity policy for Ministers, their private offices as well as members of Parliament continues to have gaps. [...] This proposal was sent for consultation to the Council of State 105, and has been introduced in Parliament on 16 June for a vote and discussion in the relevant committee on 21 June and a plenary vote before the Summer recess. Progress was therefore made on this part of the Recommendation from the 2022 Rule of Law report. The Government has codified and published integrity rules for Ministers, in contrast to the previous situation where guidance on integrity for ministers was only covered in internal, non-public letters sent by the Prime Minister<sup>106</sup>. The Council of Ministers adopted to this end a circular by the Prime Minister on 16 June. It aims to codify and supplement integrity rules and rules of conduct of government members, as well as some of the government's operating rules. It includes the fundamental principles of public interest, equality and dignity, as well as the rules of conduct on integrity, responsibility, procedures in case of conflicts of interest, acceptance and exercise of other roles and functions, gifts, independence, respect for privacy, transparency, confidentiality and discretion and the obligations after the end of the mandate.</p>	<p>Two significant developments have taken place:</p> <ul style="list-style-type: none"> <li>- The bill to extend the code of conduct for public mandate holders to all members of the ministerial private offices has been introduced (link should be available Monday 19 June) and will be voted upon before the Summer of 2023.</li> <li>- A circular with a Ministerial Code of Conduct was adopted on 16 June (see annex).</li> </ul>
13	<p>A draft Royal Decree "on integrity policy and integrity management in different federal public sector organizations" to be published in the Official Gazette in June 2023, foresees in a yearly public report on the integrity management of federal public sector organizations.</p>	<p>This provision partly qualifies the statement on p13 that there is an absence of monitoring mechanisms.</p>
13	<p>following revelations that private offices of one several ministers included seconded employees that were still being paid by such a company which raised allegations of conflicts of interest.</p>	<p>Several private offices, including on the regional level, face this situation, not just one.</p>

<p>13 and 15</p>	<p>In order to raise the awareness of conflict of interest, the Federal Public Service Policy and Support has commissioned a report “on the risks and policy measures related to post-employment conflicts of interest in the federal public service and ministerial private offices”. This report has been drafted and finalized by the University of Utrecht.</p>	<p>This provision partly qualifies the statement that there is a low awareness of the concept of conflict of interest.</p> <p>The report will be published shortly but can be shared upon request.</p>
<p>14</p>	<p>Integrity policy for civil servants is undergoing reform. The non-binding Code of Ethics for federal civil servants was updated on 5 July 2022. It revolves around the five transversal federal values : respect, trust, public interest, professionalism and social responsibility. The Code contains concrete examples to aid in its implementation. In accordance with the forthcoming Royal Decree in 2023, on federal integrity policy and integrity management, the Integrity and Culture Unit within the Federal Public Service Policy and Support will be transformed into an “Integrity Bureau” with the overall responsibility for the federal integrity policy and management. As a result of this legal framework for integrity management, each Federal Public Service will have to appoint an integrity coordinator who will be the single internal point of contact for integrity. Integrity coordinators will meet in a federal network under the aegis of the Bureau.</p>	<p>Clarification regarding federal values set out in the Code of Ethics. As indicated above, a royal decree on federal integrity policy and integrity management will be adopted in 2023.</p>
<p>15</p>	<p>There has been limited progress in relation to rules on gifts and benefits, as Parliament and Government remain without clear rules. [...] used<sup>123</sup>. The Ministerial Code of Conduct, adopted on 16 June, includes rules on gifts, tailored on the principle adopted in the Code for the public holders, and, in addition, asks each member of the government to set up a register of gifts received. Given that the bill to extend the code of conduct for public mandate holders to all members of the ministerial private offices also contains general rules on gifts and benefits, this has also been addressed for them. As only some changes were made to rules on gifts and benefits, little progress was made on this part of the Recommendation from the 2022 Rule of Law report.</p>	<p>A circular with a Ministerial Code of Conduct was adopted on 16 June (see annex). This includes rules on gifts.</p>
<p>15</p>	<p>The Federal Deontological Commission continues to offer individual advice to Members of Parliament on potential issues of conflict of interest. This function seems to be used increasingly. <sup>123</sup></p>	<p>Not one but three individual opinions were issued by the Commission in the first quarter of 2023.</p>

<p>15, footnote 123</p>	<p>123 [...] <b>Additionally, in the first quarter of 2023, two individual confidential opinions regarding conflicts of interests were issued on the demand of MPs.</b></p>	
<p>15-16</p>	<p>There remain some rules in place on ‘revolving doors’ for members of Parliament and public officials, including in the existing Code of Conduct for public office holders<sup>124</sup>. As the Government is <b>expanding</b> the application of the Code of Conduct for public office holders to Cabinet members, this would also expand the application of rules on revolving doors. <b>In addition, similar rules were adopted for in the Ministerial Code of Conduct.</b></p> <p>However, the existing rules on revolving doors continue to have important gaps. There are no clear or binding rules regarding cooling-off periods or transitory restrictions for either ministers, their staff, or members of Parliament, limiting their effectiveness<sup>125</sup>. <b>The Federal Deontological Commission has issued an initiative advice on mobility between the public and private sectors to avoid conflict of interest (“revolving doors”) on 15 May. The Government has taken note of this advice and is elaborating an approach in the next months.</b> As such, there has been some progress on this part of the Recommendation as regards the issue of revolving doors.</p>	<p>A circular with a Ministerial Code of Conduct was adopted on 16 June (see annex). This includes rules on gifts.</p> <p>In the meantime, the advice of the Federal Deontological Commission was published and can be consulted here: <a href="https://www.fed-deontologie.be/wp-content/uploads/2023/05/Avis-2023-3-pantouflage-DEF-1.pdf">https://www.fed-deontologie.be/wp-content/uploads/2023/05/Avis-2023-3-pantouflage-DEF-1.pdf</a></p>
<p>16, footnote 126</p>	<p><b>Federal Deontological Commission (2023), General own initiative advice nr. 2023/3 of 15 May 2023 on mobility between the public and private sectors, to avoid conflicts of interest (“revolving doors”)</b> <a href="https://www.fed-deontologie.be/wp-content/uploads/2023/05/Avis-2023-3-pantouflage-DEF-1.pdf">https://www.fed-deontologie.be/wp-content/uploads/2023/05/Avis-2023-3-pantouflage-DEF-1.pdf</a></p>	<p>Meanwhile, the announcement became reality.</p>
<p>16</p>	<p>There has been <del>no</del> <b>some</b> further progress on completing the reform of lobbying legislation. The 2022 Rule of Law Report recommended to Belgium to “[c]omplete the legislative reform on lobbying, establishing a framework including a transparency register and a legislative footprint, covering both members of Parliament and Government”. Work on a lobbying reform is proceeding slowly, with no concrete steps registered in the reporting period<sup>127</sup>. <b>Although</b> The Government remains committed to lobbying reform<sup>128</sup>, previously reported plans to extend the existing transparency register of the Parliament to the Government <b>continue to being discussed</b><sup>129</sup>. The Government has chosen to proceed with its <del>own</del> lobbying</p>	<p>Some corrections regarding the current state of play.</p>

	<p>regulation in the form of a royal decree, <b>creating transparency in its contacts</b>, although a timeline for adoption remains unclear<sup>130</sup>. <b>Parliament also continues the discussion on improving its lobbying legislation. To the extent possible, efforts will be made to create a joint database in which lobbyists should register.</b></p> <p>Nonetheless, at this point in time, no concrete steps forward on the lobbying reform for either Government or Parliament have been taken, and therefore no further progress has been made as regards the recommendation from the 2022 Rule of Law Report.</p>	
17, footnote 138	<p>In early 2023, a number of special legal regimes were publicised. These regimes <b>allegedly</b> allowed a number of retired MPs (and, in certain cases, high level civil servants) to avoid the legal pension limit as determined by the pension law (the “plafond-Wijninckx”) and receive additional pension.</p>	<p>The statement in footnote 138 needs to be put into perspective as the matter of the so-called pension bonuses is not settled, is currently being litigated and will ultimately fall to the competent judge to rule on the legality of the said regimes.</p>
<b>Pillar III – Media Pluralism and Media Freedom</b>		
<b><u>Page</u></b>	<b><u>Proposed change</u></b>	<b><u>Explanation</u></b>
18	<p>However, information concerning beneficial ownership is <b>only partly included in the media concentration report of the Flemish Media Authority, that is available on its website and that contains information on beneficial ownership for media companies that are part of one of Flanders’ 7 main media groups</b></p>	<p>Information concerning beneficial ownership is partly included in the media concentration report of the Flemish media regulator, which is available on its website.</p>
18, footnote 156	<p><del>and has been reiterated by the 2023 edition of the Monitor, p. 14.</del></p>	<p>The Media Pluralism Monitor 2023 has not been published yet, Member States have not been able to take its results into account. Therefore, we request to delete this phrase.</p>
<b>Pillar IV – Other institutional issues related to checks and balances</b>		
<b><u>Page</u></b>	<b><u>Proposed change</u></b>	<b><u>Explanation</u></b>
21, footnote 191	<p>Council of State judgment nr. 254.041 of 17 June 2022.</p>	<p>Rectification.</p>
21, footnote 193	<p><b>Three laws formed the basis for the adoption of the COVID-19 pandemic related measures: the Act of 31 December 1963 ‘on civil protection’, published on 16 January 1964 in the Belgian Official Gazette, the Act of 15 May 2007 on civil security, published on 31 July 2007 in the Belgian Official Gazette and the Law of 14 August 2021 on administrative police measures in an emergency pandemic situation (Federal pandemic law), published on 20 August 2021 in the Belgian Official Gazette.</b></p>	<p>Enhancement of the accuracy of the statement in footnote 193 + rectification.</p>

<p>22, footnote 206</p>	<p>Concerns have been expressed that the establishment of the Flemish Human Rights Institute will possibly weaken the position of the victims of discrimination in Flanders <del>[as it cannot assist victims of discrimination in court cases, which the Federal Equality Body, Unia, is able to do];</del></p>	<p>The passage is not entirely correct. The Flemish HRI can indeed act in court.</p> <p>(1) Act in court in its own name;</p> <ul style="list-style-type: none"> <li>- On behalf of the collective interest: The Flemish HRI can bring this claim <u>in addition to and in support of a victim</u> (who brings a separate claim in his own name, for his own interest).</li> <li>- On behalf of the VMRI's own interest.</li> </ul> <p>(2) Acting in court on behalf of a victim ('on behalf of'):</p> <ul style="list-style-type: none"> <li>- the FHRI cannot do this, Unia can but never uses it in practice.</li> <li>- This is neither a European nor an international obligation</li> <li>- Moreover, the Council of State has ruled that this is not a violation of the standstill principle.</li> <li>- the FHRI is not unique among equality bodies in Europe in this respect, quite the contrary, as stated on page 8 of the Commission Staff Working document (19.02.2021) "Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies",</li> </ul> <p>Moreover, the FHRI has a quasi-jurisdictional component as an additional capstone in the form of the Disputes Chamber if mediation between parties does not lead to a solution. This component was created in response to academically based recommendations to address a lack of enforcement of antidiscrimination legislation in Belgium.</p>
<p>23</p>	<p>"penalty payments" should be "periodic penalty payments"</p>	<p>Translation of the word "dwangsom" (NL)/ "astreinte" (FR), that better captures the temporariness of the concept.</p>
<p>23</p>	<p>"Brussels Federal Court" should be "Brussels Labour Tribunal"</p>	<p>Translation. There is no such thing as the Brussels Federal Court. The judgments are pronounced by the "Brusselse Arbeidsrechtbank" (NL) / "Tribunal de Travail de Bruxelles"</p>
<p>24</p>	<p>While the Government is taking steps to address the reception situation <b>and follows up on the individual court cases with the aim of providing reception</b>, it does not comply with a large number of judgments and court orders imposing <b>periodic penalty payments</b>.</p>	<p>The Belgian government does respect the judgements with regard to their content by providing shelter to complainants.</p>
<p>24</p>	<p>This situation led the bar associations to set up a <del>'rule of law observatory</del> <b>is closely followed by the bar associations and civil society</b>.</p>	<p>The term "rule of law observatory" is not part of an official procedure, but merely indicates that the government action in this domain is closely followed by different actors in civil society including bar associations.</p>

<p>24, footnote 218</p>	<p><del>Les astreintes imposées à Fedasil grimpent à 278,5 millions d'euros, Le Soir, 2 March 2023</del> <b>At 7 June 2023, the total amount of periodic penalty payments was 50 million euro.</b></p>	<p>Factual correction of outdated information, the periodic penalty payments currently amount to 50 million euro.</p>
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