

ENHANCING INSTITUTIONAL CAPACITIES ON FREEDOM OF EXPRESSION AND INFORMATION IN BOSNIA AND HERZEGOVINA (EFEX)

COMPARATIVE STUDY

HUMAN RIGHTS MONITORING AND REPORTING ON FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION



The role and responsibility of the Council of Europe in protecting freedom of expression have been underlined in the Reykjavik Principles for Democracy, the [Reykjavik Declaration – United around our values](#).

Funded through the voluntary contribution of the Swedish International Development Cooperation Agency (Sida), the project [Enhancing Institutional Capacities on Freedom of Expression and Information in Bosnia and Herzegovina \(EFEx\)](#) seeks to advance the protection of FoE and FoI in BiH by making a contribution towards human rights-based legal framework and practices, through enhancing the capacities of key duty bearers (the Ministry of Human Rights and Refugees – MHRR – and other institutions with responsibilities in this area) and right-holders representatives (media actors and CSOs), to integrate a human rights-based approach in their work.

The action builds on the past and current Council of Europe (CoE) activities pertaining to Freedom of Access to Information/Media and Freedom of Expression in BiH, including a SIDA-funded pilot project implemented in 2019/2020.

The project's goal will be accomplished through three interrelated components that centre on:

- (1) Freedom of Expression;
- (2) Freedom of Access to Information, and
- (3) capacity building of Ministry of Human Rights and Refugees.

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1. Introduction

Henry Lovat

1.1 Background

This volume has been prepared under the auspices of the Council of Europe project Enhancing Institutional Capacities on Freedom of Expression and Information in Bosnia and Herzegovina (EEx) undertaken with financial support from the Swedish International Development Cooperation Agency (SIDA), and in partnership with the local authorities of Bosnia and Herzegovina (BiH), primarily the state Ministry for Human Rights and Refugees (MHRR).

Initiated in 2023 and with drafts finalised in June 2025, the primary aim of the study is to deliver a comprehensive analysis of state monitoring and reporting practices employed for international human rights oversight mechanisms in the surveyed countries, particularly focussing on identifying opportunities to improve these practices in Bosnia, in alignment with the EEx project's emphasis on BiH. The subsequent debates demonstrate that while experiences from other regions may provide valuable insights for Bosnia and Herzegovina, the country's own experiences could similarly offer significant guidance to practices elsewhere.

1.2 EEx: Human rights monitoring and reporting and rights protection and promotion

As its name suggests, the EEx project is intended to support the protection of freedom of expression (FoE) and freedom of access to information (FoI) in Bosnia and Herzegovina. While part of a broader and ongoing portfolio of capacity-building initiatives related to the Framework of Engagement in Bosnia and Herzegovina, some of which are executed by the Council of Europe and others by different bodies, EEx stands out in its particular focus on supporting “the development of [the] capacities of the Ministry of Human Rights and Refugees (MHRR) of BiH for an effective exercise of its specific mandate in coordinating human rights monitoring and reporting.” This reflects, in the words of the Project Summary, “a limited capacity at the national level to comprehensively monitor and assess the implementation of such rights [i.e. FoE and FoI], and report on it... [as] key impediments to progress toward the full realisation of those rights.” (Council of Europe 2022)

In other words, the goal of EEx is to improve the substantive protection of FoE and FoI, at least in part by strengthening the ability of BiH state institutions to monitor and report on human rights.

The objective of enhancing substantive rights protection through developing monitoring and reporting capacity may perhaps, at first glance, appear curious. The capacity of state institutions to gather information on and systematically monitor human rights observance within their areas of competence, however, is integral to governments' abilities to comply with their obligations to report to international human rights oversight bodies and, as

O’Flaherty and O’Brien observed several years ago in respect of UN treaty bodies, these “now contribute significantly to the promotion of States Parties’ compliance with treaty obligations” (O’Flaherty, O’Brien 2007: 141-142).

This is not, to be clear, to suggest that international oversight and reports to regional and UN bodies are necessarily the most effective or efficient means of enhancing substantive rights protection. Indeed, the effectiveness in this regard of UN treaty bodies, in particular, has long been debated. As put by O’Flaherty and O’Brien, “[t]he existence of a substantial gap between the Committees’ actual and potential performance in holding States accountable and in enhancing human rights implementation at the national level has been observed by numerous commentators” (2007: 142). While there may be room for further empirical research in this area, there is at least some literature showing how international oversight body outputs can act, at minimum, as “a valuable tool or focal point which supports domestic mobilisation” (Krommendijk 2015: 508; citing Simmons 2009: 135; Dai 2013: 96).

Indeed, notwithstanding the concerns evoked by O’Flaherty and O’Brien, amongst others, and associated empirical gaps, the practice of national human rights monitoring and reporting to international oversight bodies has long been considered an important means of promoting rights protection. As Philip Alston confidently asserted in 1997: “the principle of holding States accountable for non-compliance with their treaty obligations by means of an objective and constructive dialogue, on the basis of comprehensive information and inputs from all interested parties, has been vindicated in practice and has the potential to be an important and effective means by which to promote respect for human rights” (Alston 1997: 6).

Alston’s observation, in turn reflects what Chayes and Chayes, writing in 1993, termed “jawboning”: “an effort to persuade the miscreant to change its ways—that is the characteristic form of international enforcement activity... exploit[ing] the practical necessity for the putative offender to give reasons and justifications for suspect conduct... Enforcement through these interacting measures of assistance and persuasion is less costly and intrusive and is certainly less dramatic than coercive sanctions... ” (Chayes and Chayes 1993: 204–205). In other words, substantive rights protections may reasonably – all else, at least, being equal – be expected to be enhanced by the systematic monitoring and reporting – and review – characteristic of international human rights oversight carried out by the UN and regional bodies and mechanisms much like the Universal Periodic Review.

This then, is the fundamental rationale underlying the EFEx project’s focus on BiH’s monitoring and reporting capacity: that strengthening the ability of the country’s institutions to methodically and systematically conduct human rights monitoring and reporting should in turn have positive impacts on substantive rights protection.

Again, this is not to suggest that such impacts are likely to be direct or immediate, nor that this is likely to be the sole consequence of strengthening such capacity. Indeed, bolstering the effectiveness more broadly of BiH’s state institutions may legitimately be considered a

valuable end in itself. Nevertheless, for present purposes, it perhaps suffices to observe that EEx's objective of enhancing rights protection via strengthening domestic capacities to conduct and manage associated monitoring and reporting appears consistent with widely shared understandings of the ambitions of international human rights oversight mechanisms. To the extent that such ambitions may not always be realised, moreover, enhancing state monitoring and reporting capacity may perhaps go some way towards alleviating at least some of the challenges impeding the effectiveness of these mechanisms.

1.3 The methodology of the comparative study: rationale, approach, and structure

With the above overarching objectives in mind, the present volume is designed to contextualise human rights monitoring and reporting practices in Bosnia and Herzegovina, and identify potentially valuable insights from experience and practices of other European countries that could inform future improvements to the country's approaches to monitoring and reporting to UN and regional international oversight mechanisms.

Reflecting this regional focus, the body of the study is divided into five substantive chapters, each respectively providing an overview of human rights monitoring and reporting and of the principal substantive FoE and FoI-related issues encountered in Austria, Belgium, Bosnia and Herzegovina, Croatia, and Switzerland. This is followed by a further chapter, comparing these experiences and practices, and identifying potentially pertinent insights for Bosnia and Herzegovina.

The four countries surveyed beside Bosnia and Herzegovina each reflect varying contexts that may be set alongside the Bosnian experience. Belgium, and Switzerland, for example, are – alongside Bosnia and Herzegovina – perhaps the most decentralised of European federal states. Austria provides a further example of a federal state, albeit with a markedly different division of powers amongst central and regional governments, while Croatia is Bosnia and Herzegovina's closest neighbour within the European Union.

Each of the five “geographic” chapters is similarly structured, drawing on a common template developed for this purpose. The chapters accordingly first set out the broad contours of constitutional arrangements in each state, and in the next section consider allocations of responsibilities within and across government institutions for both substantive human rights protections, particularly related to FoE and FoI, as well as for human rights monitoring and reporting, along with associated practices – and challenges. The third section of each chapter then zooms in on the principal substantive FoE and FoI issues encountered in each of the states surveyed, including the implementation of relevant elements of the EU *acquis communautaire*.

The subsequent comparative chapter examines the key points of distinction and similarity across the various countries surveyed, setting these, among other, in the broader context of recent work in and around the United Nations on National Mechanisms for Implementation, Reporting and Follow-up (NMIRFs), with a particular view to identifying experiences

elsewhere that may be drawn on to inform monitoring and reporting practices in Bosnia and Herzegovina.

1.4 Key findings

To no surprise, the varying approaches in human rights monitoring and reporting across the countries surveyed each feature both strengths and weaknesses. In terms of insights that may be particularly valuable for Bosnia and Herzegovina, however, the concluding chapter recommends above all that consideration be given to the following:

- a. Establishing a standing cross-government forum – bringing together state government and Entity and District ministries – to share information and coordinate human rights monitoring and reporting
- b. Establishing a standing mechanism to facilitate government-NHRI and civil society engagement and information-sharing;
- c. Revising the current BiH Methodology (Council of Ministers of Bosnia and Herzegovina 2017) to more closely embed recommendation follow-up and tracking, possibly via appropriate IT/digital tools, and to reflect (should such initiatives be adopted) the development of the fora set out under a. and b. above.

It is, however, noteworthy that the above measures are unlikely to serve as silver bullets for human rights monitoring and reporting. Indeed, just as practices and arrangements in Bosnia and Herzegovina may benefit from experience elsewhere, experiences from Bosnia and Herzegovina may be instructive for other states. More generally, human rights monitoring and reporting in any state is inevitably likely to remain a work in progress, as practices evolve in light of experience and surrounding regulatory arrangements and policy (and political) contexts.

Nevertheless, if only as a snapshot of monitoring and reporting arrangements in a relatively small sample of states, and in respect of a relatively narrowly-conceived area of substantive focus in FoE and FoI, the present study hopefully contributes to an extent to further development of associated practices, both in Bosnia and Herzegovina and elsewhere.

2. Bosnia and Herzegovina

Henry Lovat

2.1 Governance: distribution of monitoring and reporting responsibilities

2.1.1 Overview of constitutional arrangements

Bosnia and Herzegovina (BiH) is a federal state comprising two principal Entities, the Federation of Bosnia and Herzegovina (the “Federation”, “Federation of BiH” or “FBiH”), and the Republika Srpska (“RS”). The latter is a unitary Entity with its capital in Banja Luka, whereas the former is itself a federal Entity with its capital in Sarajevo but comprising ten highly autonomous cantons. The state also includes a third territorial division, the Brčko District (“Brčko” or “BD”), based around the city of Brčko on the Croatian border, established as a self-governing condominium of the two entities. The current status of the Brčko District is a result of an arbitration process provided for in Annex 2 to the Dayton Agreement, and BiH’s (to date) sole constitutional amendment (*Amendment I to the Constitution of Bosnia and Herzegovina 2009, Official Gazette of Bosnia and Herzegovina No. 25/09*). Each of these levels of government also has its own executive, legislative, and judicial authorities.

BiH’s fundamental constitutional arrangements are set out in Annex 4 to the General Framework Agreement for Peace (the “GFAP” or “Dayton Agreement”), agreed in November 1995, ending the 1992-1995 war (*General Framework Agreement for Peace 1995*; including *Constitution of Bosnia and Herzegovina 1995*). Further amendments have also been proposed to bring the constitution into alignment with the European Court of Human Rights caselaw (see especially *Sejdić and Finci v. Bosnia and Herzegovina 2009*). To date, however, such initiatives have been largely unsuccessful.

The country’s governance arrangements are complex. The competences of its state institutions are set out in Article III (1) of the Constitution, and limited to foreign policy, foreign trade policy, customs policy, monetary policy, its own institutional finances and BiH’s international obligations, immigration, refugee, and asylum policy and regulation, international and inter-entity criminal law enforcement, common and international communications facilities, regulation of inter-entity transportation, and air traffic control. In contrast, the Entities’ competences are more extensive, Article III (3) (a) of the state Constitution simply states that “[a]ll governmental functions and powers not expressly assigned... to the institutions of Bosnia and Herzegovina shall be those of the Entities.”

Executive authority in BiH is held principally by the Council of Ministers, and its composition is likewise governed by state legislation (*Law on Council of Ministers of Bosnia and Herzegovina 2002, Official Gazette of Bosnia and Herzegovina No. 38/02* (as amended)). The chair of the Council of Ministers is designated by the members of the BiH Presidency, while other members (heads of state ministries) are elected by the state legislative body, the Parliamentary Assembly. The latter comprises two chambers: a 42-member House of

Representatives and a 15-member House of Peoples, both of which are drawn from Bosnia and Herzegovina's sub-national units. The principal state-level judicial institutions are the Constitutional Court of Bosnia and Herzegovina and the Court of BiH, the former instituted by Article VI of the state Constitution and the latter by a 2002 law enacted by the Parliamentary Assembly (see: *Law on the Court of Bosnia and Herzegovina (Consolidated Version) 2009*).

The FBiH and the RS in turn also have their own Constitutions, while the Brčko District is governed by a statute, last amended in 2009. The situation within the Federation of BiH is further complicated by the prerogatives of the various cantons, moreover, each of which also has its own constitution (see generally documents at: *Constitutions 2025*).

The division of powers under the FBiH Constitution provides that the Federation and cantonal authorities each have a range of exclusive and shared competences. In particular, the former has sole responsibility for citizenship, federal fiscal, finance and economic policy, combating inter-cantonal crime, and energy policy (*Constitution of the Federation of Bosnia and Herzegovina 2000*, sec. III, art. 1). The Federation and cantons have shared responsibility for human rights, health, environmental policy, communications and transport infrastructure, social welfare, tourism, and use of natural resources, and the latter have “all responsibility not expressly granted to the Federation Government”, including police, education policy, cultural policy, housing policy, public services, land use (including zoning), business regulation, local energy production, radio and television facilities and regulation, social welfare provision, local tourism policy, and local finance (see: *Constitution of the Federation of Bosnia and Herzegovina 2000*, sec. III, arts. 2 and 4). Defence was also formerly a responsibility with the Federation, though removed in 2003 (see: *Amendments LXXXIX–XCIV to the Constitution of the Federation of Bosnia and Herzegovina 2003*, LXXXIX; *Amendments CVI–CVIII to the Constitution of the Federation of Bosnia and Herzegovina 2005*, CVI). The RS, in contrast, is a unitary Entity, albeit with some responsibilities (as in the Federation) allocated to municipalities (see: *Constitution of Republika Srpska 2024*, art. 102).

In light of their constitutional responsibilities for the state’s international obligations as well as for foreign policy more generally, BiH’s state-level bodies, principally BiH ministries, are necessarily key actors in respect of international human rights obligations, including monitoring and reporting. At the same time, however, non-state, Entity ministries are also critical actors given their extensive substantive roles in key issue areas, as well as associated access to information required for monitoring and reporting processes.

2.1.2 Distribution of powers among governments for human rights issues, including FoE and FoI

Human rights are embedded across the country’s constitutional landscape, with the state, Entity, and cantonal constitutions, broadly interpreted, each responsible for different areas of human rights protection. More specifically, however, foreign policy and international

obligations are the responsibility of state institutions pursuant to Article III of the BiH constitution (see: *Constitution of Bosnia and Herzegovina* 1995, art. III(1)(a),(e)). Foremost amongst these are the state ministries, and in particular, for relevant purposes, the Ministry for Human Rights and Refugees (the “MHRR”), responsible (inter alia) for “implementation of international conventions and other documents on human rights and fundamental freedoms” as well as “promoting and protection of individual and collective human rights and freedoms... monitoring, drafting and disseminating information on standards, achievements and activities in the area of human rights” and “co-operation with non-governmental organisations on the issues from within the competence of the Ministry” (see *Law on Ministries and Other Bodies of Administration of Bosnia and Herzegovina* 2003, art. 12).

That said, to the extent that FoI is substantively a human rights issue, it is also important to highlight the role and responsibilities of the state Ministry of Justice (“MoJ”), that include “ensuring that legislation and implementation by BiH at all levels is in compliance with the obligations of BiH deriving from international treaties” (*Law on Ministries and Other Bodies of Administration of Bosnia and Herzegovina* 2003, art. 13). Accordingly, whereas the majority of human rights issues – including FoE – fall within the purview of the MHRR, FoI, including compliance with associated international obligations under e.g., the Tromsø Convention (*Council of Europe Convention on Access to Official Documents* 2009), falls principally within the substantive remit of the MoJ. (A notable exception to this general allocation is that overall responsibility for implementation of the Aarhus Convention (*UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* 1998), including FoI-related aspects, falls to the state Ministry of Foreign Trade and Economic Relations (“MOFTER”).

As noted, however, substantive human rights responsibilities are also shared across BiH’s various levels of governance. Within the RS and the Federation, for example, the Entity ministries of justice (“FBiH MoJ” and “RS MoJ” respectively) have substantive responsibilities for oversight of the respective Entity laws on FoI, as well as for enforcement of human rights standards in general through criminal codes and civil legislation (see *Law on Federation Ministries and Other Bodies of Federation Administration* 2002, art. 7; *Law on Ministries of the Republika Srpska* 2002, art. 7). The RS MoJ is also specifically responsible under Article 24 (2) of the entity FoI law (*Freedom of Access to Information Act* 2001) for ensuring “proper and effective implementation” of that legislation. The Brčko District and cantonal institutions also have a range of relevant responsibilities in the area of human rights understood broadly, including through oversight of local police forces.

2.1.3 Distribution of powers among governments for international and national human rights monitoring and reporting, including FoE and FoI

Reflecting on the above, the body principally responsible for human rights monitoring and reporting in BiH is the MHRR, tasked with “co-ordination and preparation of reporting to the

competent... international human rights treaty bodies” and “collecting, systematising, publicising and disseminating all data from within the competence of the Ministry.” (*Law on Ministries and Other Bodies of Administration of Bosnia and Herzegovina* 2003, art. 12) At the same time though, the MHRR is not the sole body with such a role; other state-level bodies have similar responsibilities in specific areas.

As noted, for example, similar responsibilities are held by the BiH MoJ and MOFTER for FoI-related obligations. There are also several other state-level bodies with distinct monitoring and reporting mandates. For example, the Directorate of European Integration, an independent agency reporting to the Council of Ministers, is responsible for overseeing BiH’s implementation of the European Union *acquis communautaire*, and as such has lead responsibility for monitoring and reporting on national implementation of EU legislation (see: *Law on Ministries and Other Bodies of Administration of Bosnia and Herzegovina* 2003, art. 18). The state Human Rights Ombudsman (see: *Law on the Human Rights Ombudsman of Bosnia and Herzegovina (as amended)* 2000), moreover, has what amounts in some respects to a parallel mandate to that of the MHRR, insofar as it produces regular reports on human rights issues, for both domestic and international audiences and stakeholders (see more general at: *Institucija ombudsmena/ombudsmana za ljudska prava Bosne i Hercegovine* 2025).

As with other areas of governance in Bosnia and Herzegovina, monitoring and reporting processes also require the involvement of sub-national institutions, primarily, though not exclusively, at Entity level.

This is attributable not only to the jurisdiction of various legal and policy instruments pertinent to the safeguarding and advancement of international standards across the Entities, the District, and cantons, but also to the fact that a significant amount of data necessary for state-level reporting is retained by local governance. This encompasses sub-national authorities, including law enforcement agencies, courts, and prosecutor’s offices. As a result, notwithstanding the legal supremacy of the MHRR and other state-level authorities in monitoring and reporting, collaboration across public administration within BiH’s multilevel governance framework is integral to these functions (for further detail, see Lovat 2023b: 13–15, 44–600).

2.2 Conduct of monitoring and reporting

2.2.1 Overview of human rights monitoring and reporting cycles, including FoE and FoI

Bosnia and Herzegovina has an extensive international human rights monitoring and reporting track record. Since acceding to the principal United Nations (“UN”) and Council of Europe (“CoE”) human rights regimes after obtaining independence, it has undergone multiple cycles of review across these mechanisms. Amongst UN regimes, and with a view to FoE and FoI, these include in particular the Universal Periodic Review (“UPR”, most recent state report 2025 (Human Rights Council 2025)), the International Covenant on Civil and

Political Rights (“ICCPR”, most recent state report 2016 (Human Rights Committee 2016)), the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”, most recent state report 2022 (Committee on the Elimination of Racial Discrimination 2022)), and the UN Convention on the Rights of Persons with Disabilities (“CRPD”, most recent state report (Committee on the Rights of Persons with Disabilities 2023)). Outside the system administered by the Office of the High Commissioner for Human Rights (“OHCHR”), but still within the UN’s institutional ambit, the Aarhus Convention (latest state report 2021 (Bosnia and Herzegovina 2021a) is also relevant to FoI.

Within the institutional setting of the Council of Europe, BiH has also been subject to monitoring and reporting exercises under the Framework Convention for the Protection of National Minorities (“FCPNM”, latest state report 2022; Advisory Committee on the Framework Convention for the Protection of National Minorities), the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention, latest state report 2020 (Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) 2020), the European Charter for Regional or Minority Languages (“ECRML”, latest state report 2021 (Bosnia and Herzegovina, 2021b)), and the Tromsø Convention (latest state report 2023; Council of Europe Access Info Group (AIG) 2023).

In addition to internationally-mandated monitoring and reporting, public sector institutions in BiH also conduct a range of domestically-focused monitoring and reporting activities. Foremost amongst these are the annual and special reports of the BiH Human Rights Ombudsman (“Ombudsman”). The latter is again originally a creation of the GFAP (*General Framework Agreement for Peace* 1995, Annex 6), though its institutional form has adapted and evolved into an A Status member of the Global Alliance of National Human Rights Institutions and of the European Network of Human Rights Institutions (see: European Network of National Human rights Institutions 2021). The Ombudsman is broadly responsible for looking into human rights abuses in the country, and developing associated findings, recommendations and judicial referrals (see *Law on the Human Rights Ombudsman of Bosnia and Herzegovina (as amended) 2000*, arts. 2–5).

Among other, the Ombudsman is also mandated to submit an annual report on its activities to the BiH legislature and the Presidency, and has discretion to submit special reports, “where the public prominence or urgency of the facts so require” (*Law on the Human Rights Ombudsman of Bosnia and Herzegovina (as amended) 2000*, arts. 34 and 35). The latter have included, in respect of FoE, reports on hate speech (*Special report on hate speech in Bosnia and Herzegovina* 2021), on the enforcement of the (former) BiH Law on Freedom of Access to Information (*Special report on experiences in the implementation of legislation governing freedom of access to information in Bosnia and Herzegovina* 2019), and on threats against journalists (*Special report on the status and cases of threats against journalists in Bosnia and Herzegovina* 2017). In addition, until the enactment of the 2023 Law on FoI, the

Ombudsman also provided a degree of oversight under the state Fol regime, including providing guidance to BiH ministries (see: *Freedom Of Access To Information Act For Bosnia and Herzegovina* 2000, arts. 9, 19, 21 and 22). Under the 2023 state Law on Fol, in contrast, the Ombudsman's role is far narrower, formally limited to preparing an "annual report on the situation in the field of freedom of access to information at the level of the institutions of Bosnia and Herzegovina" (see: *Law on Freedom of Access to Information at the level of institutions of Bosnia and Herzegovina* 2023, art. 48).

In addition to the regular and specialised reports of the Ombudsman, the Council of Ministers periodically commissions and endorses *ad hoc* reports from BiH institutions, including those prepared by external experts and organisations. These have included reports on hate speech (Kadribašić, Bakalis and Muftić 2022), and on freedom of speech and the media (see reference at Committee against Torture 2023: 30).

2.2.2 National legal/regulatory basis for monitoring and reporting arrangements

BiH reports to international human rights monitoring bodies and mechanisms are formally submitted by the Ministry of Foreign Affairs. In practice, however, in line with its mandate under the Law on Ministries, the MHRR formally holds the pen on BiH national human rights reports. The state-level MoJ is ultimately responsible for preparing relevant reports in respect of Fol.

That said though, and as noted above, in carrying out these functions the state ministries are necessarily reliant on the Entity and other public authorities to provide them with the required information and data to be compiled into state reports. Formally speaking, the obligation on such public sector bodies derives ultimately from the state Constitution, with the sub-national Entities bound to cooperate with the state ministries in the performance of their mandated responsibilities (*Constitution of Bosnia and Herzegovina* 1995, art. III(3)(b)). This obligation in turn is reflected in the Entity arrangements, including (for example), the RS Ministry for European Integration and International Cooperation's standing arrangements for data collection and cooperation with domestic institutions (see: Ministry for European Integration and International Cooperation: Sector for International Cooperation 2025).

While the state constitution may provide a notionally sufficient legal basis, to provide day-to-day guidance, in December 2017 the Council of Ministers adopted a human rights reporting methodology (*Decision on Human Rights Reporting Methodology* 2017: the "BiH Methodology" or simply the "Methodology") as a "planning and instructional document intended for institutions and their representatives participating in the process of preparation of human rights reports" (*Decision on Human Rights Reporting Methodology* 2017, art. 2). This document essentially provides a set of standard operating procedures to guide the MHRR and other institutions in the "effective and efficient organisation of reporting activities and an improved use-value of reports", reflecting both strategic and planning considerations as well as month-to-month (and sometimes notional day-to-day) operational aspects of monitoring and reporting. The BiH Methodology also refers to the

*Rulebook on Methods of Gathering, Using and Exchanging Human Rights Data in Bosnia and Herzegovina within the Competence of the BiH Ministry of Human Rights and Refugees (Decision on Human Rights Reporting Methodology 2017: 2).*¹

2.2.3 Inclusion of international standards for monitoring/reporting in national processes

The BiH Methodology draws on guidance from the UN Office of the High Commissioner for Human Rights (“OHCHR”) regarding both human rights monitoring and broader state engagement with international human rights oversight and monitoring mechanisms. The key reference documents in this context are the 2011 OHCHR Manual on Human Rights Reporting (the “Manual”), and the 2016 OHCHR Practical Guide to Effective State Engagement with International Human Rights Mechanisms (the OHCHR “Guide”) (Office of the High Commissioner for Human Rights 2011; 2016). In addition, OHCHR has also produced a further guidance note on data collection and disaggregation (the OHCHR “Data Guidance”) (Office of the High Commissioner for Human Rights 2018)).

Elements of each of these are reflected in the BiH Methodology. Perhaps most significantly, the overarching approach to “principles of human rights reporting” in the Methodology is adapted from the OHCHR Manual, the former observing in line with the latter that “[r]eporting on human rights involves a process of reviewing raw information gathered on a human rights problem, refining and processing it in an organised and logical manner, and subsequently analysing and assessing it to draw conclusions and recommendations for action” (*Decision on Human Rights Reporting Methodology* 2017: 3). Although certain elements of the Methodology may generally align with the principles outlined in the OHCHR Manual, there are limitations regarding the latter’s ability to inform the former. These reflect the different target audiences of the two document and whereas the Methodology is aimed at domestic BiH institutions, and is particularly designed to support the work of the MHRR, the OHCHR Manual is, rather, aimed at supporting the work of human rights elements of UN field presences, specifically “The Manual is primarily addressed to human rights officers with monitoring responsibilities in OHCHR field presences ...” (Office of the High Commissioner for Human Rights 2011). As such, the contexts of the two documents are rather different.

Nevertheless, it is reasonable to expect key aspects of the Manual to be reflected in national as well as international reporting, in particular concerns for accuracy, thoroughness, and quality control (see generally Chapter 13 of the Manual), as well as (for example) ensuring meaningful rights-holder participation, integrating a gender perspective (including in gathering, disaggregating, and analysing data) (Chapter 15), and more generally ensuring transparency (Chapter 2: 15). The Manual also recognises, inter alia, the value of engagement with civil society (Office of the High Commissioner for Human Rights 2011: 15–22), recognising in particular the ability of civil society organisations (“CSOs”) to provide

¹ A copy of the Rulebook could not be obtained for the purposes of this analysis.

tailored, contextually-sensitive information (*ibid.*: 19). While the Manual is not explicitly mapped onto the Methodology, many of its key considerations are evident in the latter. These include concern for quality of data-gathering, (“using human rights indicators improves the very quality and quantity of the general social human rights debate”, *ibid.*: 19), civil society, public, and media participation (“Civil society is the principal alternative source of credible information on human rights violations and breaches... The media, both print and electronic, are also stakeholders with a significant impact on the process of systematic use of indicators for monitoring and assessing the human rights situation.” *ibid.*: 21), and gender sensitivity (*ibid.*: 3).

Further international guidance is provided by the OHCHR Guide. This document underlines the engagement capacity (national and international), coordination capacity (including across government and other public sector actors), consultation capacity (including the ability to “foster and lead consultations” with domestic CSOs and relevant national human rights institutions, *ibid.*: 19), and information management (i.e. management of monitoring, reporting, and follow-up programmes) as “key conditions” for effective national human rights reporting and follow-up mechanisms (see generally *ibid.*: 14-29). The Guide also recommends (*ibid.*: 14) that reporting and follow-up be conducted by standing government mechanisms with formal mandates and appropriate staff capacity.

All of these elements are represented in the BiH Methodology (see *ibid.*: 3-4). The latter, however, concentrates more meticulously on the comprehensive planning and administration of monitoring and reporting at both the strategic (overall framework program) and tactical (individual regime/report) levels, encompassing the delineation of various components/stages and anticipated timelines for monitoring and reporting, and, to a lesser extent, implementation and follow-up (*ibid.*: 4-16, 23-43). It also outlines the spectrum of governmental, public, and civil society/private sector bodies that may potentially participate in these activities (*ibid.*: 20-21).

Last, the BiH Methodology also reflects – albeit substantively rather than explicitly – key aspects of the OHCHR Data Guidance. The latter emphasises participation (“free, active and meaningful participation of relevant stakeholders” (Office of the High Commissioner for Human Rights 2018: 3), disaggregation, self-identification (that “populations of interest should be self-defining” (*ibid.*: 11)), transparency of data sources, privacy of data subjects, and accountability (“Data collectors are also accountable for the impact of their data collection activities and the publication of data.” (*ibid.*: 19) as key aspects of a human rights-based approach to data (see generally and especially *ibid.*: 2).

Albeit to varying degrees, these are again broadly reflected in the BiH Methodology, with extensive discussion of human rights indicators for BiH – “specific information on the state or condition of an object, event, activity or outcome that can be related to human rights norms and standards; that addresses and reflects human rights principles and concerns; and that can be used to assess and monitor the promotion and implementation of human

rights” (*Decision on Human Rights Reporting Methodology* 2017: 16) – along with concomitant data sources (see e.g., discussion at *ibid.*: 17-21). As noted above, participation and consultation also feature prominently in the BiH Methodology (see esp. *ibid.*: 36-38), with data disaggregation (*ibid.*: 3, 18, 20), transparency (*ibid.*: 36-37), and accountability (*ibid.*: 37) also recognised. In summary, while explicit referencing between the BiH Methodology and international guidance on the conduct of human rights monitoring and reporting is relatively limited, substantively the former appears to be at least closely informed by the latter.

2.2.4 Identification of and basis for mandates of key government bodies, public agencies, and non-government (including international/national civil society) stakeholders in human rights monitoring and reporting, including FoE and FoI

The prior discussion clearly indicates that the monitoring and reporting of human rights in BiH concerning FoE and FoI, as well as in a broader context, inherently requires the involvement of several state and non-state government and broader public sector bodies, each with distinct mandates and responsibilities. Moreover, the country features a vibrant civil society, with numerous non-governmental groups that engage in FoE and FoI-related human rights monitoring and reporting, although not necessarily in close collaboration with state authorities.

Initially addressing state-level institutions, the essential elements of the mandates of the MHRR and MoJ are delineated above. The duties of the former primarily involve the coordination and compilation of reports for the relevant international human rights treaty organisations, whilst the latter's responsibilities encompass a broader mandate of ensuring compliance with Bosnia and Herzegovina's international legal obligations. Other state ministries also bear responsibilities pertaining to the safeguarding and/or advancement of Freedom of Expression (FoE) and Freedom of Information (FoI), along with associated international obligations. The Ministry of Foreign Trade and Economic Relations is primarily accountable for Bosnia and Herzegovina's adherence to and reporting under the Aarhus Convention. The Ministry of Communications and Transport is tasked with managing laws, including legislative draughting, pertaining to the regulation of broadcast and electronic media. The Ministry of Civil Affairs holds comprehensive responsibility for personal data protection, where adherence to pertinent international standards – especially the EU's General Data Protection Regulation (European Union, 2016) – is intricately linked to the effective execution of FoI-related rights (see: Lovat 2023b: 11, 30, 37–39).

These government ministries are complemented by a further set of state-level public sector agencies. The BiH Human Rights Ombudsman has been considered above. Beyond this, though, other state-level bodies are also active in areas related to the substantive protection and promotion of FoE and FoI-related aspects of human rights, as well as associated monitoring and reporting. The Communications Regulatory Agency of BiH (“CRA”), for example, is established and has responsibility under the 2002 BiH Law on Communications

for the licencing and regulation of broadcast media (*High Representative Decision Enacting the Law on Communications of Bosnia and Herzegovina 2002*, arts. 36–37). Similarly, the BiH Personal Data Protection Agency has overall responsibility for ensuring effective promotion of data protection rights in BiH, including “tak[ing] care of fulfilment of the criteria relevant to data protection originating from international treaties” (*Law on Protection of Personal Data 2006*, art. 40).

The Council of Ministers’ independent Directorate for European Integration has similar responsibilities in respect of overseeing BiH’s legislative and regulatory alignment with the European Union *acquis communautaire*, an exercise underpinning much reform activity (and associated EU oversight) in light of BiH’s aspirations for EU membership (*Law on Ministries and Other Bodies of Administration of Bosnia and Herzegovina 2003, Official Gazette of Bosnia and Herzegovina No. 5/03*, art. 18). In respect of national data collection (and aggregation and disaggregation), the BiH Agency for Statistics is mandated to “[c]ollect, process and disseminate Statistics of Bosnia and Herzegovina in accordance with internationally accepted standards” (*Law on Statistics of Bosnia and Herzegovina 2004*, art. 8), while – reflecting the centrality of elections to democratic standards across BiH’s various governance regimes, as well as associated international oversight, principally via the Office of the High Representative – the BiH Central Election Commission is responsible for overseeing the conduct of elections across BiH, including for media (and political) conduct during election campaigns (*Election Law of Bosnia and Herzegovina 2001*).

In addition to the above, however, and again reflecting the panoply of institutions across BiH’s governance landscape, government institutions at the District and Entity level are also implicated in human rights – including FoE and Fol-related monitoring and reporting. The FBiH and RS Ministries of Justice, for example, have broadly-drawn mandates relating to the “administration of justice” (*Law on Ministries of the Republika Srpska 2002*, art. 7; *Law on Federation Ministries and other Bodies of Federation Administration 2002*, art. 7), as well as specific responsibilities for overseeing implementation of the Entity Fol laws (see: *Freedom of Access to Information Act 2001*, art. 24(2); *Law on Freedom of Access to Information in the Federation of Bosnia and Herzegovina 2001*). The FBiH Ministry of Environment and Tourism and the RS Ministry of Spatial Planning, Construction and Ecology also have mandates encompassing environmental issues related to the Aarhus Convention (*Law on Environmental Protection of the Federation of Bosnia and Herzegovina 2003*, art. 22; *Law on Environmental Protection of Republika Srpska 2012*, art. 12), while virtually all Entity functions are replicated again within the governance institutions of the Brčko District (see: *Government of the Brčko District of BiH 2025*)

Given BiH’s continuing international supervision as well as its EU membership aspirations (and government objectives), it is important to note that in addition to the UN and CoE human rights oversight mechanisms, the country’s track record in human rights, including its FoE and Fol, is also under scrutiny from a range of international stakeholders. These

include the Office of the High Representative (reporting to the UN Secretary General), the European Commission, and the US Department of State.

Last, to paint the full picture of human rights monitoring and reporting in BiH, the activities of key civil society actors should also be recognised. While BiH's civil society landscape is incredibly rich, several bodies stand out in particular when it comes to FoE and FoI related interests.

Foremost amongst these are the Press and Online Media Council of BiH (the "Press Council"), and the BiH Journalists' Association ("BH Novinari"). The former is the national self-regulatory body for press and online media in BiH, while the latter is a membership association for journalists around BiH. Both of these organisations collect data within their respective ambits, including on attacks on and complaints against journalists, and have also developed extensive expertise on the protection of FoE in BiH (see: BiH Press and Online Council 2025; *Linija za pomoć* 2025). Further, the Election Law also allocates a statutory function to the Press Council (*Election Law of Bosnia and Herzegovina 2001*, art. 16 and 17).

These organisations, moreover, form part of a larger civil society ecosphere. This includes, for example, four OSCE-supported Aarhus Centres supporting transparency and access to environmental information nationally (*Aarhus Centres in Bosnia and Herzegovina* 2020), as well as Vaša Prava (*Your Rights* 2025), with experience in representing FoE-related cases in BiH's courts. More narrowly focused on issues related to FoE and media, moreover, Media Centar Sarajevo works on "improving the working environment of journalists, and protecting and promoting media freedom in BiH" (*O Mediacentru* 2025), while valuable (in particular investigatory) work is conducted by the Balkan Research Network of BiH (see: *BIRN Bosnia and Herzegovina* 2025) and the Centre for Investigative Reporting (*Center for Investigative Reporting* 2025). The Bosnian branch of Transparency International is also long-established (see: Transparency International 2025).

2.2.5 Cross-government management and coordination of monitoring and reporting practices

In principle, cross-government management and coordination of human rights monitoring and reporting in BiH should take place in line with the BiH Methodology. This would imply that relevant institutions across BiH levels of governance would work with the MHRR to establish and maintain a rolling, strategic five-year monitoring and reporting plan as well as tactical, regime-specific monitoring and reporting plans, with work at each of these levels anchored in a central database – compiling information on "Treaties; Reports; Recommendations; Laws; Indicators; and Institutions" (see: *Decision on Human Rights Reporting Methodology* 2017: 7). Within the Methodology's framework, moreover, at tactical and operational level, monitoring and reporting processes are predicated on the cooperation of non-MHRR "reporting units or administrative sources", including via regime-

specific cross-government “working groups” (*Decision on Human Rights Reporting Methodology* 2017: 10).

The latter are central to the successful completion of individual oversight reports as envisioned in the Methodology, as the bodies – at least nominally – responsible for “preparation of draft and proposal reports.” (*ibid.*: 10) According to the Methodology, the “Tactical framework” – individual reporting plans for different regimes - should involve throughout the “member institutions of [the] Working Group for report preparation”, (*ibid.*: 24) including through report planning, drafting, and communication and presentation to the oversight mechanism in question, as well as in recording resultant recommendations (see: *ibid.*: 24 et seq.).

Working group members themselves are to be appointed for each reporting exercise by the Minister for Human rights and Refugees (*Decision on Human Rights Reporting Methodology*, 2017: 34). Even then though, “Working Group membership is not the sole method of participation for competent institutions... participation is also achieved through regular supply of information in the database, furnishing information... for reporting units on the provision of information for individual report preparation and through provision of opinions about draft reports.” (*ibid.*: 34) Put simply, monitoring and reporting – certainly nominally – should involve both a broader group of actors and institutions, as well as narrower report-specific working groups.

The Methodology assigns extensive activities to these working groups. It is, however, almost entirely silent on how these should be composed for different areas, referring rather in generic fashion to “recording units”, albeit recognising that relevant data may be obtained from a range of institutional sources. In the complex governance context of the country, however, this approach risks overlooking a key operational challenge. Simply put, while the various governance institutions at state, Entity, District and sub-entity level may formally be required to cooperate with the MHRR (and likewise the state MoJ and MOFTER in respect of FoI issues and the Aarhus Convention), neither the MHRR nor the BiH Council of Ministers has the substantive ability to ensure that such cooperation takes place.

The associated risk arising from this is that even where a given Entity or other institution may be integral to reporting on a given subject, there is no automatic assurance that it or its representatives will participate in a MHRR-convened treaty/mechanism-specific working group, nor that such institutions will readily (or to the extent considered optimal by the MHRR) assist in the gathering and/or provision of data to enable reports to be compiled. Even where such working groups are convened broadly in line with the Methodology, moreover, the substantive burden of preparing reports may fall mainly on the MHRR, even though the staff of the latter may be less well-versed in the nuances and details of relevant issue areas than representatives of other state or Entity, District, or cantonal agencies.

It is difficult to ascertain the extent to which the processes set out in the BiH Methodology are observed more or less rigorously. Anecdotally and on the basis of informal observation,

however, the practical challenges encountered by the MHRR in ensuring adequate cooperation from other state and non-state agencies bodies in working groups and in contributing data and analysis to reports should not be underestimated.

In the absence of more thorough empirical analysis (with concomitant practical challenges), these observations are fundamentally suggestive rather than conclusive. At minimum, however, the issues apparently encountered by state institutions in reporting to even a selected set of international oversight mechanisms suggest that despite its formal adoption, implementation of the BiH Methodology – especially as regards participation of and contributions from non-state public sector institutions – continues to prove challenging in practice (see in similar vein observation at Lovat 2023a: 17, para. 56 that: ‘Reporting methodology is more generally identified as an issue in respect of BiH across a number of regimes’).

2.2.6 Standing/*ad hoc* arrangements for government/public sector-civil society cooperation in human rights monitoring and reporting

BiH has a well-developed civil society, with a range of civil society organisations active across human rights-related fields, albeit reportedly heavily dependent on external financial and institutional support (for overview see: Sejfića 2006 inc. discussion of ‘projectomania’). Strengthening these bodies – as well as the ability and capacity of BiH government institutions to cooperate with civil society – is also a longstanding objective of international actors seeking to support governance in BiH, including the EU, the US and the Council of Europe (see e.g., European Commission 2018 (‘Governments should ensure stakeholders can actively participate in the reform and policy making process, for example by establishing inclusive structured dialogues on reform priorities with the involvement of an empowered civil society. An enabling environment for civil society organisations is therefore crucial.’)). There is also precedent in the area of FoE for integration of key CSOs in domestic legislative frameworks, with the Press and Online Media Council in particular tasked with specified functions under the BiH Election Law (see: *Election Law of Bosnia and Herzegovina 2001*, art. 16.17).

CSOs as well as the Human Rights Ombudsman, moreover, have long participated in the UN and other international oversight mechanisms, including via submission of shadow reports. The OSCE’s Office for Democratic Institutions and Human Rights has also incorporated information obtained from civil society in its annual “Hate Crime Reports” (see e.g., Office for Democratic Institutions and Human Rights, 2024). The BiH Methodology – as noted above - also recognises the scope for CSOs to support and participate in state monitoring and reporting activities.

Despite this recognition, however, formal cooperation between state and civil society sectors in monitoring and reporting, including in the fields of FoI and FoE, appears to remain exceptional. In particular, civil society and state reporting data seem to rarely align in

respect of related issue areas, such as reported attacks on or threats to journalists (see e.g., data in Office for Democratic Institutions and Human Rights 2024).

This is not to suggest that CSOs do not comment on draft state outputs, including via public consultation exercises. At the same time, however, the reported history of state-CSO engagement suggests that there are limits to the extent to which the former institutions necessarily reflect inputs from the latter in monitoring and reporting, as well as other outputs, such as legislative. For example, the experience of the Human Rights Ombudsman in respect of the European Union/TAIEX-supported reform of BiH's Freedom of Access to Information Law is instructive in this regard, including the diminished role of the Ombudsman under the 2023-adopted law in comparison to its predecessor (see: Council of Europe Access Info Group (AIG) 2022: 3 ("The Ombudsman for Human Rights of Bosnia and Herzegovina also submitted comments to the mentioned Draft. Discussion about the comments never took place...".))

That said, recent experience suggests that this may not necessarily be the case in all instances. In particular, developments within the scope of the SIDA-supported Council of Europe EFEx project have included the establishment of an MHRR-led "Cross-Sector Coordinating Working Group" on FoE and Fol (the EFEx "Working Group"), bringing together key CSOs – including the BiH Journalists Association, the Press and Online Media Council, CIN and others – and the Human Rights Ombudsman, with relevant state, Entity and District ministries and agencies, including the MHRR and state and Entity Ministries of Justice, as well as the state Communications Regulatory Agency.

At the time of writing, it remains too early to tell if the Working Group will be able to sustain itself in the medium-to-longer term (with or without international financial support). To date, however, its members, with international support, have effectively cooperated in generating a report on FoE and Fol for domestic purposes, [in developing and implementing a professional training curriculum on FoE and Fol issues] and in forging effective working relationships across the participating organisations. The group is also actively engaged in supporting BiH's participation in the ongoing Council of Europe Campaign for the Safety of Journalists (see: Council of Europe, 2025), and there are a range of further potential activities under consideration.

By design and necessity, the EFEx Working Group operates within a relatively constrained scope and mandate. These limitations reflect the political and practical challenges of engaging both civil society and government sectors in BiH – particularly in the areas of FoE and Fol - as well as the complexities of BiH's highly devolved, multilevel governance framework. Nevertheless, the success and productivity of the Working Group to date suggests that it may potentially serve as a model for similarly structured civil society-government engagement and collaboration in other human rights-related fields.

2.2.7 Arrangements for international/national FoE/FoI report follow-up/implementation

Though there is nominally an established system in place to track international oversight recommendations as part of the BiH Methodology, there appear to be minimal standing arrangements in place to enable structured follow-up. Indeed, while the Methodology envisions a thoroughgoing programme for monitoring and reporting, including a five-year calendar, it is relatively silent on directed follow-up on implementation of specific recommendations.

This is not necessarily surprising: the Methodology is concerned principally with how information and data are to be gathered in from BiH's various "reporting units and administrative sources" to the MHRR. In turn, the MHRR – and where relevant the state MoJ – may be well-placed to record international recommendations, and at least periodically to monitor and report on their implementation, seeking data from relevant domestic bodies as needed. Ongoing, systematic follow-up monitoring of the suggestions, coupled with assistance for the relevant governance units to properly execute the accompanying recommendations, is expected to impose varying demands on both central and other institutions. Considering BiH's intricate governing structures, this is likely to present logistical, practical, and potentially political challenges.

This is not to say that there is no scope for more structured, interim monitoring of and support for recommendation implementation in BiH. In particular, with the Methodology already envisioning a continuous cycle of monitoring and reporting, planning cycles may be relatively readily adaptable to encompass more structured cooperation across BiH public sector institutions to track, support, and monitor recommendation implementation on an ongoing basis. Again, in respect of FoE and FoI, at least, the EEx Working Group may provide a valuable template for closer, standing cooperation across BiH governance institutions in this regard.

Similarly, as noted earlier, BiH institutions have also on occasion carried out interim – domestically-focused – human rights monitoring and reporting exercises (see e.g., Report of the Ministry for Human Rights and Refugees on Freedom of Expression and the State of Media Freedoms in Bosnia and Herzegovina 2017). Indeed, a similar exercise is underway as part of the EEx project. These exercises suggest that, depending on the extent to which these are aligned with and guided by relevant international recommendations, there may be scope to strengthen and routinise monitoring of the extent to which such recommendations are implemented - or if not, to track obstacles and issues encountered.

In this regard, it may be worth noting also that efforts continue – under EU oversight – to reform BiH public administration, with an associated action plan envisioned for 2022-2027 (see reference at: European Commission 2024a: 5). Since at least some – if not all – of the challenges in tracking and supporting the implementation of international recommendations reflect broader governance issues in BiH, efforts to enhance human rights monitoring and reporting should be complemented by broader capacity-building

reforms. Recognising these systemic challenges could also help identify opportunities to strengthen both monitoring mechanisms and overall governance, including in respect of data collection, by way of illustration for present purposes, for example, as noted by the European Commission against Racism and Intolerance (ECRI) in 2024: “There is no official data on the number of hate speech incidents. No public body is tasked to monitor it on a permanent basis and civil society organisations involved in preventing and combating hate speech do not have the capacity to ensure a complete and comprehensive monitoring.” (European Commission against Racism and Intolerance 2024: 13).

2.3 Substantive FoE and Fol issues

2.3.1 Thematic issues identified in international oversight

BiH is affected by a range of substantive FoE and Fol related challenges. Unsurprisingly, moreover, similar issues tend to be identified across the various reporting regimes. Reflecting this, rather than set out the various specific issues highlighted in different reports, and consistent with recent approaches to analysing FoE and Fol in BiH (see e.g., Lovat 2024; Škrbić 2024),² the present discussion focuses thematically on four sets of such issues, reflecting arguably the principal international concerns noted in respect of FoE and Fol in BiH.

i. Media Regulation and Freedom

Concern for media independence is a running theme across international oversight of human rights in BiH, highlighted in both the 2019 and 2025 Universal Periodic Review rounds and in the most recent Human Rights Committee examination under the ICCPR, as well as by the European Commission in its periodic reporting. Generic concerns aside, three distinct sets of concern may be identified under this broad heading.

The first of these relates to public broadcasting in BiH, with the Human Rights Committee (2017, para. 37) and the European Commission (see variously: European Commission, 2023, 2024a, 2024b) evincing continued concern over both the governance and financial sustainability of BiH’s state-level public broadcaster, Radiotelevizija Bosne i Hercegovine (“BHRT”). The associated issues reflect a continuing failure to implement – or to reform - key elements of the 2005 state Law governing the public broadcasting system, including in respect of BHRT funding (*Law on the Public Broadcasting System of Bosnia and Herzegovina* 2005) but also more broadly tensions amongst the three BiH public broadcasters – BHRT and its RS and FBiH counterparts – and associated susceptibility of these broadcasters to political influence. These tensions have manifested, for example, in funding challenges between BHRT and the FBiH public broadcaster, as well as in RT and Sputnik TV channels continuing to be available in the RS, notwithstanding BiH’s alignment with EU sanctions on Russia (European Commission, 2023: 41, 2024b: 39). Concerns have also been raised in respect of broadcasting around the provision of broadcasting for minority populations and

² Gap analyses conducted by the author and Dr. Ajla Škrbić for the purposes of the EEx project. On file with author.

in minority languages (see: ‘UPR of Bosnia and Herzegovina (3rd Cycle): Thematic list of recommendations’, 2019, loc. 120.46 (Cyprus), 120.51 (Malta), 120.90 (Croatia); Committee of Experts of the European Charter for Regional or Minority Languages, 2022, paras 43–44; Advisory Committee on the Framework Convention for the Protection of National Minorities, 2024, paras 112–113, 115–117, 119).

Non-transparency of media ownership forms a second focus of international concern, in this case highlighted particularly in European Commission oversight (see: European Commission, 2023: 41, 2024b: 7 and 40). This concern is also echoed by domestic civil society (see: Horić, 2024), in turn reflecting broader concern from international bodies inc. the Council of Europe (see e.g., Committee of Ministers, Council of Europe 2018). In this instance, the concern is not only the (perhaps more apparent) risk of economic market concentration, but also an associated absence of criteria for the allocation of publicly-funded advertising across BiH. In this case, the state Ministry of Communications and Transport has convened a cross-ministerial working group to consider draft legislation (see accounts in: Zablocki 2018; Gadže 2022; BIRN Bosnia and Herzegovina 2023; Horić 2024): at the time of writing, however, little progress appears to have been made on this front.

A third focus of external oversight is the financial and management independence of the state Communications Regulatory Agency, responsible for broadcast licencing across BiH. Highlighted particularly by the European Commission (2024b: 39), the Committee on the Elimination of Racial Discrimination (“CERD”) (2018, para. 20(d)), and the Group of Experts on Action against Violence against Women and Domestic Violence (“GREVIO”), (2022: 40 para. 115) specific concerns raised in this instance have related to politicisation of the CRA’s governing board and inadequate use of the CRA’s sanctioning powers to address hate speech and discrimination. To some degree these have been addressed relatively recently: in particular the CRA has a newly-appointed council. The CRA’s financial dependence on political circumstances, however, as well as its use of its sanctioning powers, appear likely to remain issues of international concern, especially from the European Commission as EU accession talks continue.

ii. Protection of Journalists

A second set of FoE-related issues raised in international oversight focuses on the safety of journalists. Such concerns have been raised in particular in respect of ensuring effective investigation and judicial follow-up of alleged criminal acts against journalists, and in addressing Strategic Lawsuits Against Public Participations (“SLAPPs”).

The former, for example, was raised extensively in BiH’s 2019 UPR round (‘UPR of Bosnia and Herzegovina (3rd Cycle): Thematic list of recommendations’, 2019: 14), as well as by the Human Rights Committee (2017: 6 paras. 37–38) and over several years by the European Commission, with widespread concern in evidence as to the apparently limited extent to and manner in which BiH public authorities appeared to investigate and prosecute threats against journalists (see e.g., 2024b: 21). Indeed, one of the European Commission’s

priorities for BiH is “[g]uarantee[ing] freedom of expression and of the media and the protection of journalists, notably by (a) ensuring the appropriate judicial follow-up to cases of threats and violence against journalists and media workers.” (European Commission 2018: 15 and 16). The broader salience of this issue across Europe has, moreover, been underlined by the Committee of Ministers of the Council of Europe (2016).

Reflecting the extent of international concern over these issues in BiH, training and capacity building has recently stepped up in this field, including the designation of specified individuals as contact points for journalists in law enforcement and prosecutors’ offices (see: Council of Europe 2024). Despite this, though, there remain difficulties in obtaining authoritative data on harassment and threats against journalists, reflecting similar challenges in respect of hate speech more generally (see e.g., Human Rights Council 2024: 2, para. 16).

As to the second issue, though it is again challenging to obtain accurate data on the prevalence of this tendency in BiH, SLAPPs are an increasing area of concern in respect of FoE in BiH as elsewhere (see: Committee of Ministers 2024). This issue has been highlighted over several rounds of reporting by the European Commission in particular (see e.g., European Commission 2022: 32, 2023: 36, 2024b: 37), with concern recently underlined by the 2023 recriminalisation of defamation in the Republika Srpska and associated Constitutional Court cases (European Commission 2024a: 6, 2024b: 37), together highlighting continuing stresses in the broader BiH constitutional order.

iii. Hate Speech

Hate speech forms a third thematic focus of FoE-related international oversight in BiH, again reflecting broader international concern around this field (see e.g., Committee of Ministers 2022). This heading also encompasses a range of more specific issues, moreover, including the use of hate speech by public figures, hate speech online, and more broadly, the challenges encountered in effective investigation, prevention, and prosecution of hate speech generally – a phenomenon that has recently been described as “normalised” in BiH (Gačanica, 2024: 4; see also: Kadribašić, Bakalis and Muftić 2022).

As to the first of these, hate speech by public figures in BiH is a subject of widespread international concern, highlighted by the CERD (2018, paras 19, 20(a), (b)) (Committee on the Elimination of Racial Discrimination 2018, para. 20(a), (b)) and the Advisory Committee for the Council of Europe Framework Convention for the Protection of National Minorities (2017: 40, 21 (para. 68), 24 (para. 79)), and recognised in BiH’s 2025 UPR report (see: Human Rights Council 2025: 4). By way of illustration, for example, the CERD notes *inter alia* concern about the use by politicians of “hate speech and ethno-nationalistic narratives”. (2024: 4, para. 15) This remains the case, moreover, notwithstanding that some forms of hate speech are criminalised in BiH, albeit inconsistently across jurisdictions. The 2024 European Commission report on BiH observes, for example, that: “Entity level legislation criminalises hate speech only when causing national, racial and religious hatred and it still

needs to be aligned with the EU *acquis*.” ((2024b: 39; see also generally: Lovat, 2024, sec. V(i)(a))).

There is unsurprisingly also a degree of overlap between the use of hate speech by politicians and public figures, and its apparent prevalence online. This again, is an area of specific concern highlighted in international oversight, including by the CERD (2018, para. 19, 2024, para. 15), Human Rights Committee (2017, para. 21), and on various occasions by the European Commission (European Commission 2023: 41, 2024b: 37). One of the key challenges in respect of hate speech online is a concomitant difficulty in assessing its prevalence: though Press and Online Media Council data have been cited as suggesting that there is some decline in this respect (European Commission 2023: 41). Again though, a key, persistent challenge in this respect is that of inconsistencies in legislative, regulatory, and policy frameworks across BiH (see e.g., discussions in: Kevin and Rokša-Zubčević 2022: 28; Lovat 2024, sec. V(ii)(b)).

Last, and perhaps unsurprisingly in light of the foregoing, legal fragmentation is also accompanied by apparent institutional challenges in investigating, preventing, and prosecuting hate speech generally in BiH. Again, this challenge in BiH has been highlighted in various international oversight contexts, including in the 2019 UPR (‘UPR of Bosnia and Herzegovina (3rd Cycle): Thematic list of recommendations’, 2019: 25), by the CERD (2024: 4 and 5 paras. 15, 16 (b)), and by the European Commission (2023: 41, 43, 2024b: 39–40). This last issue is perhaps illustrated most starkly by the apparent disparity between civil society-recorded instances of hate speech (and, indeed, hate crime generally), and associated prosecutorial indictments (see e.g., Omerović 2023; Office for Democratic Institutions and Human Rights, 2024: 2 and 6).

This last issue, equally, is at least formally recognised by the BiH Council of Ministers, who have endorsed associated internationally-supported reports and initiatives (see esp. Kadribašić, Bakalis and Muftić 2022). Even so, given the limited formal and substantive powers of BiH’s state institutions, their ability to drive meaningful change in how hate speech is addressed by public sector institutions across BiH remains inherently—and to some extent structurally—constrained.

iv. Freedom of Information

Turning last to Fol, again, a range of more and less granular issues have been raised in various international oversight fora. In this regard, it is perhaps worth focusing on three distinct sets of issues arising in these fora relating, respectively, to associated legal frameworks across BiH, to issues affecting Fol for particular groups, including issues related to discrimination, and last to Fol-related practices across BiH, including in particular reportedly widespread reliance on reference to personal data as a basis for denial of access to information.

As to the first of these, the complexity of – and some of the associated issues affecting – the legislative frameworks regulating FoI in BiH are apparent from the 2024 Baseline Report by the Access Info Group (“AIG”) established under the Tromsø Convention (see: 2024). In this report the AIG highlights in particular that, following the coming into force in 2023 of a new “Law on Freedom of Access to Information at the level of institutions of Bosnia and Herzegovina” (replacing a 2001 law), there appear to have been some “steps back” compared to the 2001 law, including in respect of the extent to which state institutions are obligated to assist applicants seeking information, and the (new) absence of a requirement for state institutions to provide reasons for refusals of access (2024: 21). The AIG also notes that under the 2023 BiH law institutions are only competent to provide information if they have *produced* (rather than simply holding) the requisite information (2024: 17 and 18).

Notwithstanding issues with specific provisions, however, international oversight also raises concerns as to the extent to which – even if the relevant legal regimes are not in themselves problematic (Council of Europe Access Info Group (AIG) 2024: 18–19) – public sector practice across BiH in effect disadvantages and discriminates against certain populations. Such concerns are apparent, moreover, not only in oversight mechanism recommendations, but also in state reports themselves: BiH’s 2021 state report under the European Charter for Regional or Minority Languages, for example, observes the difficulties encountered by members of the Roma minority in engaging with local authorities in Zenica-Doboj Canton (Bosnia and Herzegovina, 2021b: 30). Similarly, as observed by Škrbić in respect of the work of GREVIO in BiH: “[a]lmost all mentioned documents point to (particular) discrimination of vulnerable groups such as women in rural areas and Roma women when it comes to FoI.” (Škrbić 2024, Annex: 53) Last, again in similar vein, a challenge has also been brought to BiH practices under the Aarhus Convention, suggesting the imposition of noncompliant – and possibly discriminatory – restrictions on access to environmental information (see: *ACCC/C/2020/177 Bosnia and Herzegovina* 2025).

The last issue perhaps worth highlighting in respect of FoI is that of apparent issues arising less from the drafting of the applicable legal regimes, but rather from their implementation and associated practices. In this regard, and apparent from both European Commission as well as civil society reports, a particular focus of concern is the use of personal data protection concerns to justify non-provision of information. As observed by the European Commission, for example: “[d]ata protection laws continued to be interpreted in a way that protects private rather than public interests, hindering the prevention and repression of corruption” (European Commission 2024b: 36). More generally, as noted recently by Transparency International BiH: “[d]elays in responding, providing incomplete answers, or delivering information in a format not stipulated by law are just some indicators of the careless and arbitrary implementation of freedom of information laws in Bosnia and Herzegovina” (Transparency International u Bosni i Hercegovini 2024). Further institutional challenges in respect of environmental information are also apparent from BiH’s most recent state report under the Aarhus Convention, which notes, *inter alia*, that despite 46

public sector bodies being invited to participate in the report's preparation, only 13 of these responded to the shared questionnaires within the relevant deadline (2021a: 1).

v. EU *acquis* implementation, other domestic/international initiatives

By way of a further set of FoE related issues to consider, as noted above, reflecting its ambitions for EU membership, and in particular the terms of the 2015 EU-BiH Stabilisation and Association Agreement, BiH is committed to aligning its domestic legal frameworks and practices with the *acquis communautaire* (European Union 2015, art. 70). This process has placed a particular focus on technical implementation of (for example) relevant EU Directives across related fields, including – for example – the Open Data Directive (European Union 2019), the 2010 (and now 2018) Audiovisual Media Services Directives (European Union 2010, 2018), and directives on Infrastructure for Spatial Information (European Union 2007), access to environmental information (European Union 2003), and electronic commerce / digital services (European Union 2000, 2022).

In many of these areas some progress has been made, as recognised throughout annual European Commission reports (see e.g., European Commission 2024b). At the same time, however, it is difficult to avoid an overall sense that BiH is generally lagging behind – not just in open data, but also in related fields - compared with other candidate countries (see generally: Carsaniga *et al.* 2022). Put perhaps more bluntly by the European Commission in its 2024 report: “[o]n digital services, Bosnia and Herzegovina made no progress in adopting a countrywide strategy and action plan for the development of an information society. Bosnia and Herzegovina has no open data policy in place. Alignment is needed with the Digital Services Act and Digital Markets Act to ensure predictability. Bosnia and Herzegovina should also align with the European interoperability framework and the Interoperable Europe Act. There is no coordinated and jointly planned approach for the digital transformation of public services throughout the country, with very limited data exchange between the services.” (European Commission 2024b: 73) This is, of course, merely a snapshot: the 2024 Commission Report also includes similar observations in respect of other related elements of the *acquis*, however, including digital transformation and media (see e.g., European Commission 2024b: 14 ("Bosnia and Herzegovina is at an early stage of preparation on digital transformation and the media. No progress was achieved. The legislation and strategic framework are not in place and are not aligned with the EU *acquis*.”)).

Last, it also bears observing that there have also been a number of domestically-generated reports produced in respect of FoE in BiH in recent years, beyond those regularly produced by the Human Rights Ombudsman, as well as further analyses produced in partnership with international actors, including the Council of Europe. These have included, for example, the reports adopted by the Council of Ministers in 2016 and 2023 and noted above, the latter of which called (for example) for relatively specific legislative and policy measures, capacity-

building, and educational and awareness-raising initiatives to more effectively combat hate speech in BiH (see: Kadribašić, Bakalis and Muftić 2022: 35–38).

In addition, a series of CoE-implemented programmes have also been established, in partnership with the local authorities, to support and facilitate domestic efforts to strengthen FoE in BiH, including EFEx,³ alongside a further range of international bodies and initiatives – including, for example, the work of the CoE’s European Commission against Racism and Intolerance, and via BiH’s participation in the CoE’s campaign for the safety of journalists (Council of Europe 2025).

Ultimately, however, international support and participation notwithstanding, as the above illustrates, significant challenges evidently persist in respect of both the substantive protection of FoE and Fol in BiH, as well as in associated monitoring and reporting. These may, of course, be considered two separate issues: given the shared challenges presented by BiH’s complex governance landscape, however, it is difficult not to view these as closely interlinked.

2.4 Assessment and conclusion

BiH’s monitoring and reporting history in respect of FoE and Fol is extensive. Indeed, the extent to which Bosnia’s state institutions – particularly the MHRR – have succeeded over several decades in managing a complex range of international oversight mechanisms and processes should not go unrecognised, particularly set against BiH’s uniquely challenging governance landscape. At the same time, though, as the discussions above illustrate, there remain significant challenges to overcome in strengthening BiH’s domestic monitoring and reporting capacities and mechanisms, as well as a range of related issues to address in respect of substantive FoE and Fol protection in BiH.

In relation to the former, perhaps the key observation that should be made in light of the preceding discussion is that while there exists a well-developed set of formal arrangements to enable and guide the production of BiH’s reports to international human rights oversight mechanisms, the complex constitutional and political circumstances of the state – and its sub-national governance arrangements – appear to significantly impede the ability of the MHRR (and other state bodies) to effectively manage these processes. The issues arising here are not related to the particular legal or regulatory arrangements in place for the production of reports or the conduct of associated monitoring, however: rather, they reflect underlying and broader sets of political and institutional features in BiH deriving ultimately from the GFAP and associated constitutional arrangements.

At the same time though, while the substantive protection of FoE and Fol in BiH displays significant weaknesses, highlighted by a range of international monitoring and reporting

³ Other related programmes include, for example, “PRO-FREX” (“Protecting freedom of expression and of the media in Bosnia and Herzegovina”), and the now-completed “JUFREX” I and II (“Freedom of Expression and Freedom of the Media in South-East Europe”) and “MIL” (“Media and Information Literacy: for human rights and more democracy”).

mechanisms, it is also important to note the progress that has been made – and recognised in oversight reports, perhaps most significantly by the European Commission – across these issue areas over time.

This is not to suggest, of course, that the substantive challenges remaining may readily be addressed. In fact, as multiple sets of international findings illustrate, BiH continues to face a range of issues related to media regulation and freedom, the ability of journalists to carry out their profession, hate speech, and access to information. At the same time though, as the other chapters in this volume illustrate, FoE-related challenges are far from unique to BiH: such issues are apparent elsewhere, albeit in different settings, underlining the value of the present comparative exercise.

3. Belgium

Ignance Van Den Steene

3.1 Governance: allocation of monitoring and reporting responsibilities

3.1.1 Constitutional character and division of authority

The Kingdom of Belgium is a constitutional monarchy as well as a decentralised federal⁴ state with asymmetric characteristics (*Belgian Constitution, art. 1*).⁵ Belgium is generally viewed as a monistic system in its approach to international law, allowing for treaties with direct effect to be instantly part of the national law, taking precedence over all other national legislation.⁶ Whether international law also takes precedence over the Constitution is a more contentious issue, with the Supreme Court of Belgium (*Hof van Cassatie*), the Constitutional Court (*Grondwettelijk Hof*), as well as the Council of State (*Raad van State*) each adopting a different interpretation (*Sottiaux 2016: 91-99*).⁷

3.1.2 Federal structure

The competences of the state are divided among the federal authority and two different types of federated entities, that being communities (3) and regions (3) (*Belgian Constitution, art. 1-3*).⁸ The Community and Region of Flanders execute their respective competences in one Flemish government (*Bijzondere Wet der Hervorming van de Instellingen (BWHL), art. 1, para. 1*).⁹ Therefore, in what follows a reference to the ‘Flemish government’ or the ‘Flemish level’ must always be understood as pertaining to both the Flemish Community and the Region, unless specified otherwise. The French Community and Region Walloon only merge their governments to a certain extent, while relying upon a different constitutional mechanism (*Belgian Constitution, art. 138*).¹⁰ The remaining two federated entities are the Region of Brussels-Capital and the German Community.¹¹ The division of competences in Belgium is constituted upon the principle of exclusive competences (barring limited exceptions) which dictates that a certain competence can only be attributed to one type of state entity (federal, communities, or regions), thus eliminating the need for a hierarchical approach akin to *bundesrecht bricht landesrecht* (*Sottiaux 2016: 239-240*).¹² The

⁴ Categorising Belgium as a confederal state *sensu stricto* risks voiding the term confederal from all its substance. It is, in my view, more appropriate to qualify it as a *federal* state with *confederal characteristics and tendencies* yet lacking the fundamental characteristics that warrant a reclassification from federal to confederal, see among others S. Sottiaux, *Grondwettelijk Recht* 2016: 219 Intersentia, Antwerpen; K. Rimanque, *De grondwet toegelicht, gewikt en gewogen* 2005, Antwerpen, Intersentia.

⁵ Art. 1 Belgische Grondwet; S. Sottiaux, *Grondwettelijk Recht* 2016: 228-233, Intersentia, Antwerpen.

⁶ S. Sottiaux, *Grondwettelijk Recht* 2016: 91-99, Intersentia, Antwerpen.

⁷ S. Sottiaux, *Grondwettelijk Recht* 2016: 93-97, Intersentia, Antwerpen.

⁸ Art. 1-3 Belgische Grondwet.

⁹ Art. 1, §1, *Bijzondere Wet der Hervormingen van de Instellingen (BWHL)* 1980; S. Sottiaux, *Grondwettelijk Recht* 2016: 229, Intersentia, Antwerpen.

¹⁰ Art. 138 Belgische Grondwet.

¹¹ Nevertheless, it is important to note that there are two additional governments in Belgium, the *Gemeenschappelijke Gemeenschapscommissie* (GGC) and the COCOF. The GGC is by far the most important of the two, executing the competencies of both the Flemish Community and the French Community in the region of Brussels-Capital.

¹² S. Sottiaux, *Grondwettelijk Recht* 2016: 239-240, Intersentia, Antwerpen.

competences that are not attributed expressly by the Constitution – or special ‘constitutional’ legislation¹³ – are deemed to belong to the federal authority, the latter thus retaining the residual competences of the state (*Belgian Constitution, in fine (read a contrario), art. 35*).¹⁴

In general terms, the federal government retains the competences related to the common interest of Belgian citizens such as those in the areas of finance (general principles of tax law), the judiciary, social security, foreign affairs, national health policy, and army-related matters. The communities (*gemeenschappen*) and the regions (*gewesten*), on the other hand, have competences in areas of culture/language/education and economic/agricultural/urban planning respectively (*Belgian Constitution j. art. 4-6 BWHL, art. 39 j. 127-129*).¹⁵ Disputes regarding the division of competences between the communities, regions, and federal authority are resolved by the Constitutional Court of Belgium (*Belgian Constitution, art. 142*).¹⁶ In the context of this research, it is important to note that Belgium adheres to a rather unique principle of law regarding the power to conclude international agreements such as treaties. Each entity has the right to conclude a treaty whenever it pertains to its scope of competence (according to the principle of *in foro interno, in foro externo*) (*Belgian Constitution, art. 127, 128, 130, and 167*).¹⁷ Whenever treaties touch upon competences attributed to different entities, the agreement of all relevant entities is required, thus resulting in a so-called mixed treaty (which includes the vast majority of human rights treaties). Internally all entities are responsible for their own treaty obligations, thus giving rise to internal responsibility in case of failure to fulfil these obligations. Externally, at the international level, states are not required to accept the principle of *in foro interno, in foro externo* (see Montevideo Convention, art. 2) and are thus entitled to directly hold the Belgian (federal) state accountable for breaches of obligations, *i.e.* in case of the non-fulfilment of an obligation under a human rights treaty. Finally, it might be useful to specify that regions and communities do not have their own constitutions (unlike *e.g.*, the US or Germany), thereby removing one additional layer of complexity present in those other jurisdictions, as Belgian constitutional grounds for human rights all originate from one single text, the Belgian Constitution.

3.1.3 Decentralised structure

Besides being a federal state, Belgium is also a decentralised state with distinct (local) competences for provinces (*provincies*) and municipalities (*gemeentes*) (*Belgian Constitution, art. 162*). The competences of these local entities are generally laid down in the Constitution and are thus identical across the entire state of Belgium, at least in their

¹³ This is legislation that requires a special majority and takes precedence over all other ‘ordinary’ national legislation.

¹⁴ Art. 35 Belgische Grondwet, *in fine* (read *a contrario*); S. Sottiaux, *Grondwettelijk Recht* 2016: 242-243, Intersentia, Antwerpen.

¹⁵ Art. 39 j. 127-129 Belgische Grondwet j. art. 4-6 Bijzondere Wet der Hervorming van de Instellingen (BWHL).

¹⁶ Art. 142 Belgische Grondwet; S. Sottiaux, *Grondwettelijk Recht* 2016: 453, Intersentia, Antwerpen.

¹⁷ Art. 127, 128, 130, and 167 Belgische Grondwet.

core principles of division of powers. They mostly have local competences pertaining to, e.g., (recreative) sports, local infrastructure, protection of the local environment. The exact nature of the competences may nevertheless vary depending upon which region or community the local authority is localised in. Municipalities and provinces execute competences delegated to them both by the federal government and by the relevant community or region. In principle, these local entities do not have competences that are directly relevant to the purpose of this research. They may nevertheless have an indirect impact on the effectiveness of human rights protection and monitoring, such as through cooperation agreements with national human rights institutions.

3.2 Division of responsibilities across government units for human rights issues

The Constitution of Belgium applies directly to all state entities, including the regions and communities. The basic national human rights obligations thus flow directly from the constitution which is thus the primary source of obligation for all state actors. All state representatives, both at the federal and community/regional level, as well as at the local level, are required to exercise their legislative/executive competences in accordance with relevant (constitutional) human rights obligations. This includes both positive obligations to ensure the protection of human rights, as well as negative obligations to avoid (excessively) interfering with those rights. When it comes to freedom of expression and information, art. 19, 25, and 150 of the Belgian Constitution are often cited in case law and doctrine as the source of those rights (Sottiaux 2016, 355).¹⁸ While these constitutional provisions do not directly mention freedom of expression (they pertain to freedom of religion and press respectively), they are viewed as *lex specialis* applications of the general principle of freedom of speech. Case law usually cites art. 19 and 15 in conjunction with art. 10 of the European Convention on Human Rights (ECHR), as well as other relevant treaty law (see e.g., *GwH*, 22 July 2004, No. 136/2004).¹⁹ Given that human rights treaties, and especially the ECHR, are generally viewed as directly applicable in the Belgian legal order, all state actors must abide by the obligations flowing from these international human rights obligations. In other words, whenever a state representative acts to protect FoE or FoI, or risks infringing upon it, such actions are in all cases interpreted through the lens of international, European, and domestic law, read in conjunction.²⁰ This judicial technique of reading constitutional rights and treaty obligations in conjunction with one another has long been a tool for the Belgian Constitutional Court to expand its jurisdiction beyond a plain face reading of the Constitution. It has arguably enhanced, or at the very least broadened, access to court protection of human rights for Belgian legal subjects.

The Constitutional Court is tasked with adjudicating violations of human rights responsibilities (non-constitutional legislation) by the federal and state legislatures

¹⁸ S. Sottiaux, *Grondwettelijk Recht* 2016: 355, Intersentia, Antwerpen.

¹⁹ A landmark case where the Constitutional Court of Belgium decided that it has the power to exercise scrutiny over the state's compliance with relevant treaty law: *GwH*, 22 July 2004, No. 136/2004.

²⁰ S. Sottiaux, *Grondwettelijk Recht*, Intersentia, Antwerpen, 2016: 340-348.

(*Bijzondere Wet Grondwettelijk Hof 1989, art. 1, 2°*),²¹ while the Council of State does so for actions by federal and state executive bodies (*wetten op de Raad van State, gecoördineerd op 12 januari 1973, art. 14*).²²

3.2.1 Federal level

It is challenging to ascertain which entities are accountable for specific facets of FoE and Fol monitoring and reporting within the government *sensu stricto*. Although the Department of Foreign Affairs is evidently the principal coordinating entity in the reporting process and the one that ultimately submits the Belgian National Report, the delineation of responsibilities among the other departments concerning monitoring and reporting is characterised by a lack of transparency and clarity, at least in formal terms. The principal stakeholders appear to be the ministries of Foreign Affairs, Justice, Police, Home Affairs, and Defence (see e.g., *Human Rights Committee 2018: 2*). There is no specific legislation, nor are there specific guidelines or regulations detailing the division of competences among the ministries specifically for human rights. There is also no minister of human rights or its equivalent. The Constitution and constitutional legislation²³ merely dictate the required number of ministers without spelling out the division of competences. Federal ministers are thus responsible for monitoring human rights within their area of competence.²⁴ The coordination between the different ministers and departments largely functions on an *ad hoc* basis, a tendency that extends throughout the Belgian approach to human rights reporting and monitoring.

State actors are required (positively and negatively) to protect FoE and Fol, and several federal bodies, known as national human rights institutions (NHRIs), are tasked with monitoring and promoting compliance among state entities with these obligations. NHRIs attain recognition just after adhering to the formal protocols aligned with the Paris Principles, demonstrating their “trustworthiness as a credible and independent actor” (*UNGA Resolution A/RES/48/134*).²⁵ Institutions can be recognised as type-A (fully compliant) or type-B (partly compliant) NHRIs. The European Network of National Human Rights Institutions (ENNHRI) supports its accredited members (NHRI with status A or B), including those in Belgium (*ennhri (website)*).²⁶ Belgium currently has no NHRI with status A.

In 2019, the Federal Institute for the Protection and Promotion of Human Rights (*Federaal Instituut voor de Rechten van de Mens*) (FIRM) was established by the Belgian legislature to monitor the respect of human rights obligations in Belgium, partly in fulfilment of the

²¹ *Bijzondere Wet Grondwettelijk Hof 1989, Art. 1, 2°*.

²² Art. 14, *wetten op de Raad van State, gecoördineerd op 12 januari 1973*.

²³ Art. 4 *Belgische Grondwet*; BWI is an example of ‘constitutional’ legislation.

²⁴ A way to achieve a greater understanding may involve examining the national action plans (NAPs) developed by Belgium. Regrettably, no such NAPs appear to exist concerning the ICCPR or problems linked to FoE/Fol in a strict sense. Nonetheless, a comprehensive understanding may be attained by examining alternative National Action Plans, such as those pertaining to the Women, Peace, and Security Agenda or the initiatives centred on business and human rights.

²⁵ UNGA Resolution A/RES/48/134; <https://ennhri.org/about-nhris/un-paris-principles-and-accreditation/>.

²⁶ <https://ennhri.org/our-work/nhri-accreditation/>

principles of Paris and Belgian pledges at the UN Human Rights Committee to create a national human rights institute (NHRI), ultimately being accredited as an NHRI type B.²⁷ The FIRM is responsible for monitoring all human rights obligations under the competences of the federal government.²⁸ The Institute also has some residual competences in cases where a competent body cannot be identified. Importantly, it monitors actions by all relevant actors within the ambit of their federal competences, from state actors to individuals.²⁹ The FIRM generates pertinent internal reports and recommendations,³⁰ with its mandate specifically focused on fostering compliance with international and European human rights treaties, so granting it a comprehensive mandate that includes all human rights obligations. It has swiftly emerged as a pivotal entity in conveying Belgian policy to the United Nations, ECtHR, and other multilateral organisations, generating parallel reports consistently, while progressively impacting the formulation of Belgian national reports (e.g., through the publication of internal reports and studies).³¹ At the national level, the FIRM collaborates closely with pertinent entities at the regional and community levels (*infra*). Subsequently, the option remains to confer inter-federal status to the FIRM, but solely for competences not previously assigned to a pertinent institute at the regional or municipal level.³² This inter-federal status would allow the FIRM to broaden its scope to encompass the competencies of Belgium's federated organisations. However, significant hurdles exist that render the transformation of the FIRM incredibly challenging, a matter that will be revisited in the subsequent subsection.

The Inter-Federal Centre for Equal Opportunities (UNIA) is an autonomous institution created in 1993 where individuals can file complaints in light of potential breaches of their human rights.³³ It is recognised as an NHRI type B.³⁴ Its creation and governing philosophy are based upon a cooperation agreement (*samenwerkingsakkoord*) between the federal government and the federated entities.³⁵ It is thus an inter-federal institution whose area of authority encompasses human rights issues related to federal competences, as well as those of the federated entities. Among its core tasks is advising individuals, engaging in

²⁷ Wet van 12 Mei 2019; Strategisch Plan FIRM (2022-2025), 2022, 3, available at <https://institutfederaldroitshumains.be/sites/default/files/2022-05/lees-het-strategisch-plan-van-het-firm.pdf>; Bijdrage aan het Mensenrechtencomité van de VN betreffende België (follow-upprocedure) 139ste sessie (9 okt. 2023 – 3 nov. 2023) (Report FIRM and Myria), 3.

²⁸ Art. 4, Wet van 12 Mei 2019.

²⁹ Art. 4, §2, Wet van 12 Mei 2019.

³⁰ See e.g., <https://institutfederaldroitshumains.be/sites/default/files/2022-10/Advies%20FIRM%20Openbaarheid%20bestuur%202022.pdf>

³¹ <https://federaalinstituutmensenrechten.be/nl/over-ons/missie-visie-en-strategie>

³² Art. 21, §1, Wet van 12 Mei 2019; “Bijdrage aan het Mensenrechtencomité van de VN betreffende België (follow-upprocedure)” 139ste sessie (9 okt. 2023 – 3 nov. 2023) (Shadow Report FIRM and Myria), 4.

³³ Human Rights Council 2011:3, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, (First Cycle).

³⁴ <https://www.unia.be/nl/artikels/unia-internationaal-erkend-als-nationaal-mensenrechteninstituut>

³⁵ Samenwerkingsakkoord tussen de federale overheid, de gewesten en de gemeenschappen voor de oprichting van het interfederaal Centrum voor gelijke kansen en bestrijding van discriminatie en racisme onder de vorm van een gemeenschappelijke instelling zoals bedoeld in artikel 92bis van de bijzondere wet van 8 augustus 1980, 12 juni, 2013.

follow-up procedures, and taking legal action where deemed necessary.³⁶ Its primary competence is nevertheless discrimination on the grounds stipulated under the ICCPR, ECHR, and relevant national legislation (thus its mission is more focused upon the consequences of FoE on individuals' right not to be discriminated against).³⁷ While UNIA does not have a general mandate for monitoring all human rights, unlike the FIRM at the federal level, until recently it was in a position to exercise its competences regardless of whether it pertains to a federal or a state-entity competence (recently this is no longer the case for Flemish competences, see *infra*). Furthermore, UNIA publishes studies and prepares (internal and external) parallel reports, which will be briefly explored under Section 3.2.2.

A final institution worth mentioning is Myria, an independent federal institution, mainly focusing on migration rights and human rights of foreign nationals.³⁸ It issues recommendations and self-standing reports to governmental actors and relevant treaty bodies, often in cooperation with other important institutions such as UNIA. However, FoE and FoI play only a marginal role in their day-to-day operations wherever they concern the rights of foreign nationals.

3.2.2 Level of communities and regions

The division of competences among the Flemish ministers is laid down in an executive order (*besluit*) of the Flemish government.³⁹ While the executive order does not address human rights, it makes it rather clear that ministers retain the competences naturally linked to those they have been attributed, which thus includes human rights. Each minister is therefore responsible for the monitoring of human rights within their respective areas of competence, mirroring the situation at the federal level.⁴⁰

Until recently, there was no centralised institution for human rights protection comparable to the FIRM at the community and regional levels in Belgium. The initial step in this procedure appears to need negotiating a cooperation agreement between the federal government and the federated units, which has not yet taken place as of the time of writing.⁴¹ For an extended period, the most probable outcome was the inter-federalisation of the FIRM, which would have allowed it to attain status A as a National Human Rights Institution (NHRI). Despite calls for this path, the political schism between federated entities—particularly between the French and Flemish governments—appeared to obstruct such an attempt. Insights from relevant stakeholders indicate that this political split primarily concerns the preservation of

³⁶ <https://federaalinstituutmensenrechten.be/nl/vrijheid-van-meningsuiting>

³⁷ <https://www.UNIA.be/nl/faq/wat-is-de-rol-van-UNIA>

³⁸ <https://www.myria.be/en>

³⁹ Besluit van de Vlaamse Regering tot bepaling van de bevoegdheden van de leden van de Vlaamse Regering, 2 October 2019, available at <https://codex.vlaanderen.be/PrintDocument.ashx?id=1032376&datum=&geannoteerd=false&print=false>

⁴⁰ Interview with the Legal Policy Officer Human Rights (Flemish Government).

⁴¹ Human Rights Committee 2022:2, Information received from Belgium on the follow-up to the concluding observations on its sixth periodic report.

regional political autonomy rather than the essence of human rights protection, a recurring motif in the Belgian federal system.⁴²

Ultimately, the Belgian system progressed contrary to inter-federalisation, advancing instead towards increased autonomy for the federated entities in the domains of human rights monitoring and reporting. Several years prior, the Flemish legislature initiated the establishment of a national human rights organisation to address issues pertaining to Flemish competencies. This effort faced criticism, both direct and indirect, from prominent national and international entities, including UNIA and the European Commission against Racism and Intolerance.⁴³ Notwithstanding this criticism, in 2022, the Flemish government enacted a decree (*decreet*; i.e. legislation at the community/region level) establishing the Flemish Institute for Human Rights (*Vlaams Mensenrechteninstituut*) (VMRI), similar to the FIRM but tasked with monitoring human rights pertinent to Flemish community and regional competences.⁴⁴ The VMRI has not yet acquired the formal designation of NHRI, currently functioning only as a *de facto* entity (quasi-NHRI). Similar to UNIA and the FIRM, the VMRI is an independent organisation financed and governed democratically by the legislator, specifically the Flemish Parliament.⁴⁵ The formation of the VMRI has resulted in UNIA losing its jurisdiction over the majority of human rights matters pertaining to Flemish competencies, which are now under the purview of the VMRI. The establishment of the VMRI precludes the FIRM, or any other entity, from achieving sole A-status as a National Human Rights Institution or obtaining full inter-federal status. The FIRM may still pursue inter-federalisation; but, this endeavour is likely to yield an asymmetric variant of inter-federalism, wherein the competencies pertaining to the Flemish area and community are retained by the VMRI.⁴⁶

Given the thus-created landscape, Belgium's only option to create an NHRI status A would be to negotiate a cooperation agreement between the FIRM, the VMRI, and UNIA, as well as one between the various Belgian governments (some actors even stress that this cooperation agreement must involve other important institutions with human rights-related competences).⁴⁷ It might nevertheless be questioned whether obtaining status A is at all a priority. NHRIs seem to be mainly focused on executing their tasks to the best of their ability while working within the legal architecture created with the inception of the FIRM and the VMRI. The negative consequences of not having an NHRI with status A are actively being mitigated by the actors in question, e.g., by putting considerable effort into diplomatic relations within relevant international organisations to ensure participation rights *de facto*

⁴² Interview with the Legal Policy Officer Human Rights (Flemish Government).

⁴³ https://www.UNIA.be/files/Documenten/Publicaties_docs/Standpuntnota_UNIA_over_VMRI.pdf;
<https://rm.coe.int/ecri-general-policy-/16808b5a23>

⁴⁴ Decreet tot oprichting van een Vlaams Mensenrechteninstituut, 28 October 2022.

⁴⁵ Art. 4, Decreet tot oprichting van een Vlaams Mensenrechteninstituut, 28 October 2022.

⁴⁶ https://www.federalinstitutehumanrights.be/sites/default/files/2023-09/MEMORANDUM_FIRM_NL.pdf

⁴⁷ https://www.federalinstitutehumanrights.be/sites/default/files/2023-09/MEMORANDUM_FIRM_NL.pdf, 57.

akin to those with status A.⁴⁸ UNIA has been developing these diplomatic channels for decades now, thus implying that the coming of the FIRM and the VMRI has somewhat complicated the diplomatic landscape for Belgium as the latter institutions take over competences from UNIA, yet lack the same kind of influence and experience in the relevant international institutions (though the NHRIs seem to cooperate productively with one another⁴⁹). Developing these will thus take time and may be considered another reason why obtaining status A is not a priority for the time being.⁵⁰

Within the French-speaking community and region, the Association de Promotion des Droits Humains et des Minorités (ADHUM) was established in 2013.⁵¹ The ADHUM can nevertheless not be equated with the role of the VMRI and hence does not interfere with the competences of UNIA in the Walloon Region/French Community, neither does it impede the (asymmetric) inter-federalisation of the FIRM. As a non-profit organisation, the institution's primary focus is, rather, limited to the protection of French-speaking minorities in Dutch-speaking regions/communities, which it deems of significant importance given the inability of UNIA to intervene in issues related to language discrimination.⁵² It has nevertheless also issued self-standing reports to e.g., the Human Rights Committee.⁵³

3.2.3 Division of responsibilities across government units for international and national human rights monitoring and reporting, including FoE and FoI

The Belgian national human rights reports are only finalised and submitted after continuous back-and-forward discussion between the federal government, the governments of the regions and communities, NHRIs, and civil society. The latter two's influence upon the main national state reports remains rather limited, however (*infra*).

Given that most of the monitoring and cooperation regarding reporting seems to occur on an *ad hoc* basis in Belgium, the only way to obtain a somewhat clearer picture is by gaining insights from relevant stakeholders. All interviews that were conducted for the purpose of the research have nevertheless indicated that this cooperation essentially boils down to informal processes such as email, phone calls, online conferences, and occasional *ad hoc* meetings. What is clear is that each community/region prepares its own initial reports, which are then forwarded to their federal colleagues. At the federal level, all reports from the federated entities are brought together and form the basis of negotiations as to the final

⁴⁸ Interview with a representative of UNIA (*Dienst Beleid & Monitoring*).

⁴⁹ Interview with a representative of UNIA (*Dienst Beleid & Monitoring*).

⁵⁰ Interview with a representative of UNIA (*Dienst Beleid & Monitoring*).

⁵¹ <https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/MinorityIssues/Session7/Item3/Participants/ADHUM.pdf>

⁵² Alternative follow-up report of the Association for the Promotion of Francophonie in Flanders (APFF) and the Association for the Promotion of Human Rights and Minorities (ADHUM) to the Human Rights Committee (CCPR) concerning the priority recommendations made during the examination of the sixth periodic report of the Belgian State, November 2022: 3.

⁵³ Alternative follow-up report of the Association for the Promotion of Francophonie in Flanders (APFF) and the Association for the Promotion of Human Rights and Minorities (ADHUM) to the Human Rights Committee (CCPR) concerning the priority recommendations made during the examination of the sixth periodic report of the Belgian State, November 2022.

content of the draft report. NHRIs and civil society often only contribute after the initial draft of a Belgian national report is finalised, once again in an informal manner.

At the Flemish level, the reporting process is coordinated by the Legal Policy Officer for Human Rights attached to the Flemish government (*Departement Kanselarij en Buitenlandse Zaken*) who involves all ministers with relevant competences related to the specific human rights under reporting consideration. After the initial impetus by the Legal Policy Officer, the cabinets of the relevant ministers prepare their own interim reports within their area of competence. Both FoI and FoE are not the sole competence of one minister but are of importance for several departments and agencies, such as, e.g., the Media Department for Press Freedom.⁵⁴ Once these various reports are consolidated, the integrated Flemish report is sent to the federal government, where it plays an important role – together with the reports of the other federated entities – in the drafting of the final Belgian National Report.

The FIRM has become a very important actor in the reporting process of Belgium. In cooperation with other (quasi-)NHRIs such as the VMRI and UNIA, they provide self-standing parallel reports that are submitted directly to the relevant UN committees.⁵⁵ They nevertheless also have an *ex ante* role in influencing the principal report submitted by the Kingdom of Belgium by providing internal reports and recommendations, as well as participating in preparatory meetings.⁵⁶ UNIA, Myria, and the VMRI play a similar *ex ante* role, while their legislative basis also includes the ability to directly cooperate with the relevant international organisations.⁵⁷ There does not seem to be a unique approach for issues of FoE and FoI specifically, thus indicating that they follow the standard procedure as laid out in this section.

Following these high-level meetings and after the collection of relevant internal reports by the above-mentioned actors (and civil society as highlighted *infra*), the Belgian National Report (BNR) is compiled and thereafter submitted to the relevant international organisation(s) by the federal department of Foreign Affairs.

3.3 Conduct of monitoring and reporting

3.3.1 Overview of human rights monitoring and reporting cycles, including FoE and FoI

Belgium is a very active player on the international scene, including when it comes to human rights issues. The State has ratified most major human rights treaties, both at an international and at a regional level. From what could be gathered from relevant reports, Belgium seems to take its obligations very seriously – at least in rhetoric - and diligently

⁵⁴ Interview with the Legal Policy Officer Human Rights (Flemish Government).

⁵⁵ See e.g., Bijdrage aan het Mensenrechtencomité van de VN betreffende België (follow-up procedure) 139ste sessie (9 okt. 2023 – 3 nov. 2023) (Shadow Report FIRM and Myria).

⁵⁶ Strategisch Plan FIRM 2022-2025; Bijdrage aan het Mensenrechtencomité van de VN betreffende België (follow-up procedure) 139ste sessie (9 okt. 2023 – 3 nov. 2023) (Shadow Report FIRM and Myria).

⁵⁷ Art. 24 and 25, Decreet tot oprichting van een Vlaams Mensenrechteninstituut, 28 October 2022.

reports to the relevant international institutions, albeit often with substantive delays of a year or more (which is not uncommon for most states).⁵⁸ The monistic approach to international law is distinctly evident in case law,⁵⁹ legislation, and executive decision-making, frequently emphasising the significance of international standards and prioritising them above conflicting national norms, potentially even over the Constitution.

Although Belgium occasionally delays in meeting its reporting duties, the state consistently responds to issues raised by the pertinent commissions, even if these efforts do not always result in prompt action on the ground. These limitations appear to be a pervasive issue, not confined to the Belgian Kingdom, but prevalent in the reporting processes of numerous other governments. Several pertinent stakeholders interviewed for this research have indicated repeatedly a growing 'fatigue' with reporting requirements and processes. This tiredness must be regarded with gravity, as it may result in a reporting process that is purely 'procedural' and not genuinely focused on addressing fundamental concerns. The Belgian state's internal requirements to consult and secure consensus from all federated institutions undoubtedly constitute a primary impediment to the timely generation of reports and the formulation of collaborative solutions to significant national human rights issues. Achieving consensus can frequently be difficult, particularly due to the often starkly contrasting political views between the administrations of Wallonia and Flanders. Belgium has significant discord between French-speaking and Dutch-speaking governments, compounded by the complex challenge of unifying no less than six distinct regions and populations.

The Belgian state seems to be very responsive to inquiries and recommendations by relevant international organisations/committees, generally adopting most of the recommendations in a given report. While the adoption of these recommendations does not always give way to a quick and effective implementation of measures, the latter does seem to happen more often than not, albeit sometimes (much) later than desired or promised, with reports giving evidence of implementation measures sometimes ten years after initial concerns were raised. A poignant example is the Belgian commitment to establish a national human rights institution (*supra*, the FIRM) in accordance with the Paris Principles,⁶⁰ which finally came to fruition over ten years after the initial commitment. As elaborated earlier, the FIRM still falls short of embracing all relevant aspects required of NHRIs, only having obtained status B thus far.⁶¹ At a European level, the Belgian courts and governments are very open and responsive to decisions by the ECtHR, mostly embracing the latter's decisions and making

⁵⁸ A quick glance at UN Treaty Body Database (Belgium), comparing the due dates to the dates submitted will give the reader a good idea of the number of delays:

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=BEL&Lang=EN

⁵⁹ The quintessential Belgian case in this regard: Cass. 27 mei 1971, Arr. Cass. 1971, 95 (*Smeerkaasarrest/Franco-Suisse Le Ski*).

⁶⁰ UNGA Resolution A/RES/48/134

⁶¹ <https://federaalinstituutmensenenrechten.be/en/firmifdh-internationally-recognized-as-a-national-human-rights-institution>

concrete commitments to address the issues. Once again, concrete commitments have not always translated into effective and quick (enough) changes, as can be observed with the lingering issue of prison rights in Belgium.⁶² In summary, one could state that Belgium does not shy away from its international obligations in rhetoric, but still has considerable room for improvement when it comes to their translation into practice.

As is customary, Belgian reporting cycles and schedules are easily accessible on the UN OHCHR website.⁶³ Given the in-detail analysis that will follow under Section 4, only a summary overview will be given of the different international and regional instruments for which Belgium has ongoing reporting obligations, further limiting the analysis to those that might have an (indirect) impact on FoE/Fol:

1. Universal Periodic Review (UPR): Belgium has completed three cycles of review and is currently working on cycle four (2022-2027).
2. International Covenant on Civil and Political Rights (ICCPR): Belgium submitted its last report on 18 July 2018 (due 2017). FIRM and Myria published a joint report for the Human Rights Committee as a follow-up in 2023. The seventh cycle's report is expected to be finalised in 2025.⁶⁴
3. UN Sustainable Development: Belgium submitted its last two UN Sustainable Development reports (Voluntary National Reports (VNR)) in 2017 and 2023.⁶⁵ These VNRs are prepared in cooperation with all the federated entities of Belgium, as well as the Federal Council for Sustainable Development (CFDD-FRDO) representing civil society. Its second report focused heavily on the 'leave no one behind' principle and 'inclusion'.⁶⁶ There was some attention on Fol, promoting the exchange of open data and a push for 'open science'.⁶⁷ Attention was also given to Belgium's recent initiative of digitalising judicial data – an area in which it was severely behind most developed nations – laying out the federal government's 'just-on-web programme' and the new institution at the Flemish level (Flemish Data Utility) which will be an important independent actor in carrying out the Flemish Data Strategy of 2022.⁶⁸ FoE was not prominently discussed in either of the VNRs.

⁶² See e.g., the following report on the Belgian situation regarding prison rights: Rapport au Gouvernement de la Belgique relatif à la visite effectuée en Belgique par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 27 mars au 6 avril 2017, available at <https://www.coe.int/en/web/cpt/-/belgium-anti-torture-committee-calls-for-improved-prison-conditions-better-care-for-psychiatric-internees-and-stronger-action-against-police-brutality>

⁶³ <https://www.ohchr.org/en/countries/belgium>

⁶⁴ <https://www.UNIA.be/nl/over-UNIA/mensenrechten/internationale-verslaggeving>

⁶⁵ <https://dashboards.sdgindex.org/profiles/belgium/policy-efforts>

⁶⁶ <https://www.sdgs.be/en/voluntary-national-review-vnr#:~:text=Belgium's%20Voluntary%20National%20Review%3A%20a%20collaborative%20process&text=The%20Federal%20Council%20for%20Sustainable,the%20scientific%20and%20research%20sector.>

⁶⁷ Voluntary National Review of Belgium, 2023: 103, available at https://www.sdgs.be/sites/default/files/content/VNR/vnr2023_belgium_final.pdf

⁶⁸ Voluntary National Review of Belgium, 2023: 63-64, available at https://www.sdgs.be/sites/default/files/content/VNR/vnr2023_belgium_final.pdf

4. Convention on the Elimination of All Forms of Racial Discrimination (CERD): In 2019, the Belgian government submitted its combined 20th to 22nd periodic report.⁶⁹
5. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW): In 2020, Belgium submitted its eight periodic report, which was initially due in 2018.⁷⁰ It had some focus on the issue of gender expression and reiterated the FIRM's role in protecting and monitoring freedom of expression in general.⁷¹
6. Convention on the Rights of Persons with Disabilities (CRPD): The combined second and third periodic reports were submitted in 2020.⁷² The report was the result of meetings between the federal government, federated entities, and civil society.⁷³
7. Aarhus Convention: Belgium submitted its most recent report in 2020, while it is currently close to finalising its upcoming report.⁷⁴ The 2020 report included some important information regarding Fol.⁷⁵ The report is, as usual, the result of close cooperation and discussion between the federal government and the federated entities, as well as certain specific institutions and civil society initiatives.⁷⁶ Belgium has a dedicated website registering public consultations.⁷⁷
8. Istanbul Convention (CoE Convention on preventing and combating violence against women and domestic violence): Belgium submitted its latest report in February of 2024.⁷⁸

Belgium is neither a State Party to the European Charter for Regional or Minority Languages, nor to the Framework Convention for the Protection of National Minorities.⁷⁹

3.4 National legal/regulatory basis for monitoring and reporting arrangements

Federal ministers frequently utilise circulation letters (*omzendbrieven*) to oversee the daily activities of the federal entities under their jurisdiction.⁸⁰ These circulation letters are unilateral executive decisions of the pertinent minister that are legally binding solely on the

⁶⁹ Committee on the Elimination of Racial Discrimination, "Combined twentieth to twenty-second periodic reports submitted by Belgium under article 9 of the Convention, due in 2018", 3 May 2019.

⁷⁰ Committee on the Elimination of Discrimination against Women, "Eighth periodic report submitted by Belgium under article 18 of the Convention, due in 2020", 18 November 2020.

⁷¹ Committee on the Elimination of Discrimination against Women, "Eighth periodic report submitted by Belgium under article 18 of the Convention, due in 2020", November 2020: 4, 6, and 33.

⁷² Committee on the Rights of Persons with Disabilities, "Combined second and third periodic reports submitted by Belgium under article 35 of the Convention pursuant to the optional reporting procedure, due in 2019", 14 April 2020.

⁷³ Committee on the Rights of Persons with Disabilities, "Combined second and third periodic reports submitted by Belgium under article 35 of the Convention pursuant to the optional reporting procedure, due in 2019", April 2020: 2.

⁷⁴ <https://www.health.belgium.be/en/environment/aarhusbe/party-states-report-procedure>

⁷⁵ 2020 report Belgium Aarhus convention, 3, available at

https://www.health.belgium.be/sites/default/files/uploads/fields/fpshealth_theme_file/synthesis_implementation_report_def_clean.pdf

⁷⁶ The latter include the Inter-Environnement Bruxelles (IEB), Inter-Environnement Wallonie (IEW), the Association de Comités de Quartier Ucclois (ACQU), the position of the Comité de Défense de l'Altitude Cent (CODA), the position of the Comité du Quartier Fond'Roy, as well as comments by a number of citizens.

⁷⁷ www.aarhus.be

⁷⁸ Only available in French: <https://rm.coe.int/ic-cp-inf-2024-2-reponse-de-la-belgique-au-formulaire-de-rapport-sur-l/1680ae5ecf>

⁷⁹ <https://www.coe.int/en/web/minorities/country-specific-monitoring>

⁸⁰ <https://federaalinstituutmenserenrechten.be/nl/federaal-instituut-voor-de-rechten-van-de-mens-waarschuwt-voor-inperkingen-van-de-vrijheid-van>

members of their federal institution. They may also be directed towards local governments (municipalities and provinces). They do not serve as adequate replacements for legislation but are subordinate to it, merely providing interpretation of the existing law. Although these occasionally address human rights issues, their role is predominantly indirect and limited. Additional legislation, royal decrees, or ministerial decrees do not substantially tackle human rights reporting and monitoring, save from those delineating the competences of the NHRIs. The coordination of human rights reporting predominantly remains an *ad hoc* procedure, with COORMULTI (*infra*) playing a vital role. The federal government obtains some direction from the NHRIs in preparing the BNR; nevertheless, the NHRIs primarily focus on their own parallel reporting duties, resulting in the creation of supplementary reports that accompany the main BNR. Opinions regarding the necessity or desirability of intensified collaboration with these NHRIs in the formulation of the principal BNR vary considerably, with some advocating for enhanced cooperation while others uphold the ‘independence’ of the NHRIs and the significance of their concurrent findings.⁸¹

At the Flemish level, the approach to drafting human rights reports is laid down in a declaration of the Flemish government of 2008, thus giving it a more formal legal grounding than its federal counterparts.⁸² The declaration was first circulated as a confidential document yet is now available to the general public. Furthermore, there are concrete plans to update this approach soon after the election of the new legislature in 2024.⁸³ According to the declaration, the department *Internationaal Vlaanderen* (“Flanders International”) is the main actor that coordinates the Flemish participation in the creation of the BNRs, while the distribution of information is handled by the *Vlaamse Werkgroep Multilateraal Beleid* (“Flemish working group for multilateral policy”).⁸⁴

3.5 Inclusion of international standards for monitoring/reporting in domestic processes

Despite its importance in theory, the OHCHR Manual appears to be entirely unreferenced in Belgian reports, legislation, or any governmental papers related to human rights. Furthermore, the interviewed stakeholders had either limited awareness of it or appeared to regard it as insignificant. The Legal Policy Officer for Human Rights to the Flemish government stated that although the handbook is not officially integrated into their reporting process, their activities are effectively grounded in it.⁸⁵ The interviews with UNIA and VMRI similarly revealed that the OHCHR Manual was neither widely recognised nor directly

⁸¹ See interviews with a representative of UNIA (*Dienst Beleid & Monitoring*) and with the Legal Policy Officer Human Rights (Flemish Government).

⁸² Mededeling aan de Vlaamse Regering, 2008 (Minister-President van de Vlaamse Regering), available at <https://omgeving.vlaanderen.be/sites/default/files/2022-01/VR%202008%201411%20MED.0502%20RSV%20structuur%20Leiestreek.pdf>

⁸³ Interview with the Legal Policy Officer Human Rights (Flemish Government).

⁸⁴ Mededeling aan de Vlaamse Regering, 2008 (Minister-President van de Vlaamse Regering), 5.

⁸⁵ Interview with the Legal Policy Officer Human Rights (Flemish Government); Verifying such a claim would however require an in-depth evaluation of the reports in light of the OHCHR Manual, which would go beyond the limited scope of this project.

utilised, thereby demonstrating its practical irrelevance for Belgian stakeholders.⁸⁶ Belgian actors once again exhibit a pronounced dependence on *ad hoc* working methods rather than adopting a more formalised approach.

3.6 Identification of and basis for mandates of key government bodies, public agencies, and non-government (including international/national civil society) stakeholders in human rights monitoring and reporting, including FoE and FoI

It is important to note that there is no explicit national legal basis that dictates how the drafting/preparation of reports ought to happen. As was highlighted before, the Federal Public Service for Foreign Affairs is ultimately responsible for the coordination of the Belgian National Report.⁸⁷ Upon their initiative, a draft report is submitted to relevant NHRIs and NGOs, after which the government takes notice – and at times alters the report in light – of their comments and recommendations.⁸⁸ The input by civil society is usually discussed at a later meeting, prompting criticism that civil society ought to be involved at an earlier stage, during the drafting of the provisional report.⁸⁹ In what follows, a detailed summary will be given of the relevant actors operating at the four identified levels, inter-federal (1), federal and federated entities (2), and civil society (3). Given the limited scope of the research, this section will only discuss the institution at the level of the federated entities that mirror institutions at the federal level. Levels two and three will thus be discussed in conjunction.

i. Inter-federal institutions

Inter-federal institutions are those that have an area of competence that covers both the federal level and that of the federated entities. These almost always necessitate the conclusion of a cooperation agreement.

1. UNIA (*supra* section 3.2.1)
2. Belgian Advisory Committee on Bioethics (*Het Raadgevend Comité voor Bio-ethiek*), created in 1993 on the basis of a cooperation agreement between the federal government and the governments of the communities.⁹⁰ It is an independent institution which issues yearly reports, as well as recommendations regarding the role of human rights in ethical issues such as euthanasia, genetic testing, and

⁸⁶ See interviews with a representative of UNIA (*Dienst Beleid & Monitoring*) and with a representative of the VMRI.

⁸⁷ Human Rights Council January 2016:2, “National Report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21”, (Second Cycle).

⁸⁸ Human Rights Council January 2016: 2, “National Report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21”, (Second Cycle).

⁸⁹ Human Rights Council January 2016: 2, “National Report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21”, (Second Cycle).

⁹⁰ Samenwerkingsakkoord, January 15, 1993, available at:

https://www.health.belgium.be/sites/default/files/uploads/fields/fpshealth_theme_file/samenwerkingsakkoord_accord_de_cooperation.pdf

compulsory vaccination.^{91 92} While it certainly plays a role in relation to FoE and Fol, such a role remains largely marginal and indirect.

3. Combat Poverty Service (*Steunpunt tot bestrijding van de armoede*): In line with most inter-federal institutions, its legal basis may be found in a cooperation agreement between the relevant federated entities.⁹³ Through the regular issuing of reports and recommendations, the institution enhances the protection of various socio-economic rights. Its role in FoE issues may be minimal, but Fol issues are more frequently revisited in their reports, especially on data and information digitalisation.⁹⁴
4. The National Commission on the Rights of the Child (*De Nationale Commissie voor de Rechten van het Kind*) (NCRK): This commission, operational since 2007, brings together the various governmental actors at the federal and federated entities level, as well as relevant actors from civil society to discuss, assemble, and submit (shadow/parallel) reports under the UN Convention on the Rights of the Child.⁹⁵ It also plays an important role in the follow-up of recommendations issued by the relevant treaty body, by issuing non-binding suggestions to the governmental actors.⁹⁶ The equivalent exists at the level of the federated entities, namely the “*Kinderrechtencommissaris*” (Flanders) and the “*Délégué aux droits de l’enfant de la fédération Wallonie-Bruxelles*” (Wallonia and Brussels).
5. Human Rights Platform (*Mensenrechtenplatform*): A mutual discussion forum which brings together all institutions that are fully or partly involved in the protection or monitoring of human rights.⁹⁷ The presidency of the platform rotates on a yearly basis between the member institutions.⁹⁸ In 2022, the FIRM and Myria created an integrated list of questions for all relevant HR institutions (including CSOs), which were aimed at mapping out the practices of HR reporting and monitoring at the

⁹¹ See e.g. Advies nr. 64 van 14 december 2015 betreffende de ethische aspecten van de vaccinatieverplichting, available at:

https://www.health.belgium.be/sites/default/files/uploads/fields/fpshealth_theme_file/advies_64_vacc_verplichting_1.pdf

⁹² <https://www.health.belgium.be/nl/wie-zijn-wij>

⁹³ Samenwerkingsakkoord tussen de federale staat, de gemeenschappen en de gewesten betreffende de bestendiging van het armoedebeleid, 1998.

⁹⁴ De financiële dimensie van armoede. Een bijdrage aan politiek debat en politieke actie, Tweejaarlijks verslag 2022-2023, steunpunt tot bestrijding van armoede, bestaansonzekerheid en sociale uitsluiting, 123, available at <https://armoedebestrijding.be/wp-content/uploads/2024/01/Hoofdstuk-VI-Een-effectieve-toegang-tot-rechten-Tweejaarlijks-Verslag-22-23.pdf>

⁹⁵ Human Rights Council May 2011: 3, “National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1”, (First Cycle).

⁹⁶ Human Rights Council May 2011: 4, “National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1”, (First Cycle).

⁹⁷ Jaarverslag Vast Comité van Toezicht op de Politiediensten 2022: 16, available at:

<https://comitep.be/document/jaarverslagen/Comité%20P%20Jaarverslag%202022.pdf>

⁹⁸ In 2023 the College of the Federal Ombud Institutions assumed the presidency, while in 2024 it was assumed by the CTRG, see De Federale Ombudsman, Jaarverslag 2023: 67, available at:

https://www.federaalombudsman.be/sites/default/files/2024-04/Jaarverslag_2023_federale%20ombudsman%20Web.pdf

institutional level, more specifically regarding advice, recommendations, hearings, reporting, and interaction with legislative control (Parliament).⁹⁹ The results of this questionnaire were discussed during the meeting of the platform on 7 June 2022.¹⁰⁰ Once again, the informal nature of the Belgian approach must be underlined, as these meetings are not open to the public, nor recorded in publicly available transcripts. While it is obvious enough that the creation of such a platform most likely benefits the reporting and monitoring process of human rights obligations, it is not possible to objectively verify its efficiency given its informal nature and lack of publicly available documents.¹⁰¹

ii. Federal level and the level of the federated entities

1. The Federal Institute of Human Rights (*Federaal Instituut voor de Rechten van de Mens*) (FIRM): (*supra* section 3.2.1)
2. Flemish Institute for Human Rights (*Vlaams Mensenrechteninstituut*) (VMRI): (*supra* section 3.2.1)
3. Myria (migration rights): (*supra* section 3.2.1)
4. Federal mediator (*Federale bemiddelingscommissie*): The primary federal ombud institution for human rights prior to the FIRM.¹⁰² At the level of the federated entities, similar institutions may be identified.¹⁰³ They “deal with complaints about the acts and operations of their own administrative authorities. They can also hear complaints concerning alleged human rights violations committed by an administrative authority”.¹⁰⁴ At the level of federated entities, one can find equivalent institutions to that of the federal mediator, those being the “*mediateur de la Wallonie et de la fédération Wallonie-Bruxelles*”, the “*Vlaamse Ombudsdienst*” and the “*ombudsmann der Deutschsprachigen Gemeinschaft*”.
5. The Standing Committee on the Supervision of Police Services (*Het Vast Comité van Toezicht op de politiediensten*) (Committee P): An external body with monitoring responsibility over law enforcement actions, investigating and oversight services, and of policing by civil servants who are thereto authorised.¹⁰⁵ The Committee P must

⁹⁹ Jaarverslag Vast Comité van Toezicht op de Politiediensten, 2022; 16, available at:

<https://comitep.be/document/jaarverslagen/Comité%20P%20Jaarverslag%202022.pdf>

¹⁰⁰ Jaarverslag Vast Comité van Toezicht op de Politiediensten 2022: 16, available at:

<https://comitep.be/document/jaarverslagen/Comité%20P%20Jaarverslag%202022.pdf>

¹⁰¹ The interviewee affiliated to the VMRI expressed the same sentiment, highlighting that they were also interested in reading the transcripts yet unable to do so. They nevertheless answered this question in their personal capacity as academic researcher.

¹⁰² Human Rights Council May 2011: 3, “National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1”, (First Cycle).

¹⁰³ Human Rights Council May 2011: 3, “National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1”, (First Cycle).

¹⁰⁴ Human Rights Council May 2011: 3, “National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1”, (First Cycle).

¹⁰⁵ Human Rights Council May 2011: 3, “National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1”, (First Cycle).

report to Parliament on a yearly basis and each of these reports has a dedicated section related to human rights monitoring, specifically aimed at aiding the development of Belgian human rights reports.¹⁰⁶ More specifically, the reports are submitted to and discussed by the relevant Parliamentary oversight committees.¹⁰⁷

6. The College of the Federal Ombud Institutions (*het College van Federale Ombudsmannen*): This college is the central ombud institution of Belgium with regard to federal competences consisting of two members directly elected by the first chamber of Parliament for a period of six years.¹⁰⁸ Once elected, the two ombudsmen dispose of considerable discretion and are able to hire the staff they desire. The college reports to Parliament on a yearly basis (at the very least).¹⁰⁹ Any individual can file a complaint with the College. The latter gives priority to finding a mediated solution but can also issue recommendations to the administrative authority against which the complaint was filed.¹¹⁰ The College plays an important role in the protection of whistleblowers.¹¹¹ Finally, it regularly alludes to themes related to access to information, such as the digitalisation of government data and the lack of trust by the general public in the latter.¹¹²
7. The Data Protection Authority (*Gegevensbeschermingsautoriteit*) (GBA): The GBA is an independent institution operational since 2017, replacing the Privacy Committee.¹¹³ Its main aim is to issue recommendations and provide additional information regarding the General Data Protection Regulation (GDPR).¹¹⁴ Furthermore, it issues yearly reports in which it regularly reiterates the importance of timely and qualitative administration of data, as well as ensuring that the rights of the GDPR are known to the general public.¹¹⁵ Besides these tasks, it fulfils all the required competences as prescribed by the GDPR.¹¹⁶ Issues of FoI are sporadically discussed in its reports.

¹⁰⁶ Human Rights Council May 2011: 3, “National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1”, (First Cycle).

¹⁰⁷ Jaarverslag Vast Comité van Toezicht op de Politiediensten 2022: 7, available at: <https://comitep.be/document/jaarverslagen/Comité%20P%20Jaarverslag%202022.pdf>

¹⁰⁸ https://www.dekamer.be/kvvcr/pdf_sections/pri/fiche/nl_11_11.pdf

¹⁰⁹ For an overview of the reports: <https://www.federaalombudsman.be/nl>

¹¹⁰ https://www.dekamer.be/kvvcr/pdf_sections/pri/fiche/nl_11_11.pdf

¹¹¹ De Federale Ombudsman, Jaarverslag 2023, available at: https://www.federaalombudsman.be/sites/default/files/2024-04/Jaarverslag_2023_federale%20ombudsman%20Web.pdf

¹¹² De Federale Ombudsman, Jaarverslag 2023: 3, 26, and 33 available at https://www.federaalombudsman.be/sites/default/files/2024-04/Jaarverslag_2023_federale%20ombudsman%20Web.pdf

¹¹³ Wet van 3 december 2017 tot oprichting van de Gegevensbeschermingsautoriteit.

¹¹⁴ Beheersplan Gegevensbeschermingsautoriteit 2024: 3, available at <https://www.gegevensbeschermingsautoriteit.be/publications/beheersplan-2024.pdf>

¹¹⁵ Beheersplan Gegevensbeschermingsautoriteit 2024, 4, available at <https://www.gegevensbeschermingsautoriteit.be/publications/beheersplan-2024.pdf>

¹¹⁶ Beheersplan Gegevensbeschermingsautoriteit 2024, available at <https://www.gegevensbeschermingsautoriteit.be/publications/beheersplan-2024.pdf>

8. *Centrale Toezichtsraad voor het Gevangeniswezen* (CTRG): The CTRG is the central institution for the protection of prisoners' human rights.¹¹⁷ It issues reports and recommendations to the first chamber of Parliament and the minister of justice. Its yearly reports regularly touch upon some fundamental human rights issues in prison, including access to information (in relation to voting, internet, etc.) and freedom of expression.¹¹⁸ Prison rights have always been an important shortcoming in the Belgian human rights framework, as demonstrated by numerous condemnations by the ECtHR.¹¹⁹
9. The Institute for the Equality of Women and Men (*Instituut voor de Gelijkheid van Vrouwen en Mannen*) (IGVM): The IGVM has been operational since 2002 and functions as an independent federal governmental institution that seeks to enhance equality between genders and combat gender-based discrimination.¹²⁰ Besides issuing recommendations and reports, it also cooperates directly with the relevant treaty bodies in providing additional information to Belgian national reports.¹²¹

iii. Civil society

Belgium hosts numerous active civil society organisations that contribute to human rights advocacy. A comprehensive analysis of some significant examples will be presented below.

1. Within the French-speaking community and region, the Association de Promotion des Droits Humains et des Minorités (ADHUM) was established in 2013.¹²² The ADHUM can nevertheless not be equated with the role of the VMRI and hence does not interfere with the competences of UNIA in the Walloon Region/French Community, neither does it impede the (asymmetric) inter-federalisation of the FIRM. As a non-profit organisation, the institution's primary focus is, rather, limited to the protection of French-speaking minorities in Dutch-speaking regions/communities, which it deems of significant importance given the inability of UNIA to intervene in issues related to language discrimination.¹²³ It has nevertheless also issued self-standing reports to e.g., the Human Rights Committee.¹²⁴
2. A second notable CSO is Amnesty International (Belgium), which operates through separate branches for the French-speaking and Dutch-speaking communities, in line

¹¹⁷ Art. 22, basiswet van 12 januari 2005.

¹¹⁸ <https://ctrg.belgium.be/centrale-raad/>

¹¹⁹ See among others, two illustrative cases: *Sylla and Nollomont*, 16 May 2017; *Clasens*, 28 May 2019; *Pîrjoleanu/België*, 16 March 2021.

¹²⁰ Wet houdende oprichting van het Instituut voor de gelijkheid van vrouwen en mannen, 16 December 2002.

¹²¹ For more information regarding the IGVM, see: <https://igvm-iefh.belgium.be/nl>

¹²² <https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/MinorityIssues/Session7/Item3/Participations/ADHUM.pdf>

¹²³ Alternative follow-up report November 2022: 3 of the Association for the Promotion of Francophonie in Flanders (APFF) and the Association for the Promotion of Human Rights and Minorities (ADHUM) to the Human Rights Committee (CCPR) concerning the priority recommendations made during the examination of the sixth periodic report of the Belgian State.

¹²⁴ Alternative follow-up report of the Association for the Promotion of Francophonie in Flanders (APFF) and the Association for the Promotion of Human Rights and Minorities (ADHUM) to the Human Rights Committee (CCPR) concerning the priority recommendations made during the examination of the sixth periodic report of the Belgian State, November 2022.

with the country's institutional and linguistic setup.¹²⁵ As a section of the global Amnesty movement, it focuses on a wide range of human rights issues, including but not limited to freedom of expression, refugee and migrant rights, protection against torture, and gender equality. Both branches are active in public campaigns, education initiatives, and lobbying efforts, and they contribute regularly to international human rights reporting processes.

3. The *Liga voor Mensenrechten*, rooted in the Flemish region, works independently on the promotion and defence of civil and political rights. Its core areas of activity include the right to privacy, oversight of police and security services, justice system transparency, and freedom of expression. The Liga engages in public education, legal advocacy, and strategic litigation and regularly issues expert analyses on legislation and government policies.¹²⁶
4. The Belgian Disability Forum (BDF) acts as a national umbrella organisation representing various associations of persons with disabilities in Belgium.¹²⁷ It works at both national and European levels, particularly in advocating for the implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD). The BDF is a non-profit organisation that guarantees its independence through its statutes and ensures the legality of its operations both formally and financially.
5. GRIP (*Gelijke Rechten voor Iedere Persoon met een handicap*), based in Flanders, similarly promotes full inclusion and equal rights for persons with disabilities. It undertakes rights monitoring, advocacy, and public education, particularly focusing on accessibility, participation, and self-determination.¹²⁸
6. Other organisations include Defence for Children International – Belgium (DEI-Belgique), active in child rights advocacy, Privacy International Belgium, addressing digital rights and data protection, and Transparency International Belgium,¹²⁹ focusing on anti-corruption and good governance.

3.7 Cross-government management and coordination of monitoring and reporting practices

A multitude of governmental and non-governmental actors are directly involved in Belgian monitoring and reporting practices. Given that (almost) all human rights treaties and regimes are the result of a mixed treaty process at the Belgian level (see *supra*), the cooperation between all the federated entities and the federal government has been – and still remains – crucial every step of the way. Besides governmental actors *sensu stricto*, we have discussed the independent Belgian NHRIs UNIA, the FIRM, and the VMRI. Following

¹²⁵ <https://www.amnesty-international.be>

¹²⁶ <https://mensenrechten.be/pagina/liga-organisatie>

¹²⁷ <https://bdf.belgium.be/en/about-us.html>

¹²⁸ <https://www.gripvzw.be>

¹²⁹ <https://www.transparency.org/en/countries/belgium>

this section's analysis of coordination between governmental actors *sensu stricto*, the following section will delve into more detail regarding the cooperation between NHRIs.

The Belgian governments have several tools at their disposal to ensure that the necessary cooperation takes place. One important tool is the use of cooperation agreements that fulfil a similar role to a treaty, albeit between federated entities within a single state.¹³⁰ According to 'constitutional' legislation, these cooperation agreements ought to be concluded for the purpose of coordinating the Belgian participation (in all its forms, thus including reporting) within supranational and international organisations.¹³¹ Despite the apparent obligation to conclude these agreements, their use seems to be very sparse.¹³² No relevant agreements currently exist related to issues of FoE or Fol.

Cooperation between different ministries and ministers within the same legal order (*i.e.* federal or federated order) is both a formal process mandated by the constitution/constitutional legislation¹³³ and a more 'informal' process of regular (cabinet) meetings outside of those mandated. Ministers have the right to be present for all proceedings in the legislative chambers and are thus always aware of the reports submitted to the Parliamentary commissions (such as the yearly reports by the NHRIs).¹³⁴

Besides the use of cooperation agreements, there exists a consultation committee (*Overlegcomité federale regering en Gemeenschaps- en Gewestregeringen*) to resolve and prevent conflicts between the competences of the federal government and the federated entities. With respect to reporting and monitoring of human rights, the committee appears to play a fairly limited role, theoretically being able to play the role of addressing disagreements between the governments regarding the content of human rights (draft) reports, and only in such a case where these pertain to disagreements regarding the division of competences or interests.¹³⁵ Up until now its relevance for the human rights reporting process would seem to remain solely theoretical.

In Belgium, despite the existence of some formal cooperation mechanisms, the coordination among federated entities and the federal level (*i.e.*, inter-federal coordination)

¹³⁰ Art. 92*bis*, §1, BWHI.

¹³¹ Art. 92*bis*, §4*bis-ter*, BWHI.

¹³² See *e.g.*, one cooperation agreement between the Walloon Region and the French Community regarding the Convention on the Rights of the Child: Samenwerkingsakkoord tussen het Waalse Gewest en de Franse Gemeenschap betreffende de artikelen 42 en 44 van de Internationale Conventie inzake de rechten van het kind, November 21 2023; see also the cooperation agreement relevant for *access to information*: Samenwerkingsakkoord tussen de Federale Staat, de Vlaamse Gemeenschap, de Franse Gemeenschap, de Duitstalige Gemeenschap, de Gemeenschappelijke Gemeenschapscommissie, het Waalse Gewest en de Franse Gemeenschapscommissie betreffende de verwerking van gegevens met betrekking tot het digitaal EU-COVID-certificaat, het COVID Safe Ticket, het PLF, de verwerking van persoonsgegevens van in het buitenland wonende of verblijvende werknemers en zelfstandigen die activiteiten uitvoeren in België, July 23 2021.

¹³³ See *e.g.* art. 80 BWHI.

¹³⁴ Art. 100 Belgische Grondwet.

¹³⁵ <https://www.vlaanderen.be/intern/beleid-en-regelgeving/regelgeving-en-besluitvorming/werking-en-besluitvorming-vlaamse-regering/samenwerking/samenwerking-met-federale-en-regionale-overheden#sb-belangenconflicten-9614c563-9320-4c50-9f4c-a65dab3cd7fa>

regarding human rights monitoring and reporting largely happens on an *ad hoc* basis.¹³⁶ The main coordination mechanism seems to be the COORMULTI within the Directorate-General European Affairs and Coordination (*Directie Generaal Europese Zaken en Coördinatie*) (DGE).¹³⁷ The COORMULTI brings together all relevant ministers and are thus high-level meetings that aim to pinpoint the exact policies of the Belgian federation. It is at these meetings that the government finalises its stances regarding particular human rights reports. COORMULTI reports are unfortunately not made publicly available, but they do often constitute the basis (often without much change in language¹³⁸) of the eventually submitted reports to the relevant UN treaty bodies. NHRIs are also not directly privileged to these meetings but have to inquire via informal ways what has been discussed.¹³⁹ Other governmental institutions also contribute to cooperation on an *ad hoc* basis, including the federal governmental institution of justice and of work (*FOD*¹⁴⁰ *Justitie* and *FOD Werk*).¹⁴¹ Given the lack of competences by the FIRM at the community/regional level (*supra*), it does not yet play an important role in inter-federal cooperation. When it comes specifically to the Convention for the Rights of the Child, there is however a central institution that facilitates inter-federal cooperation, namely the NCRK where the five-yearly UN reports are assembled.¹⁴²

Once again, the Belgian approach is predominantly characterised by *informal* processes, prioritising flexibility over textual rigidity. *Ad hoc* approaches remain the recurring theme throughout.

3.8 Standing/*ad hoc* arrangements for government/public sector-civil society cooperation in human rights monitoring and reporting

Human Rights Platform, as discussed, is a key initiative to enhance cooperation between non-governmental institutions charged with human rights monitoring. The Platform came into existence through the conclusion a number of cooperation agreements¹⁴³ between the NHRIs and various other institutions of civil society.¹⁴⁴ At the Platform's meetings information and good practices are exchanged, while potential discrepancies between the law in theory and in practice are highlighted.¹⁴⁵ At the local level, UNIA regularly concludes cooperation agreements with municipalities, gaining additional insight into the level of

¹³⁶ Mensenrechten en het Vlaams Internationaal Beleid, Vlaamse Overheid, 2012, 18, available at <https://publicaties.vlaanderen.be/view-file/10886>

¹³⁷ Mededeling aan de Vlaamse Regering, 2008 (Minister-President van de Vlaamse Regering), 4.

¹³⁸ Interview with a representative of the VMRI.

¹³⁹ Interview with a representative of the VMRI.

¹⁴⁰ Federale overheidsdienst (FOD)

¹⁴¹ Mensenrechten en het Vlaams Internationaal Beleid, Vlaamse Overheid, 2012, 18, available at: <https://publicaties.vlaanderen.be/view-file/10886>

¹⁴² Mensenrechten en het Vlaams Internationaal Beleid, Vlaamse Overheid, 2012, 18, available at: <https://publicaties.vlaanderen.be/view-file/10886>; Mededeling aan de Vlaamse Regering, 2008 (Minister-President van de Vlaamse Regering), 4.

¹⁴³ See e.g., the cooperation agreement between UNIA and Myria, available at: https://www.UNIA.be/files/Documenten/Publicaties_docs/Protocol_UNIA-Myria_2017.pdf

¹⁴⁴ <https://www.UNIA.be/nl/over-UNIA/samenwerkingsovereenkomsten-van-UNIA>

¹⁴⁵ <https://www.UNIA.be/nl/over-UNIA/samenwerkingsovereenkomsten-van-UNIA>

diversity in the different cities and to what extent UNIA can adjust its aid.¹⁴⁶ It collaborates closely with Committee P to gain a deeper understanding of the challenges surrounding discrimination and hate speech, an area where law enforcement and investigators possess unique insights.¹⁴⁷ Naturally, UNIA's cooperation with the FIRM is an important one, often aimed at coordinating the Belgian reporting obligations to the relevant treaty bodies. Their reports are often self-standing and thus submitted separately from (and as an addition to) the main Belgian national state report (parallel reports). The coordinating role regarding cooperation depends upon the subject matter at hand, with UNIA taking the lead on issues of racism and handicap, while the FIRM does so for (most) other human rights issues (*i.e.*, a residual competence).¹⁴⁸

Representatives of Committee P regularly take part in meetings of the FIRM and recently collaborated closely with the latter in studies by the FIRM regarding the general safety of human rights advocates and defenders.¹⁴⁹ Committee P also directly contributes to reports submitted to the relevant treaty bodies, either at its own accord or at the request of the government, the latter usually being the ministries of justice, foreign affairs, and internal affairs.¹⁵⁰ Specifically for FoE-related issues, Committee P is often confronted with press-related issues in the context of (freedom of) demonstrations.¹⁵¹

Given the criticism expressed by UNIA, civil society, and the UN (*supra*), it would be expected that the collaboration between UNIA and the VMRI would encounter challenges. In addition to the technical challenges of delineating the precise distribution of competences between the institutions (*e.g.*, for combating racism), there may have been concerns regarding a potential lack of goodwill from either party to collaborate. Despite the inherent technical problems, there appears to be considerable goodwill from both parties, as well as from the FIRM, to improve collaboration between the institutions.¹⁵² Regular meetings are reportedly taking place, and communication appears to be open.¹⁵³ Their involvement in the Human Rights Platform may also facilitate improved collaboration.

The collaboration between the governments, in a strict sense, and the NHRIs appears to be significantly less extensive than that among the NHRIs themselves. It is reportedly nearly entirely reliant upon *ad hoc* communication via mail and phone.¹⁵⁴ Further, information exchange is frequently limited to the submission of draft reports, in which the NHRI are asked to provide (minimal) feedback. This restricted function has been criticised by UNIA

¹⁴⁶ <https://www.UNIA.be/nl/over-UNIA/samenwerkingsovereenkomsten-van-UNIA>

¹⁴⁷ <https://www.UNIA.be/nl/over-UNIA/samenwerkingsovereenkomsten-van-UNIA>

¹⁴⁸ Interview with a representative of UNIA (*Dienst Beleid & Monitoring*).

¹⁴⁹ Jaarverslag Vast Comité van Toezicht op de Politiediensten 2022: 16, available at: <https://comitep.be/document/jaarverslagen/Comité%20P%20Jaarverslag%202022.pdf>

¹⁵⁰ Jaarverslag Vast Comité van Toezicht op de Politiediensten, 2022: 16, available at: <https://comitep.be/document/jaarverslagen/Comité%20P%20Jaarverslag%202022.pdf>

¹⁵¹ Jaarverslag Vast Comité van Toezicht op de Politiediensten, 2022: 16, available at: <https://comitep.be/document/jaarverslagen/Comité%20P%20Jaarverslag%202022.pdf>

¹⁵² Interview with a representative of the VMRI and the interview with a representative of UNIA (*Dienst Beleid & Monitoring*).

¹⁵³ Interview with a representative of the VMRI and the interview with a representative of UNIA (*Dienst Beleid & Monitoring*).

¹⁵⁴ Interview with a representative of the VMRI and the interview with a representative of UNIA (*Dienst Beleid & Monitoring*).

previously (*infra*). The essential COORMULTI meetings at the federal level are not consistently relayed to the NHRIs, nor are they routinely invited to participate in an institutional manner.¹⁵⁵ The Belgian government and the National Human Rights Institutions (NHRIs) report concurrently, whereby the latter submit self-standing (parallel) reports that supplement the Belgian National Report.¹⁵⁶

3.9 Arrangements for international/national FoE/FoI report follow-up/implementation

As may be apparent from the discussion above, follow-up of recommendations by relevant treaty bodies are undertaken on a rather *ad hoc* basis by both the federal governmental institutions *sensu stricto* (e.g., ministries) on the one hand and NHRIs on the other. Thus, unsurprisingly, both the drafting of reports and follow-up of recommendations are undertaken by these same institutions as part of a continuous cycle. There does not, however, seem to be a streamlined process of ensuring that recommendations/pledges are implemented in practice, nor an institutionalised process of periodic inquiries. The (quasi-)NHRIs such as UNIA, the FIRM, and the VMRI do issue self-standing parallel reports, as well as internal studies addressing (non)compliance with recommendations, thus fulfilling the most prominent follow-up role. The content of these internal studies regularly serves as the basis for the parallel reports submitted by these same NHRIs, indicating that reporting (*a priori*) and follow-up (*ex posteriori*) are closely intertwined in Belgian practice.

At the Flemish level, there exists only an informal follow-up procedure, which involves regular updates from the Legal Policy Officer Human Rights to the cabinet of the minister-president (leader) of the Flemish government.¹⁵⁷ The policy officer gives regular reminders of the recommendations and commitments that are still left unaddressed by the government.¹⁵⁸

3.10 Substantive FoE and FoI Issues

3.10.1 Overview of record of international and domestic human rights reporting and follow-up in respect of FoE/FoI

i. Universal Periodic Review (UPR)

Belgium's latest 2021 UPR national report focused predominantly on the creation of the FIRM, the need to establish an NHRI category A under the Paris Principles,¹⁵⁹ and the delays in the establishment of a national mechanism for the prevention of torture.¹⁶⁰ The report

¹⁵⁵ Interview with a representative of the VMRI

¹⁵⁶ Interview with a representative of UNIA (*Dienst Beleid & Monitoring*).

¹⁵⁷ Interview with the Legal Policy Officer Human Rights (Flemish Government).

¹⁵⁸ Interview with the Legal Policy Officer Human Rights (Flemish Government).

¹⁵⁹ UNGA Resolution A/RES/48/134

¹⁶⁰ Human Rights Council May 2021: 2, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, (Third Cycle).

nevertheless also highlights certain issues related to racism and discrimination.¹⁶¹ Committees of experts have been set up to monitor anti-discrimination laws, while trainings are organised to increase awareness among judges.¹⁶² Both at the federal level and at the level of the federated entities, action plans are being drawn up to enhance the prevention of racism and discrimination. These initiatives both have a general and more specific scope, an example of the latter being a tool created by the Flemish government to combat discrimination in the private rental market.¹⁶³

This detailed reporting regarding the combat against discrimination is a recurring theme in Belgian reports. FoE issues *sensu stricto* specifically seem to only be highlighted occasionally, although the effects of FoE on other people (e.g., racism and discrimination) dominate the human rights conversation. This might be partly due to the disproportionate number of complaints filed when it comes to racism, as opposed to those pertaining to the protection of freedom of speech (at least within UNIA).¹⁶⁴ The 2021 UPR report emphasises this point by merely dedicating a couple of paragraphs to the issue of FoE, focusing on freedom of religion rather than FoE *sensu stricto*. In this regard, the Belgian state highlighted the creation of the Council of Dialogue in 2017 which seeks to facilitate regular meetings between representative bodies of various religions and philosophical organisations in Belgium.¹⁶⁵ While the COVID-19 crisis is often mentioned throughout the report, there is no indication of any FoE-related issues this crisis might (or could) have caused.¹⁶⁶

No other matters of FoE or FoI could be identified in the 2021 UPR report.

ii. 1966 International Covenant on Civil and Political Rights (ICCPR)

While Belgium's next ICCPR report is expected to be finalised in 2025, no interim reports have been submitted thus far. Its most recent report of 2018 also highlights the importance of establishing an NHRI yet predates the establishment of the FIRM in 2019.¹⁶⁷ Extensive attention was again given to issues of racism and non-discrimination, particularly the steps taken to enforce anti-discrimination laws in practice.¹⁶⁸ Freedom of religion was also extensively discussed, with a focus on the wearing of religious clothing in public places that

¹⁶¹ Human Rights Council May 2021: 5-9, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, May 2021 (Third Cycle).

¹⁶² Human Rights Council May 2021: 6, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, (Third Cycle).

¹⁶³ Human Rights Council May 2021: 6, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, (Third Cycle).

¹⁶⁴ Interview with a representative of UNIA (*Dienst Beleid & Monitoring*).

¹⁶⁵ Human Rights Council May 2021: 10, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, (Third Cycle).

¹⁶⁶ Neither did any of the interviews conducted provide additional information in this regard.

¹⁶⁷ Human Rights Committee July 2018: 3, Sixth periodic report submitted by Belgium under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2017.

¹⁶⁸ Human Rights Committee July 2018: 6-9, Sixth periodic report submitted by Belgium under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2017.

entirely or almost entirely cover a person's face.¹⁶⁹ The report also revisits many of the same issues as the 2021 UPR report.

No other matters of FoE or FoI could be identified in the 2018 ICCPR report.

iii. 2009 Council of Europe Convention on Access to Official Documents (CETS No. 205) (“Tromsø Convention”)

Belgium joined the Tromsø Convention in 2009 but remains one of five signatory governments that have not yet ratified the convention.¹⁷⁰ The absence of ratification is mostly due to the hybrid character of the Tromsø Convention, which mandates under Belgian law that all legislative bodies (federal, municipalities, and regions) endorse the treaty. Prominent actors such as GRECO and FIRM have consistently underscored the significance of ratifying and thereafter implementing the Convention. Conversely, the representative of the Flemish government interviewed was unaware of the existence of this convention, suggesting it may have become a somewhat ‘forgotten’ ratified agreement.¹⁷¹ The significance of ratifying the Convention was highlighted in a recent judgement by the Constitutional Court of Belgium, which addressed the restricted access to relevant documents for journalists under Flemish open government legislation. In addition to the insufficient focus on the Tromsø Convention, there appears to be a general neglect of FoI, which are frequently addressed only in conjunction with other substantive human rights concerns.

iv. 2001 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (“Aarhus Convention”)

The Aarhus Convention pertains to competences that are relevant for both the federal government and the regions of Belgium. The latest 2021 report by Belgium (sixth cycle) contained information from all three Belgian regions, including the input of civil society actors through a public consultation.¹⁷² Interestingly, most public interventions came from the Brussels-Capital Region, while the Flemish Region did not register any.¹⁷³

The federal government reported that it was not always straightforward to determine whether a question must be considered as a ‘request for environmental information’ in the sense of the Aarhus Convention, neither is it always clear under which legislation a specific

¹⁶⁹ Human Rights Committee July 2018: 9-11, Sixth periodic report submitted by Belgium under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2017.

¹⁷⁰ <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=205>

¹⁷¹ Interview with the Legal Policy Officer Human Rights (Flemish Government).

¹⁷² Report of Belgium to the Aarhus convention 2020: 3-5, available at https://www.health.belgium.be/sites/default/files/uploads/fields/fpshealth_theme_file/synthesis_implementation_report_def_clean.pdf.

¹⁷³ Report of Belgium to the Aarhus convention 2020: 3-5, available at: https://www.health.belgium.be/sites/default/files/uploads/fields/fpshealth_theme_file/synthesis_implementation_report_def_clean.pdf.

request for information falls.¹⁷⁴ The Walloon government on the other hand stressed the relation between FoI and other closely related human rights in the areas of privacy and intellectual property protection, as well as the difficulty of distinguishing among them.¹⁷⁵

The Federal Appeals Commission (FAC) for access to environmental information seems to work efficiently while erring on the side of more access rather than less. Between 2017 and 2020, no requests for information were denied by the FAC.¹⁷⁶ There nevertheless remain a few important hurdles such as the hesitancy by some public authorities to provide adequate information necessary for the well-functioning of the appeals procedures, as well as the refusal by others to (adequately) execute the eventual decision by the Commission.¹⁷⁷ Equivalent appeals commissions operate at the level of the federated entities.¹⁷⁸

Finally, the federal government also highlighted the issue of finding sufficient funding to effectively implement the Aarhus Convention, which it notes is a difficult process that must be undertaken on a yearly basis, complicated further by major political divides (regarding environmental protection).¹⁷⁹

v. Other non-EU international instruments with reporting obligations relevant to FoE/FoI

(1) International Convention on the Elimination of All Forms of Racial Discrimination (1965), Art. 5

Belgium's latest CERD report addressed issues of FoI with regard to access to decent housing by persons of foreign origin.¹⁸⁰ In particular, at the Flemish level, an action plan was created to combat discrimination in the private rental market, with a focus on raising awareness regarding individuals' rights.¹⁸¹ Further details regarding (problems related to)

¹⁷⁴ Report of Belgium to the Aarhus convention 2020: 14, available at:

https://www.health.belgium.be/sites/default/files/uploads/fields/fpshealth_theme_file/synthesis_implementation_report_def_clean.pdf.

¹⁷⁵ Report of Belgium to the Aarhus convention 2020: 14, available at:

https://www.health.belgium.be/sites/default/files/uploads/fields/fpshealth_theme_file/synthesis_implementation_report_def_clean.pdf.

¹⁷⁶ Report of Belgium to the Aarhus convention 2020: 14, available at:

https://www.health.belgium.be/sites/default/files/uploads/fields/fpshealth_theme_file/synthesis_implementation_report_def_clean.pdf.

¹⁷⁷ Report of Belgium to the Aarhus convention 2020: 40, available at:

https://www.health.belgium.be/sites/default/files/uploads/fields/fpshealth_theme_file/synthesis_implementation_report_def_clean.pdf.

¹⁷⁸ Report of Belgium to the Aarhus convention 2020: 15, available at:

https://www.health.belgium.be/sites/default/files/uploads/fields/fpshealth_theme_file/synthesis_implementation_report_def_clean.pdf.

¹⁷⁹ Report of Belgium to the Aarhus convention 2020: 23, available at:

https://www.health.belgium.be/sites/default/files/uploads/fields/fpshealth_theme_file/synthesis_implementation_report_def_clean.pdf.

¹⁸⁰ Committee on the Elimination of Racial Discrimination May 2019: 20, Combined twentieth to twenty-second periodic reports submitted by Belgium under article 9 of the Convention, due in 2018.

¹⁸¹ Committee on the Elimination of Racial Discrimination May 2019: 20, Combined twentieth to twenty-second periodic reports submitted by Belgium under article 9 of the Convention, due in 2018.

the right of access to information were unfortunately not provided. FoE on the other hand was not discussed at all in the context of racism and non-discrimination.

No other substantial issues related to FoI or FoE could be identified in the latest CERD report.

(2) Convention on the Rights of Persons with Disabilities (2006) and its Optional Protocol, in particular arts. 4, 9, 21, 23

Unsurprisingly, Belgium's latest national report – submitted in 2020 – has an important focus on issues of non-discrimination of persons with a disability.¹⁸² When it comes to issues generally related to FoI, the report focused on awareness-raising, ranging from creating accessible websites to actively conducting research into the representation and perception of disability in media outlets. Booklets and brochures were also developed that could benefit those seeking clear(er) information.¹⁸³ Other points of attention include access to information pertaining to the rights of persons with disabilities, as well as access to justice. The actual effectiveness of these initiatives is nevertheless difficult to evaluate, especially given that they were implemented relatively recently.

Issues more specifically linked to FoI and FoE were also briefly addressed in the report.¹⁸⁴ Right out of the gate, it is interesting to note that the Belgian state refers to its implementation of the European directive on the accessibility of the websites and mobile applications of public sector bodies, for which it has created an inter-federal working group called the “Belgium Web Accessibility Office”.¹⁸⁵ At the same time, it would be prudent to not give too much weight to these implementation efforts, given that the bar was set quite low when it comes to FoI, arguing that nearly half of the Flemish government websites “were basically accessible”.¹⁸⁶ This clearly indicates that a lot of work still has to be done on this front. There are nevertheless some noteworthy efforts to further include various types of disabled persons, such as grants to develop a Flemish sign language course and the additional allocation of government funds to relevant institutions such as the Flemish Agency for Persons with Disabilities.¹⁸⁷ Additional efforts were undertaken to enhance the quality of audio description by the Flemish media regulator.¹⁸⁸

¹⁸² Committee on the Rights of Persons with Disabilities April 2020: 5, Combined second and third periodic reports submitted by Belgium under article 35 of the Convention pursuant to the optional reporting procedure, due in 2019.

¹⁸³ Committee on the Rights of Persons with Disabilities April 2020: 8-9, Combined second and third periodic reports submitted by Belgium under article 35 of the Convention pursuant to the optional reporting procedure, due in 2019.

¹⁸⁴ Committee on the Rights of Persons with Disabilities April 2020: 21-22, Combined second and third periodic reports submitted by Belgium under article 35 of the Convention pursuant to the optional reporting procedure, due in 2019.

¹⁸⁵ Committee on the Rights of Persons with Disabilities April 2020: 21, Combined second and third periodic reports submitted by Belgium under article 35 of the Convention pursuant to the optional reporting procedure, due in 2019.

¹⁸⁶ Committee on the Rights of Persons with Disabilities April 2020: 21, Combined second and third periodic reports submitted by Belgium under article 35 of the Convention pursuant to the optional reporting procedure, due in 2019.

¹⁸⁷ Committee on the Rights of Persons with Disabilities April 2020: 21, Combined second and third periodic reports submitted by Belgium under article 35 of the Convention pursuant to the optional reporting procedure, due in 2019.

¹⁸⁸ Committee on the Rights of Persons with Disabilities April 2020: 21, Combined second and third periodic reports submitted by Belgium under article 35 of the Convention pursuant to the optional reporting procedure, due in 2019.

(3) Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210) (Istanbul Convention), Arts. 14, 17, 19, 21

While the Belgian state report and the GREVIO report to the Istanbul Convention did not address issues of FoE directly, they did focus on non-discrimination efforts. The Belgian state report also addressed issues of FoI directly in light of art. 19 of the Istanbul Convention.¹⁸⁹ This included an overview of measures such as the creation of brochures pertaining to domestic violence, awareness tools in 22 different languages regarding spousal abuse, as well as updating their website¹⁹⁰ to ensure that migrants are properly informed about their rights and how to exercise them.¹⁹¹ These measures were developed in coordination with psychologists specialised in PTSD, law enforcement officers specialised in behavioural sciences, and other professionals with experience in victim care.¹⁹² At the level of the federated entities, similar initiatives were undertaken. At the Flemish level, a dedicated phone number, as well as multiple specialised websites have been created and updated.¹⁹³ The measures proposed and undertaken make it clear that access to information by (migrant) victims of domestic violence remains a focal point. There are still too many victims who are unaware of or do not know how to attain their rights.

3.10.2 EU-derived monitoring/reporting obligations (inc. implementation reports) and associated follow-up (where relevant) re. FoE/FoI

(1) Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (recast) (Open Data Directive)

The Open Data Directive was implemented both at the level of the federal government and of the federated entities.¹⁹⁴ Federal legislation of 2023 modified an earlier federal law to comply with Belgian open data obligations under the Directive.¹⁹⁵ The modifications included providing access to dynamic data in real-time and through adequate technical means, increasing the amount of valuable government data for reuse, introducing and regulating new forms of exclusivity arrangements, and giving way to exceptions to the principle that only a marginal cost may be charged.¹⁹⁶ The Law of 2023 also touched upon

¹⁸⁹ Rapport soumis par la Belgique donnant effet aux dispositions de la Convention du Conseil de l'Europe sur la prévention et la lutte contre la violence à l'égard des femmes et la violence domestique conformément à l'article 1, paragraphe 68 (Rapport de référence) 2019: 28.

¹⁹⁰ <http://www.violencessexuelles.be/>

¹⁹¹ Rapport soumis par la Belgique donnant effet aux dispositions de la Convention du Conseil de l'Europe sur la prévention et la lutte contre la violence à l'égard des femmes et la violence domestique conformément à l'article 1, paragraphe 68 (Rapport de référence) 2019: 28.

¹⁹² Rapport soumis par la Belgique donnant effet aux dispositions de la Convention du Conseil de l'Europe sur la prévention et la lutte contre la violence à l'égard des femmes et la violence domestique conformément à l'article 1, paragraphe 68 (Rapport de référence) 2019: 28.

¹⁹³ <http://www.1712.be/> ; <http://www.ikzwijgnietmeer.be/> ; <http://www.zanzu.be/> ; <http://www.slachtofferzorg.be/>

¹⁹⁴ <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32019L1024>

¹⁹⁵ Wet tot wijziging van de wet van 4 mei 2016 inzake het hergebruik van overheidsinformatie (2023), 25 December 2023.

¹⁹⁶ Wet inzake open data en het hergebruik van overheidsinformatie (2016), 4 May 2016; <https://data.gov.be/nl/documentatie/wettelijk-kader-en-adviezen>

the relationship between the Directive and certain other legal instruments. At the level of all the federated entities, the Open Data Directive received extensive implementation as well, giving birth to multiple pieces of legislation and executive orders.¹⁹⁷ In Flanders, modifications were made to a decree of 2018 pertaining to Flemish administrative authorities (*Bestuursdecreet*).¹⁹⁸ The decree states that individuals can address the central information point of the Flemish government to inquire further information about their rights, that the staff has an obligation to provide correct and complete information, and that all this must be done free of charge within a reasonable time limit.¹⁹⁹ Every civilian have the right to access information concerning themselves, including data related to affiliated legal entities, current records, and any rights that may arise from such information.²⁰⁰ The communication of information must always be done in a politically and commercially neutral manner.²⁰¹

(2) Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive)

Belgium implemented the Directive 2010/13/EU in May of 2017 by adopting legislation at the federal level addressing audio-visual media services in the bilingual area of Brussels-Capital.²⁰² This law specifically targets televised airings.²⁰³ Before its entry into force, the Belgian GBA issued an advisory opinion regarding compliance with the Audiovisual Media Services Directive, providing unique insights into Belgian implementation efforts.²⁰⁴ A deep dive into this advisory opinion would nevertheless lead us too far, but one particular issue deserves an honourable mention, the protection of minors in the online environment. This dilemma presents an interesting interplay between on the one hand FoI (minors can access the information they want) and FoE (content creators/service providers can provide the (legal) content they desire), and protection of vulnerable persons – in this case, minors – on the other. Art. 17/1 of the federal legislation implementing the Directive starts from the basic premise that service providers may not share audio-visual media services that can negatively impair the physical, moral, or intellectual development of minors. Interestingly, it does provide for some leeway as it introduces exceptions such as airings during time periods that minors are less likely to be tuned in, or those that are locked behind a security system that generally excludes minors from accessing the content.²⁰⁵

¹⁹⁷ <https://data.gov.be/nl/documentatie/wettelijk-kader-en-adviezen>

¹⁹⁸ Bestuursdecreet (2018), 7 December 2018.

¹⁹⁹ Bestuursdecreet (2018), art. 6, 7 December 2018.

²⁰⁰ Bestuursdecreet (2018), art. 7, 7 December 2018.

²⁰¹ Bestuursdecreet (2018), art. 13 and 14, 7 December 2018.

²⁰² Wet betreffende de audiovisuele mediadiensten in het tweetalig gebied Brussel-Hoofdstad (2017), 5 May 2017.

²⁰³ https://www.bipt.be/file/cc73d96153bbd5448a56f19d925d05b1379c7f21/8127e0c8a2e86f9bee966cf95962de0d5c00e242/raadpleging_2015-12-02_herziening_mediawet_brussel.pdf, 2.

²⁰⁴ <https://www.gegevensbeschermingsautoriteit.be/publications/advies-nr.-02-2021.pdf>

²⁰⁵ <https://www.gegevensbeschermingsautoriteit.be/publications/advies-nr.-02-2021.pdf>, 2021: 4.

(3) Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE)

Directive 2007/2/EC has been implemented extensively at the regional level of Belgium.²⁰⁶ Furthermore, a cooperation agreement was concluded between the three Regions of Belgium and the federal government, enhancing coordination between the relevant entities regarding special information and infrastructure.²⁰⁷ At the Flemish level specifically, a decree from 2009 created a new central institution “GDI-Vlaanderen”,²⁰⁸ in charge of optimising the collection, exchange, (re)use, and creation of sources related to spatial information, as well as enhance coordination between other institutions involved in the sector.²⁰⁹ The GDI can be considered as a network of nodes. “Geopunt”, operated by “Digitaal Vlaanderen”, is the main hub where all data, services, and metadata of GDI-Vlaanderen can be found. This mesh network contains nodes up to the municipal level. The nodes can be more or less developed for the exchange of data and services.²¹⁰ A more detailed look at these pieces of legislation and other implementation efforts would quickly become too technical for the FoE/Fol purpose of our analysis. At this point, it suffices to conclude that the INSPIRE Directive has received intense implementation efforts that have created a multitude of institutional infrastructure and resources, specifically created to enhance access to information (Fol).

(4) Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC

Directive 2003/4/EC led to Belgian legislative implementation efforts in all three regions and at the federal level.²¹¹ At the Flemish regional level, a decree of 2004 gave birth to a regime of administrative transparency,²¹² which to this day plays an important role in judicial rulings and actual administrative practice. It not only focuses on passive transparency (as recognised in art. 32 of the Belgian Constitution)²¹³ but also on active administrative transparency whereby the initiative ought to be taken by the administration itself.²¹⁴ At the federal level, legislation was specifically adopted to implement the requirements for public

²⁰⁶ <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32007L0002>

²⁰⁷ Wet houdende instemming met het samenwerkingsakkoord van 2 april 2010 tussen de Federale Staat, het Vlaamse Gewest, het Waalse Gewest en het Brussels Hoofdstedelijke Gewest voor de coördinatie van een infrastructuur voor ruimtelijke informatie. Loi portant assentiment de l'accord de coopération du 2 avril 2010 entre l'Etat fédéral, la Région flamande, la Région wallonne et la Région de Bruxelles-Capitale pour la coordination d'une infrastructure d'information géographique (federal law approving the conclusion of the cooperation agreement); <https://www.vlaanderen.be/geopunt/vlaams-geoportaal/gdi-vlaanderen>

²⁰⁸ For its website, see <https://www.vlaanderen.be/geopunt/vlaams-geoportaal/gdi-vlaanderen>

²⁰⁹ Decreet betreffende de Geografische Data-Infrastructuur Vlaanderen (2009), art. 4, 20 February 2009.

²¹⁰ <https://www.vlaanderen.be/geopunt/vlaams-geoportaal/gdi-vlaanderen>

²¹¹ <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32003L0004>

²¹² Decreet betreffende de openbaarheid van bestuur (2004), 26 March 2004.

²¹³ Decreet betreffende de openbaarheid van bestuur (2004), art. 7, 26 March 2004.

²¹⁴ Decreet betreffende de openbaarheid van bestuur (2004), art. 28, 26 March 2004.

access to environmental information.²¹⁵ It imposes certain general transparency obligations upon administrative entities that are qualified as an ‘environmental entity’ (*milieu-instantie*).²¹⁶ While most obligations pertain to merely providing correct information, the law also provides for obligations of active transparency which includes communication of applicable legislation, treaties, and regulations to their particular administrative mandate.²¹⁷ Interestingly, these environmental entities also have reporting obligations towards the minister of “living environment” (*Minister van leefmilieu*), on a recurring four-year basis.²¹⁸ They must also report to the director general of the living environment (*Directoraat Generaal Leefmilieu van de Federale Overheidsdienst Volksgezondheid*).²¹⁹ Based on these internally submitted reports, the minister has the obligation to report directly to Parliament.²²⁰

(5) *Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)*

Directive 2000/31/EC received legislative implementation at the federal level in the Law of 2003.²²¹ The law created Fol obligations specifically for institutions that provide services of (digital) information to consumers (*Diensten van de informatiemaatschappij*), such as clarifying the language in which contracts may be concluded, in which ways contracts may be concluded, and what the confidential status of the said contract will be.²²² Notably, the law also clarifies the Fol obligations for the purpose of advertising in the sector.²²³ It must be clear to the consumer that they are being advertised to and what is being advertised must be correct and representative of the actual service.²²⁴ If the service provider offers promotions on services, they must clearly indicate to the consumer how they can be claimed and which advantages may be gained.²²⁵

²¹⁵ Wet betreffende de toegang van het publiek tot milieu-informatie (2006), art. 2, 5 August 2006.

²¹⁶ Wet betreffende de toegang van het publiek tot milieu-informatie (2006), art. 7-9, 5 August 2006.

²¹⁷ Wet betreffende de toegang van het publiek tot milieu-informatie (2006), art. 11-15, 5 August 2006.

²¹⁸ Wet betreffende de toegang van het publiek tot milieu-informatie (2006), art. 16, 5 August 2006.

²¹⁹ Wet betreffende de toegang van het publiek tot milieu-informatie (2006), art. 16, 5 August 2006.

²²⁰ Wet betreffende de toegang van het publiek tot milieu-informatie (2006), art. 17, 5 August 2006.

²²¹ Wet betreffende bepaalde juridische aspecten van de diensten van de informatiemaatschappij (2003), art. 1, 11 March 2003.

²²² Wet betreffende bepaalde juridische aspecten van de diensten van de informatiemaatschappij (2003), art. 7-8, 11 March 2003.

²²³ Wet betreffende bepaalde juridische aspecten van de diensten van de informatiemaatschappij (2003), art. 13-15, 11 March 2003.

²²⁴ Wet betreffende bepaalde juridische aspecten van de diensten van de informatiemaatschappij (2003), art. 13, 11 March 2003.

²²⁵ Wet betreffende bepaalde juridische aspecten van de diensten van de informatiemaatschappij (2003), art. 13, 11 March 2003.

3.11 Assessment and conclusion

3.11.1 Analysis of respective strengths, weaknesses, and implications regarding FoE/FoI monitoring/reporting and protection/promotion

The federal structure of the Belgian state is complicated, to say the least. It consists of two different types of federated entities, seven federated entities in total (counting the federal state), and a division of competences that is at best unclear and at its worst illogical and confusing. This hugely impacts the division of competences regarding human rights monitoring and reporting, both for governmental actors and for NHRIs/CSOs. Some institutions are competent for all human rights yet only when they pertain to federal competences (FIRM), others have a specific human rights mandate yet without being restricted to federal/federated entities' competences (UNIA). Add to the mix a recently created quasi-NHRI that undermines the general 'jurisdiction' of UNIA, with a general human rights mandate yet only when it pertains to Flemish competences (VMRI), and it becomes clear that finding one's way to the right institution could prove troublesome. The improbability of creating an NHRI with status A is another direct consequence of the current state of affairs, making it harder for those Belgian institutions to cooperate with(in) the relevant international human rights mechanisms.

The informal nature of the Belgian monitoring and reporting system could either be viewed as a negative or a positive. On the one hand, it allows for a great deal of flexibility to the actors, both in terms of cooperation and in the ways (internal) reports are formulated and submitted. From what could be gathered throughout this study, the *ad hoc* nature does not impair the ability of Belgian actors to fulfil their reporting obligations. While reports mostly get compiled behind the screens, there is a sense of trust that the relevant (non-)governmental institutions know how to coordinate and cooperate. In other words, there does not seem to be an active outcry for more formalism.

On the other hand, the informal nature makes it exceedingly hard to obtain a clear picture of how reporting and monitoring decisions are made. Unpublished reports from high-level meetings such as the COORMULTI and the Human Rights Platform contribute to a rather untransparent system whereby the outside observer is usually only privy to the end result, either in the form of a parallel report or as a Belgian state report. This makes it hard to pinpoint who is doing what and hence decreases accountability, which in turn might affect the quality of the reports and follow-up mechanisms.

At the substantive level, it is notable that FoE does not seem to be a prominent subject matter in Belgian state and parallel reports. In the limited cases that it is being addressed, it is done so in relation to the freedom of religion or press freedom. No 'considerable' issues were identified throughout the analysis of the reports, which naturally does not imply that they do not exist in reality. In my view, the 'suppression' of core FoE issues in Belgian reports might stem from the increasing focus on secondary (*i.e.*, as a corollary) issues of FoE such as non-discrimination and the fight against racism. This might be due to UNIA, which was

Belgium's only NHRI up until recently, and its mandate that is specifically concerned with matters of discrimination and racism. Therefore, one might expect to see increasing focus on primary FoE issues in e.g., reports by the FIRM or the VMRI. At this point, these amount to no more than reasoned hypotheses which can only be verified later in time when these institutions have been operating for a considerable number of years.

Issues of FoI are more prominently discussed and reported, albeit mostly in correlation to other human rights. In my view, this is quite logical given that access to information can rarely be viewed in a vacuum, as the information one wants to access is always highly related to it and cannot be easily disconnected. What could be considered more worrisome, is the indifference with which Belgian actors seem to interact with the Tromsø Convention (or a lack of interaction to be more precise). Despite being an early signatory, there has been no ratification in Belgium. Whether this is an isolated matter or a symptom of a wider issue towards substantive FoI matters is difficult to say. On a positive note, the Belgian state has actively implemented most of the important EU directives at all federated levels, often with substantive and detailed legislation. At the very least, this indicates that the state takes its FoI obligations seriously.

All this being said, both FoE and FoI seem to be far from the most highlighted and reported upon human rights in the Belgian system. While this might indicate that Belgium is a good student in these HR departments, it might also be that other rights have overshadowed FoE and FoI, thus obscuring ongoing issues in reality. Unfortunately, in this regard, the jury is still out.

3.12 Summary of key points in chapter

- Belgium is a decentralised federal state with two types of federated entities, communities (3) and regions (3), whereby the competences of the federal level and those of the federated entities are of an exclusive nature.
- The Belgian Constitution has adopted a unique approach to the treaty-making power of federated entities (*in foro interno, in foro externo*), implying that treaties often need the consent of all Parliamentary assemblies at all levels (mixed treaties).
- Human rights are protected by both the constitution and international law, given the primacy of the latter over all other national law and the Constitutional Court's ability to 'combine' the content of human rights treaties and constitutionally enshrined human rights.
- When it comes to human rights monitoring and reporting, Belgium relies predominantly on informal ways of cooperation, coordination, and division of competences among governmental actors. *Ad hoc* ways of working are prevalent throughout the Belgian approach.
- The division of competences pertaining to human rights follows the principle of *accessorium sequitur principale*, whereby each minister is competent for human rights monitoring/reporting within their particular area of competence. This is true for

both the federal (no explicit legislation) and the federated level (e.g., Executive Order by the Flemish Government).

- The beating heart of the HR reporting and monitoring seemingly lies at the level of the NHRIs. Their extensive reporting obligations, regular submissions of parallel reports, and overall involvement in Belgian human rights policy make them the key actors to be observed. Belgium nevertheless lacks an NHRI with status A, while the inception of the VMRI has made it even less likely that this will change in the near future.
- When it comes to coordination among governmental actors, the COORMULTI plays a crucial role at the federal level. Despite its prominence, there are no published reports from these high-level meetings, and nor are NHRIs or other CSOs regularly invited to participate. COORMULTI meetings are usually organised after the collection of initial reports by the federated entities (e.g., the one coordinated by the Legal Policy Officer of Human Rights to the Flemish government)
- Cooperation between governmental actors at different federated levels also takes place on an *ad hoc* basis. While certain formal cooperation mechanisms exist, they do not seem to play a role in HR monitoring and reporting. The same can be said about the coordination between NHRIs/CSOs, where informal coordination (emails, *ad hoc* meetings, phone calls, etc.) reigns supreme. NHRIs are predominantly focused on the preparation and submission of their own parallel reports, while only involved to a lesser extent with the preparation of the main Belgian state reports.
- While Belgium is generally a state that ratifies most human rights treaties, it did not ratify the Tromsø Convention. Even more so, this Convention seems to be a ‘forgotten one’, often not even on the radar anymore of policymakers involved in the area of FoI.
- Recommendations by relevant treaty bodies are generally accepted by the Belgian state, as well as responded to in follow-up reports. Although reports are frequently postponed and implementation steps may be delayed by several years, there appears to be a willingness to adhere to the recommendations. One does have to be wary of the growing ‘fatigue’ towards reporting obligations and procedures.

4. Croatia

Ajla Škrbić

4.1 Governance: allocation of monitoring and reporting responsibilities

4.1.1 Overview of constitutional arrangements

The Republic of Croatia (Croatia) is a unitary state. In political terms, is a parliamentary democracy, a republic in structure, and economically, oriented towards a market economy. In its article 3, the Croatian Constitution (1990, as amended) outlines the paramount values of the constitutional order as freedom, equal rights, national and gender equality, peace-making, social justice, respect for human rights, inviolability of ownership, environmental conservation, the rule of law, and a democratic multiparty system. The Constitutional Court has applied this provision on multiple occasions (Lang, Đurđević and Mataija 2019: 1150).

Croatia is a unitary state (*Constitution* 1990, art. 134). Moreover, specific international legal authorities, notably the European Convention on Human Rights (ECHR), are esteemed with greater significance. The president of the Constitutional Court has even noted that the case law of the Croatian Constitutional Court demonstrates that international treaties hold a quasi-constitutional status, serving as benchmarks for reviewing national legislation (Omejec 2009:2). In practice, however, it is relatively uncommon for Croatian courts to refer to international law in their rulings (Lang, Đurđević and Mataija 2019: 1175).

As for the governance structure, Croatia comprises three levels: central, regional/county and local. The basic units of regional self-government are the counties (*županije*), with the state divided into 20 counties and the city of Zagreb. Each county, with the exception of the city of Zagreb, has towns and municipalities. The city of Zagreb, on the other hand, holds a unique status, combining the functions of both a city and a county and playing a crucial role in state administrative tasks within its territory. Local governments possess limited authority, as more than half serve populations of fewer than 3,000 and encounter financial constraints (OECD 2024:16). Additionally, they face less scrutiny. Consequently, in light of concerns regarding the potential misuse of public funds by local authorities to secure media conformance, the Croatian Journalists' Association and the non-governmental organisation Gong conducted a research, utilising FoI requests, to reveal the financial allocations from local and regional government budgets to the media.²²⁶ The Croatian Journalists' Association, in collaboration with the Trade Union of Croatian Journalists and with the backing of the Active Citizen Fund, commissioned specialists to develop a Model for Financing Local Media.²²⁷ This model, aimed at ensuring transparent funding of media content based on explicit criteria, has already been implemented by Zagreb, Split, and Makarska, while other counties have expressed interest as well.²²⁸

²²⁶ Interview with a person working at the Croatian Journalists' Association, August 2024, on file with the author.

²²⁷ Available at <https://hnd.hr/modeli-financiranja-lokalnih-medija>, accessed 12 September 2024.

²²⁸ Interview with a person working at the Croatian Journalists' Association, August 2024, on file with the author.

The political system operates on the principle of separation of powers, dividing authority among the legislative (the Croatian Parliament), executive (the government and the president) and judicial branches. The system is further constrained by the constitutionally guaranteed right to local and regional self-government (art. 4, Constitution).

The Constitution of Croatia has undergone five amendments to date, the most recent in 2014, which controversially defined marriage as a union between a woman and a man.²²⁹ However, the fourth amendment from 2010 is particularly important to this paper.²³⁰ It introduced, among others, two significant changes.

Firstly, it introduced a new chapter related to the European Union (EU). It also established the supremacy and direct applicability of EU law under its article 145. Consequently, Croatia joined the EU on 1 July 2013. Since then, the Supreme Court has repeatedly stated that EU law constitutes an integral part of the Croatian legal system and takes precedence over domestic legislation (Supreme Court of the Republic of Croatia 2015).²³¹

The second major change introduced by the 2010 amendment was the addition of a (new) paragraph 4 to article 38, guaranteeing FoI. This provision mandates that any restrictions of FoI must be proportionate to the nature of the restriction needed in each specific case, essential in a free and democratic society and regulated by law. This was the only proposal accepted from a range of amendments suggested by civil society organisations (Gong 2024).

Croatia is the national state of the Croatian nation and members of autochthonous national minorities,²³² who are guaranteed equality with citizens of Croatian nationality and “the exercise of their national rights in accordance with the democratic norms of the United Nations and the countries of the free world”.²³³ Therefore, according to article 14, paragraph 1 of the Constitution, everyone is entitled to rights and freedoms, irrespective of personal characteristics such as race, colour, gender, language, religion, political or other beliefs, national or social origin, property, birth, education or social status. Article 26, additionally, guarantees that everyone is equal before the law.

The Croatian Constitution more generally provides a comprehensive framework for human rights and fundamental freedoms in Chapter III.²³⁴ These rights may only be restricted by law

²²⁹ Constitutional Court of the Republic of Croatia, *Decision on the occasion of the completion of the procedure for monitoring the constitutionality and legality of the state referendum held on 1 December 2013*, 14 January 2014, Official Gazette No. 5/2014, available at: www.usud.hr/sites/default/files/dokumenti/5_Promjena_Ustava_RH_od_1._12._2013_referendum_-_odluka_USRH_NN_br._5_2014.pdf (accessed 13 September 2024).

²³⁰ *Decision on Promulgation of Changes to the Constitution of the Republic of Croatia*, Official Gazette No 76/10, available at www.usud.hr/sites/default/files/dokumenti/4_Promjena_Ustava_RH_NN_br._76_2010.pdf, (accessed 12 September 2024).

²³¹ See, e.g., Supreme Court of the Republic of Croatia, Judgment and Decision Revt 249/14-2, 9 April 2015, para. 22.

²³² Enumerated in the Constitution, chapter 1. Historical Foundations (which serves as the preamble).

²³³ *ibid.*

²³⁴ See also the *Constitutional Act on the Rights of National Minorities* (2002), Official Gazette Nos 155/02, 47/10, 80/10, 93/11. Available at: www.zakon.hr/z/295/Ustavni-zakon-o-pravima-nacionalnih-manjina (accessed 12 September 2024).

to protect the rights and freedoms of others, maintain legal order and uphold public morals and health (Constitution, art. 16, para. 1). Additionally, any limitations on freedoms or rights must be proportionate to the specific need in each case (*ibid.*, para. 2).

EU accession has further advanced the protection of fundamental rights in the state. Specifically, it resulted in significantly improved and detailed anti-discrimination regulations, along with the establishment of institutions dedicated to safeguarding human rights, such as the ombudspersons for gender equality and children's rights (Lang, Đurđević and Mataija 2019: 1172). Nevertheless, the ECHR has served as the primary tool in adjudicating constitutional rights, as evidenced, in particular, in the case law of the Croatian Constitutional Court. (*ibid.*: 1172)

Article 38 of the Constitution in particular guarantees freedom of thought and expression. This freedom encompasses the freedom of the press and other media, freedom of speech and public expression and the right to establish media institutions. Censorship is prohibited and journalists have the right to report freely and access information.

As previously noted, this provision of the constitution also guarantees FoI (Constitution, art. 38, para. 4). Any restrictions on this right must be proportionate to the specific need and necessary in a free and democratic society, as defined by law. Moreover, individuals whose constitutionally and legally protected rights have been infringed by public communication are guaranteed the right to remedy (*ibid.*, para. 5).

Nevertheless, various laws further regulate both FoE and FoI. For instance, the right to dignity and reputation can limit FoE (*ibid.*, art. 35). The protection is detailed in the Criminal Code, which designates honour and reputation as protected interests under Chapter XV. Other key regulations include the Act on the Right of Access to Information, the Media Act, the Act on the Implementation of the General Data Protection Regulation, the Act on Healthcare Data and Information, the Croatian Radio-Television Act and the Electronic Media Act,²³⁵ among others. In addition, several regulations are applicable here as well (see e.g., the Protocol on Actions of the Police upon Learning about Criminal Offences against Journalists and Media Workers and the Protocol on Actions of the Police and Media Workers at Public Gatherings of Public Interest).²³⁶

²³⁵ See, respectively: *Act on the Right of Access to Information* (Official Gazette Nos 25/13, 85/15, 69/22); *Media Act* (Official Gazette Nos 59/04, 84/11, 81/13, 114/22); *Act on the Implementation of the General Data Protection Regulation* (Official Gazette No. 42/18); *Act on Healthcare Data and Information* (Official Gazette No 14/19); *Croatian Radio-Television Act* (Official Gazette Nos 137/10, 76/12, 78/16, 46/17, 73/17, 94/18, 114/22, 20/23, 18/24); *Electronic Media Act* (Official Gazette Nos 111/21, 114/22).

²³⁶ See:

Protocol on Actions of the Police upon Learning about Criminal Offences against Journalists and Media Workers, Ministry of the Interior, available at: https://mup.gov.hr/UserDocsImages/2023/9/Potpisivanje%20sporazuma%20HND%20MUP/PROTOKOL_1_prijava_KD_n_a_%C5%A1tetu_novinara.pdf (accessed 12 September 2024); *Protocol on Actions of the Police and Media Workers at Public Gatherings of Public Interest*, Ministry of the Interior, available at: https://mup.gov.hr/UserDocsImages/2023/9/Potpisivanje%20sporazuma%20HND%20MUP/PROTOKOL_2_Javna_okupljanja_od_interesa_za_javnost.pdf (accessed 12 September 2024).

4.2 Division of responsibilities across government units for human rights issues, including FoE and FoI

The government has established several specialised offices to support its work on human rights. These include the Office for Human Rights and Rights of National Minorities (*Ured za ljudska prava i prava nacionalnih manjina*), the Office for Gender Equality (*Ured za ravnopravnost spolova*), the Office for Cooperation with NGOs (*Ured za udruge*) and the Office for Legislation (*Ured za zakonodavstvo*).²³⁷ These bodies are responsible for the development, implementation and reporting of national policies and regulations in their respective areas, as well as ensuring that these instruments comply with international standards.

Furthermore, there is a specialised Office of the Representative of the Republic of Croatia before the European Court of Human Rights (ECtHR) (*Ured zastupnika Republike Hrvatske pred Europskim sudom za ljudska prava*), tasked with all activities related to the execution of the ECtHR judgments and decisions.

Moreover, various ministries within the government have human rights within their mandates. Article 3 of the Act on the Organisation and Scope of State Administration Bodies (*Zakon o ustrojstvu i djelokrugu tijela državne uprave*) specifies 18 ministries and in its article 4 nine state administrative organisations and outlines their responsibilities. The most relevant for this paper are the Ministry of Justice, Public Administration and Digital Transformation, with its specific Directorate for Human Rights, National Minorities and Ethics (*Uprava za ljudska prava, nacionalne manjine i etiku*), as well as the Service for Victim and Witness Support (*Služba za podršku žrtvama i svjedocima*); the Ministry of Foreign and European Affairs, with the Directorate for Multilateral and Global Issues (*Uprava za multilateralu i globalna pitanja*) and the Sector for the United Nations (UN) and International Organisations (*Sektor za UN i međunarodne organizacije*) that incorporates the Department for Human Rights (*Služba za ljudska prava*); the Ministry of Culture and Media, with the Expert Working Group for Designing Policy to Suppress Strategic Lawsuit Against Public Participation (SLAPP) Lawsuits (*Stručna radna skupina za suzbijanje SLAPP-tužbi*); and the Ministry of Science, Education and Youth, with the Directorate for National Minorities (*Uprava za nacionalne manjine*). (Office of the Ombudswoman of Croatia 2023: 9-10)

In March 2024, the latter established the National Coordination Committee for the Implementation of Measures of the National Plan for the Development of Culture and Media (*Nacionalni koordinacijski odbor za provedbu mjera Akcijskog plana razvoja kulture i medija*) (adopted by the government in late December 2023 for the period from 2023 to 2027).²³⁸ The

²³⁷ See, respectively: *Regulation on the Office for Human Rights and Rights of National Minorities* (Official Gazette No. 6/19; see also art. 27 of the *Law on the Government of the Republic of Croatia*, Official Gazette Nos 150/11, 119/14, 93/16, 116/18); *Act on Gender Equality* (Official Gazette Nos 81/08, 69/17, art. 18 para. 2); *Regulation on the Office for Cooperation with NGOs* (Official Gazette Nos 34/12, 63/19); *Regulation on the Office for Legislation* (Official Gazette No. 63/19).

²³⁸ Available at https://min-kulture.gov.hr/UserDocImages/dokumenti/Nacionalni_plan_razvoja_kulture_i_medija/Nacionalni_plan_objava.pdf, accessed 12 September 2024.

Committee's goal is to generate specific proposals for implementing measures to enhance journalists' safety. It includes around 40 stakeholders, such as experts, journalists, editors-in-chief, media publishers, representatives of professional associations, non-profit media entities, public broadcasters, academia, representatives from relevant government ministries and legal experts (Council of Europe n.d.).

Additionally, there are other bodies established by the government and relevant to specific human rights. These include the Personal Data Protection Agency (*Agencija za zaštitu osobnih podataka*) and Council for Electronic Media (*Vijeće za elektroničke medije*), as well as other bodies/commissions and inter-sectoral bodies, such as the Commission for Working on the Complaints–Police Sector, Independent Mechanism of Monitoring the Actions of Police Officers of the Ministry of the Interior in the Area of Illegal Migration and International Protection, Commission for Labour Complaints–Social Welfare, Council for Human Rights, Human Rights Coordinators, Gender Equality Coordinator, Commissions for Gender Equality, Council for Civil Society Development, Working Group for Monitoring Hate Crimes, Council for National Minorities, Central State Office for Digital Society Development and others (Office of the Ombudswoman of Croatia 2023: 25-36).

The Council for Electronic Media holds significant importance in this context. This regulatory authority for electronic media is tasked with overseeing multiple facets of media operations. Its responsibilities encompass the issuance and annulment of concessions and permits for media services, the approval of audio and audiovisual media services, the issuance of warnings or indictments for legal violations, passing regulations, the oversight of program compliance and quotas, the administration of funds from the Fund for the Promotion of Electronic Media Pluralism and Diversity, and addressing citizen complaints.²³⁹ The Council should subsequently broaden its regulatory authority to encompass print media.²⁴⁰ Nonetheless, the Croatian Journalists' Association asserts that the membership selection procedure is flawed.²⁴¹ The ultimate decision was based on the government's proposal, which received parliamentary approval by a simple majority, despite a public call being undertaken and without restrictions on successive terms (Electronic Media Act 2021).

Croatia also has several more or less independent bodies with mandates related to human rights that are not part of the government but are established based on the government's recommendations and/or have a prominent role within the human rights framework and therefore deserve to be included in this section. These bodies include the People's Ombudsperson (Ombudswoman) (*Pučka pravobraniteljica*), Ombudsperson for Gender Equality, Ombudsperson for Children, Ombudsperson for Persons with Disabilities and Information Commissioner (*Povjerenik za informiranje*).

²³⁹ See the Croatian Radio-Television Act and the Electronic Media Act.

²⁴⁰ Interview with a person working at the Croatian Journalists' Association, August 2024, on file with the author.

²⁴¹ *ibid.*

According to the Constitution, art. 93, the People's Ombudswoman is a commissioner of the Croatian Parliament that promotes and protects human rights and freedoms enshrined in the Croatian Constitution, laws and international legal instruments ratified by Croatia.²⁴² When assessed against the Paris Principles, this body is recognised as a national human rights institution (NHRI) and has been accredited with A status, indicating full compliance with the Paris Principles.²⁴³ The Ombudswoman is elected by the parliament for a term of eight years and has been highly active in legislative procedures and giving recommendations on legislative and administrative matters across various areas. To date, she has established three regional offices (in Rijeka, Split and Osijek), in addition to the main office in Zagreb.

The Ombudsperson for Gender Equality, whilst theoretically an independent body responsible for monitoring the enforcement of laws and regulations on gender equality, is not fully independent in practice. Specifically, this body is appointed by the parliament based on a proposal from the government (Act on Gender Equality 2008: art. 20, para. 1). Importantly, failure to have its annual reports adopted by the parliament can lead to its dismissal (Act on Gender Equality 2008: art. 21). This body includes representatives from various ministries, courts, institutions and organisations working to combat gender-based violence.

The creation of the Ombudsperson for Children was prompted by the 1996 recommendations from the UN Committee on the Rights of the Child. It addresses complaints received or acts on its own initiative to respond to individual or systemic violations of children's rights. If a relevant body fails to comply with its demands within the prescribed time, it notifies the institution responsible for overseeing the body's work. However, just as the Ombudsperson for Gender Equality, it is also appointed by the parliament, and failure to adopt its annual reports can lead to its dismissal. This occurred in 2016, when the Parliament rejected its 2015 Annual Report, leading to the dismissal of the incumbent Ombudsperson for Children. The European Commission against Racism and Intolerance (ECRI) viewed the possibility of dismissing the Ombudsperson for Gender Equality, the Ombudsperson for Children and the Ombudsperson for Persons with Disabilities if parliament fails to approve their annual reports as a significant threat to the independence of these bodies and recommended that the authorities amend the legislation to fully safeguard their independence (Office of the Ombudswoman of Croatia 2023: 21). Additionally, its independence is constrained by the requirement to submit its annual work plan for approval to the parliament Committee on the Family, Youth and Sports.

A similar situation applies to the Ombudsperson for Persons with Disabilities. According to the Act on the Ombudsperson for Persons with Disabilities, it is appointed by the parliament based on the government's proposal, and its position can be jeopardised if the parliament

²⁴² Office of the Ombudswoman of Croatia, About us, available at www.ombudsman.hr/en/about-us/, accessed 12 August 2024.

²⁴³ ENNHRI, Ombudswoman of the Republic of Croatia, available at <https://ennhri.org/our-members/croatia/>, accessed 12 August 2024.

does not adopt its annual reports. As for its mandate, it handles complaints regarding administration by central and local governments and recommends amendments to laws and regulations related to disability rights.

The Information Commissioner safeguards, monitors and promotes FoI and the reuse of information (Act on the Right of Access to Information 2013: art. 35, para. 1) and is elected by the parliament for a five-year term, with the possibility of re-election, following a public call (*ibid.*: art. 36, para. 1). The Commissioner's primary responsibilities include handling second-instance proceedings related to FoI and the reuse of information, conducting inspections, enforcing laws and fostering both international cooperation and collaboration with the EU bodies, national experts and public authorities. The 2022 amendments to the Act on the Right of Access to Information highlighted that the Information Commissioner's decisions granting access to information or directing public authorities to address information requests are binding and enforceable without the need for judicial review. Enforcement is managed by the Information Commissioner, and the fines are collected by deducting from the salary of the responsible individual. Decisions made by the Commissioner can be, however, contested through an administrative dispute before the High Administrative Court of Croatia, initiated either by the public authority that made the decision or by the user who filed the appeal (*ibid.*: art. 26). The implementation of the Act on the Right of Access to Information is overseen by inspectors and other authorised officials within the Information Commissioner's Office. This indicates that the individual occupying the role of Information Commissioner is critically important, since they can profoundly influence the office's efficacy. The Croatian Journalists' Association observes that the inaugural Information Commissioner, Anamarija Musa, significantly contributed by partnering with the non-governmental organisation Gong and advocating for the application of the Act on the Right of Access to Information for journalistic and academic research.²⁴⁴

4.3 Division of responsibilities across government units for international and domestic human rights monitoring and reporting, including FoE and FoI

The bodies mentioned in the previous section are tasked with monitoring and reporting on human rights at the international and domestic levels in their respective areas.

For instance, the Office for Human Rights and Rights of National Minorities is composed of the Human Rights Department and the Department for the Rights of National Minorities. Article 5 of the Regulation on the Office for Human Rights and Rights of National Minorities regulates that the Human Rights Department is responsible for coordinating, monitoring and reporting on the implementation of several key initiatives, including the national programmes for the protection and promotion of human rights, combating discrimination and human trafficking and their associated action plans. Additionally, this Department oversees the recommendations of the Ombudswoman and coordinates the preparation of

²⁴⁴ Interview with a person working at the Croatian Journalists' Association, August 2024, on file with the author.

reports on their implementation. It also prepares reports on the implementation of international instruments for combating human trafficking ratified by Croatia and contributes to reports on international and European agreements and conventions falling under the jurisdiction of other state bodies, all according to the Regulation on the Office for Human Rights and Rights of National Minorities. Meanwhile, the Department for the Rights of National Minorities monitors the enforcement of the Constitutional National Minority Rights Act and coordinates the preparation of reports on its implementation according to the same Regulation on the Office for Human Rights and Rights of National Minorities, art. 6. It also tracks the implementation of the Framework Convention for the Protection of National Minorities and oversees the drafting of relevant reports. This department is, further, involved in planning, monitoring and reporting on activities within the operational programmes for national minorities. Moreover, it coordinates and monitors the implementation of the National Roma Inclusion Strategy and its accompanying action plan, as well as the EU Framework for National Roma Integration Strategies, reporting on their progress.

Responsibilities of the Office of the Representative of the Republic of Croatia before the ECtHR include monitoring the ECHR system, familiarising judicial, state administration and other bodies as well as experts and the general public with the ECHR and ECtHR jurisprudence, and collecting, analysing and systematising data for the preparation of statistics and reports (Regulation on the Office of the Representative of the Republic of Croatia before the European Court of Human Rights 2012).

All ministries mentioned in the previous section are tasked with promoting, monitoring and reporting on human rights within their jurisdiction. The Ministry of Foreign and European Affairs plays a crucial role, as it coordinates and compiles these reports.

The work of the Ombudswoman includes monitoring the implementation of the human rights instruments, often by preparing alternative reports. She annually prepares a report to the Parliament with the assessment of the state of rights and freedoms in Croatia and is entitled to submit special reports to the Parliament when needed (e.g., in 2021, she furnished a report on the impact of Covid-19 on human rights and equality in Croatia) (Office of the Ombudswoman of Croatia 2023: 15).

The Ombudsperson for Gender Equality is required to report to the Parliament on its mandate at least once a year and has established the Observing Body for Comprehensive Monitoring, Data Collection and Analysis of Cases of Murder of Women and Reporting — Femicide Watch (*Promatračko tijelo za sveobuhvatno nadgledanje, prikupljanje podataka, analizu slučajeva ubojstva žena i izvještavanje – Femicide Watch*), as noted by the Ombudsperson for Gender Equality (2018: 94–95).

The Ombudsperson for Children submits annual reports on its activities to the Parliament and can also present special reports when necessary to advocate for important measures

protecting children's rights and interests (Law on the Ombudsperson for Children 2017: art. 19, para. 4 and 5).

As for the Ombudsperson for Persons with Disabilities, it monitors compliance with legally binding international documents, particularly the UN Convention on the Rights of Persons with Disabilities. In addition to regular reports, it can also submit special reports when deemed necessary.²⁴⁵

Finally, and importantly for FoI, public authorities must submit to the Information Commissioner a report on the implementation of the Act on the Right of Access to Information for the previous year by 31 January of the current year (Act on the Right of Access to Information 2013: art. 60, para. 2). These reports are submitted via the 'Pristupinfo' application. The Information Commissioner then submits the report on the implementation of the Act on the Right of Access to Information to the Parliament by 31 March each year (Act on the Right of Access to Information 2013: art. 60, para. 4).

4.4 Conduct of monitoring and reporting

4.4.1 Overview of human rights monitoring and reporting cycles, including FoE and FoI

Building on the comprehensive analysis presented in section IV, the subsequent section will provide a succinct overview of the international and regional instruments to which Croatia is subject, focusing on those that could impact FoE and FoI either directly or indirectly.

Universal Periodic Review (UPR). Croatia submitted its most recent national report in February 2020. In November of the same year, the UPR Working Group reviewed Croatia and adopted the report on the state. Croatia is currently participating in the fourth cycle, with the deadline for submission of the fourth national report set for 4 August 2025 (Human Rights Council 2020; Human Rights Council n.d.).²⁴⁶

International Covenant on Civil and Political Rights (ICCPR) — Croatia submitted its last (fourth) report in May 2022. Additionally, several civil society organisations, as well as the Ombudswoman, the Ombudsperson for Children, the Ombudsperson for Gender Equality and the Ombudsperson for Persons with Disabilities, submitted their alternative reports to the Human Rights Committee (HRC) (Human Rights Committee 2022; Human Rights Committee 2024).

UN Sustainable Development — Croatia presented its first Voluntary National Review of the implementation of the UN 2030 Agenda for Sustainable Development in 2019 (Government of Croatia 2019).

Convention on the Elimination of All Forms of Racial Discrimination (CERD) — Croatia submitted its last (combined ninth to fourteenth) report in April 2020. Several civil society organisations, the Ombudswoman and the Serb National Council also submitted their

²⁴⁵ *ibid.* Article 17, paragraph 2.

²⁴⁶ See UN Human Rights Council documentation on the Universal Periodic Review of Croatia

alternative reports to the Committee on the Elimination of Racial Discrimination (Committee on the Elimination of Racial Discrimination 2020; Committee on the Elimination of Racial Discrimination n.d.).

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

— Croatia submitted its last (combined fourth and fifth) periodic report in September 2013 and a follow-up report to the concluding observations in November 2017. Several civil society organisations also submitted alternative reports to the Committee on the Elimination of Discrimination against Women (Committee on the Elimination of Discrimination against Women 2013; Committee on the Elimination of Discrimination against Women 2017).

Convention on the Rights of Persons with Disabilities (CRPD)

— Croatia submitted its last (combined second, third and fourth) periodic report in December 2021. The Croatian Union of Associations of Persons with Disabilities, the European Network on Independent Living and the Association for Self-Advocacy also submitted alternative reports to the Committee on the Rights of Persons with Disabilities (Committee on the Rights of Persons with Disabilities 2021).

Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)

— Croatia submitted its last (fifth) report in May 2021 (Government of Croatia 2021a).

The Council of Europe (CoE) Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)

— The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) received the most recent Croatian State report in February 2022. GREVIO subsequently published its Baseline Evaluation Report in September 2023, followed by the Croatian Government's comments on that report (received in July 2023). Finally, the Committee of the Parties adopted a Recommendation concerning Croatia in December 2023 (GREVIO 2022; GREVIO 2023a; GREVIO 2023b; Committee of the Parties 2023).

European Charter for Regional or Minority Languages

— Croatia submitted its last (seventh) periodic report in February 2023. The Committee of Experts for the European Charter for Regional or Minority Languages subsequently adopted its seventh evaluation report on Croatia in March 2024, while the Committee of Ministers adopted its recommendations in July 2024 (Committee of Experts 2023; Committee of Experts 2024; Committee of Ministers 2024).

Framework Convention for the Protection of National Minorities (FCNM) — Croatia submitted its sixth State report in June 2023 (Committee of Ministers 2023).

4.4.2 Domestic legal/regulatory basis for monitoring and reporting arrangements

In March 2023, after a six-year hiatus in human rights policy, Croatia adopted the National Plan for the Protection and Promotion of Human Rights and Combating Discrimination for

the period 2021 to 2027, together with the Action Plan for the Protection and Promotion of Human Rights for 2023 and the Action Plan for Combating Discrimination for 2023 (Government of Croatia 2023a; Government of Croatia 2023b; Government of Croatia 2023c). These documents have been prepared by the Working Group for the Elaboration of the National Plan for the Protection and Promotion of Human Rights and Combating Discrimination for the period from 2021 to 2027, coordinated by the Office for Human Rights and Rights of National Minorities (Government of Croatia 2023a: 2). As stated in the National Plan itself, they are the products of collaborative efforts of stakeholders from the state administration, civil society organisations, NHRIs and academia (Government of Croatia 2023a: 4). Biennial action plans for 2024-2025 are currently being developed.

However, none of these instruments address reporting to international bodies in detail, and no such document exists in Croatia. Instead, several documents provide some guidance in this area, but more in terms of identifying the bodies responsible for reporting, rather than the methodology of the reporting itself. These documents include the Foreign Affairs Act, which sets out obligations relating to reporting and cooperation on international treaties (Foreign Affairs Act 1996: arts 4–5), and the Regulation on the Internal Organisation of the Ministry of Foreign and European Affairs (2020). Article 59 of the latter designates the Directorate for Multilateral and Global Issues to handle diplomatic activities related to human rights before international organisations and to prepare relevant national reports. More specifically, according to articles 64 and 66, its Sector for the UN and International Organisations and the Department for Human Rights are responsible for preparing these reports and coordinating with relevant state administration bodies (Regulation on the Internal Organisation of the Ministry of Foreign and European Affairs 2020).²⁴⁷

In addition, the Information Commissioner has issued several guidelines for public authorities, primarily aimed at the implementation of the Act on the Right of Access to Information rather than at reporting and monitoring as such. In 2023, two guidelines were issued: one concerning restrictions on freedom of information and another on the exercise of freedom of information in relation to personal data protection (Information Commissioner 2024: 86). Furthermore, following amendments to the Act in 2022 arising from the transposition of the Open Data Directive, the Information Commissioner issued an instruction for public authorities concerning exemptions from the Act's application in relation to the information reuse regime (Information Commissioner 2024: 86; Directive (EU) 2019/1024). Finally, in response to numerous inquiries from local and regional self-government units, a recommendation was issued on the application of Article 11 of the Act on the Right of Access to Information, concerning the conduct of public consultations in the adoption of local budgets (Information Commissioner 2024: 86).

²⁴⁷ The organisation chart of the Ministry of Foreign and European Affairs is available at <https://mvep.gov.hr/UserDocslImages//dokumenti//200902-organigram-mvep.pdf>, accessed 12 September 2024.

Nevertheless, some actors suggest that the absence of a detailed document on reporting to international bodies is not a significant issue. When asked about the main challenges in monitoring and reporting on FoE and FoI, the Croatian Journalists' Association cited two major concerns, above all, the authorities' reluctance to provide data access and the public's distrust in institutions.²⁴⁸ As observed, there is a noticeable lack of communication with the public, practitioners and experts, with their recommendations often ignored. As the Association highlighted, even when authorities are not actively concealing information, facilitating public access is not a priority and typically requires substantial budgetary resources.²⁴⁹ Furthermore, the Croatian Journalists' Association highlighted that there is minimal investment in educating citizens about their right to access information and the availability of existing data.²⁵⁰

4.4.3 Inclusion of international standards for monitoring/reporting in domestic processes

State bodies typically do not explicitly indicate whether their reports incorporate international standards for monitoring and reporting. In some cases, they merely state that the reports have been “drafted in conformity with the reporting guidelines related to international treaties in the area of human rights, which regulate the form and content of periodic reports” (Committee on the Elimination of Discrimination against Women 2013: para. 2). However, desk research did not reveal any instances where these bodies explicitly referenced or utilised the Office of the United Nations High Commissioner for Human Rights (OHCHR) Manual on Human Rights Monitoring.

A commonly cited example of good practice is *Roma Inclusion in the Croatian Society: A Baseline Data Study*, a comprehensive study providing baseline data for monitoring the implementation of the National Roma Inclusion Strategy for the period 2013–2020 (Government of Croatia 2020). The governmental Office for Human Rights and Rights of National Minorities, tasked with overseeing and reporting on the National Roma Inclusion Strategy from 2013 to 2020, recognised that evaluating its implementation was nearly impossible without clear benchmark criteria. As a result, there was a risk of categorising all outcomes as either successes or failures. An external evaluation highlighted this issue as well. To address this, the government sought to establish baseline data to assess the impacts of national, regional and local interventions in this field. The result provided all stakeholders — including central state administration bodies, regional and local self-governments, public services, the non-profit sector and Roma national minority members — with a robust analytical framework to guide both short term and long term priorities at national and regional levels (Government of Croatia 2020: 9). More specifically, the Study defined the initial values for measuring the effectiveness of the National Roma Inclusion Strategy and its action plans at the national, regional and local levels. It defined the needs

²⁴⁸ Interview with a person working at the Croatian Journalists' Association, August 2024, on file with the author.

²⁴⁹ Interview with a person working at the Croatian Journalists' Association, August 2024, on file with the author.

²⁵⁰ Interview with a person working at the Croatian Journalists' Association, August 2024, on file with the author.

of Roma communities and the obstacles to their inclusion at the local/regional and national levels.

As for civil society organisations, they claim that they utilise international standards and guidelines for monitoring and reporting activities. For instance, the Human Rights House Zagreb (*Kuća ljudskih prava Zagreb*), in its 2022 report, expressly stated that its research methodologies for assessing human rights conditions in Croatia were based on the UN Universal Human Rights Index, which includes all relevant global human rights norms and standards and is thus appropriate for national-level research (Human Rights House Zagreb 2022: 9).

4.4.4 Identification of and basis for mandates of key government bodies, public agencies, and non-government (including international/national civil society) stakeholders in human rights monitoring and reporting, including in reference to FoE and FoI

The key **government bodies** responsible for human rights monitoring and reporting in Croatia are outlined in section 4.3. The legal basis for their mandates is generally established by the Act on the Organisation and Scope of State Administration Bodies, along with the procedural rules governing these bodies.

Among **‘independent’ bodies**, the Ombudswoman and the Information Commissioner are the most significant in this area, and they are also discussed in section 4.3.

The Parliament has several committees whose work is closely related to human rights. Particularly important for monitoring and reporting on FoE and the FoI are the Committee on the Constitution, Standing Orders and Political System and the Committee on Human and National Minority Rights. The Committee on the Constitution, Standing Orders and Political System monitors the implementation of the Constitution and conducts the procedure to nominate the judges of the Constitutional Court, the Ombudswoman and Information Commissioner. During the enactment of laws and regulations, this Committee has the rights and duties in areas such as association, public assemblies and peaceful protests, the legal position of religious communities and public information. The Committee on Human and National Minority Rights, on the other hand, establishes and monitors policies, the enactment of legislation and the implementation of international treaties related to human and ethnic rights. It also takes part in the election of the Ombudswoman and regularly discusses her reports.

At the **regional/county level**, human rights protection is ensured through the efforts of county human rights coordination bodies.²⁵¹ These groups generally include representatives from various county administrative departments involved in human rights protection. For example, the Coordination for Human Rights of Međimurje County (*Koordinacija za ljudska prava Međimurske županije*) serves as an advisory body to the Međimurje County Assembly

²⁵¹ Full list available at: <https://pravamanjina.gov.hr/kontakti-525/adrese-i-kontakti-zupanijskih-koordinacija-za-ljudska-prava-555/555>, accessed 12 September 2024.

on human rights issues in the County (Decision on the Establishment and Tasks of the Coordination for Human Rights of Međimurje County 2011, as amended 2022). It collects data on the state of human rights and freedoms in Međimurje County, alerts the relevant County administrative bodies about violations, and proposes actions and solutions to promote and improve human rights protection in the County. Their priority areas include, among other, freedom of media and FoI. In its work, the Coordination for Human Rights of Međimurje County collaborates with civil society organisations that deal with human rights and freedoms, as well as the Ombudswoman. Issues that the Coordination for Human Rights of Međimurje County cannot solve are referred to the Office for Human Rights and Rights of National Minorities at the state level. The situation is similar in other county human rights coordination bodies. As for the legal basis for their mandates, it is based on the Law on Local and Regional Self-Government, complemented by decisions establishing the bodies concerned and defining their responsibilities (Law on Local and Regional Self-Government 2001; see e.g., Decision on the Establishment and Tasks of the Coordination for Human Rights of Međimurje County 2011).

Finally, when it comes to **civil society organisations** involved in human rights monitoring and reporting on FoE and FoI, the Croatian Journalists' Association (*Hrvatsko novinarsko društvo*), Gong, Transparency International Croatia, the Human Rights House Zagreb, Zelena Akcija/FoE Croatia and Biom stand out. The Croatian Journalists' Association established the Center for the Protection of Freedom of Expression to support journalists dealing with legal issues. Gong is a prominent advocate for FoI and has created the ImamoPravoZnati (WeHaveTheRightToKnow) platform, which streamlines the process of exercising this right.²⁵² Zelena akcija/FoE Croatia and Biom are essential organisations dealing with environmental protection.

4.4.5 Cross-government management and coordination of monitoring and reporting practices

Croatia is often criticised for lacking a fully functional system for coordinating and preparing reports and implementing recommendations from international human rights mechanisms, causing multi-year delays in reporting on the implementation of international treaties (Human Rights House 2022:12). There is no single entity tasked exclusively with monitoring and reporting on FoE and FoI to international bodies. Instead, each of the previously mentioned bodies addresses these rights within its own mandate. However, they do enjoy the support of other bodies working on specific rights. For example, although the Ministry of Justice, Public Administration and Digital Transformation coordinated and developed the state report on the implementation of the European Charter for Regional or Minority Languages, it did so jointly with several other bodies (Ministry of Foreign and European Affairs, Ministry of Science and Education, Ministry of the Interior, Ministry of Culture and Media, Ministry of Labour, Pension System, Family and Social Policy, Ministry of the Sea,

²⁵² Available at: <https://imamopravoznati.org>, accessed 12 August 2024.

Transport and Infrastructure, Croatian Bureau of Statistics, Office for Human Rights and Rights of National Minorities of the Government, Agency for Electronic Media, Croatian Radio-Television and Council for National Minorities) (Government of Croatia 2022a: 3). Still, further details regarding the precise mechanics of this collaboration are unavailable.

The UPR Working Group suggested that the state consider establishing an inter-ministerial committee responsible for the implementation of its international human rights obligations and for coordinating the drafting of the national reports (Human Rights Council 2015: 16, recommendation 99.41). Seemingly, this has been implemented with the formation of the Council for Human Rights in late 2021 (Decision on the Establishment of the Council for Human Rights 2021). This Council consists of the Deputy Prime Minister of Croatia responsible for human rights, 14 representatives from public authorities, including relevant state administration bodies and offices of the Croatian Government, and three representatives from associations and other civil society organisations committed to advancing and promoting human rights in Croatia (Decision on the Appointment of the President, Members and Deputy Members of the Council for Human Rights). It is tasked with reviewing reports and recommendations from international human rights bodies.²⁵³ Civil society, however, continues to argue that this body has not demonstrated complete efficacy in its responsibilities.

As highlighted by the Human Rights House Zagreb, the Council for Human Rights failed to address any state reports or recommendations from international human rights bodies throughout 2022 (Human Rights House 2022: 12). To date, the Council has held seven meetings, where members primarily reported on the activities of their institutions between Council sessions.²⁵⁴ Regarding FoE and Fol, there were no specific discussions on these rights; instead, the conversations were more general, focusing on their overall importance. For instance, at the fifth session, the discussion on hate speech led to the consensus that Croatia has a robust legislative framework for tackling hate speech and hate crimes, but the need for further educational efforts for both the public and the state was emphasised (Government of Croatia n.d.b). Additionally, it appears that the sessions of this body are increasingly drifting away from one of the Council's key tasks of reviewing reports from international human rights bodies.²⁵⁵

²⁵³ More on the Council available at: <https://ljudskaprava.gov.hr/savjet-za-ljudska-prava/1061>, accessed 12 September 2024.

²⁵⁴ Information on the sessions available at: <https://ljudskaprava.gov.hr/ljudska-prava/savjet-za-ljudska-prava/sjednice-savjeta-za-ljudska-prava/1064>, accessed 12 September 2024.

²⁵⁵ Cf., the second session, during which reports on human rights from various bodies were reviewed (notes from the session available at: <https://ljudskaprava.gov.hr/vijesti/odrzana-2-sjednica-savjeta-za-ljudska-prava/1069> (accessed 12 September 2024).

4.4.6 Standing/ad hoc arrangements for government/public sector-civil society cooperation in human rights monitoring and reporting

Since 2011, Croatia has been on board of the Open Government Partnership. This multilateral initiative aims to achieve tangible progress in transparency and openness of public authorities, citizen and civil society engagement and empowerment, anti-corruption efforts and the use of new technologies to enhance the quality of public services. One of Croatia's commitments under the Open Government Partnership is to advance the implementation of FoI.²⁵⁶ In 2012, the government established the Office for Cooperation with NGOs (Regulation 2012).

Regarding the specific cooperation in the areas of FoE and FoI, in September 2023, the Deputy Prime Minister, the Ministry of the Interior, the Croatian Journalists' Association and the Union of Croatian Journalists signed a Cooperation Agreement with two accompanying protocols (mentioned in section 4.4). These measures were implemented to adhere to the EU recommendation on the safety of journalists issued on 16 September 2021 (European Commission 2021) and should improve cooperation among the mentioned stakeholders.

In March 2024, and as mentioned in section 4.5, the Ministry of Science and Education established the National Coordination Committee for the Implementation of Measures of the Action Plan for the Development of Culture and Media of Croatia. This Committee includes around 40 stakeholders, such as experts, journalists, non-profit media entities, public broadcasters and representatives from relevant ministries (Council of Europe n.d.). Although established only recently, it appears to be quite active, though mostly concerning campaigns for the safety of journalists.²⁵⁷

The Information Commissioner collaborates with state administrative bodies and other state institutions, as well as with local and regional self-government units, particularly in the context of implementing measures and activities from various national strategic documents. This collaboration includes providing expert assistance based on inquiries received from public authorities and working together on promotional and educational events. According to the Information Commissioner herself, the quality of collaboration is especially evident in the regular annual consultation of information officers throughout the country, whilst the collaboration with local and regional self-government units primarily occurs through educational activities and responses to inquiries from municipalities and cities (Information Commissioner 2024: 88).

The best opportunity for cooperation between the state and civil society is, however, the Council for Human Rights within the Government, mentioned in the previous section. Its

²⁵⁶ See more here: www.opengovpartnership.org/members/croatia/, accessed 12 September 2024.

²⁵⁷ See, e.g., *Notes on the National Coordination Board for Implementation of Culture and Media Action Plan measures and the Campaign of the Council of Europe and OSCE on the Safety of Journalists*, available at: <https://min-kulture.gov.hr/eu-kultura/izdvojena-lijevo/mediji-16434/nacionalni-koordinacijski-odbor-za-provedbu-mjera-akcijskog-plana-razvoja-kulture-i-medija-te-kampanja-vijeca-europe-i-osce-a-za-sigurnost-novinara/25972> (accessed 12 September 2024).

sessions offer a platform for genuine dialogue on current and relevant human rights issues between decision-makers and independent national human rights bodies (European Civic Forum 2024: 106). Yet, as previously noted, the Council has been straying from its core mission.

This issue is not limited to the Council; other public bodies also struggle to cooperate effectively with civil society actors. For instance, the Council for Civil Society Development, an advisory body to the Croatian Government that could play a key role in strengthening partnerships between the authorities and civil society, has experienced dysfunction, marginalisation and overall sidelining. More specifically, in 2023, it met only once (European Civic Forum 2024: 101). Although the elections for new Council members were finalised timely, it took the government nearly six months to appoint the new Council, with the appointments only finalised in early 2024 (European Civic Forum 2024). This delay undermined the opportunity for a dialogue between the government and civil society and restricted civil society organisations' access to decision-making processes related to their fields of work. Moreover, the appointment of civil society organisations to advisory bodies is frequently non-transparent, and those selected through the Council for Civil Society Development do not always represent the most qualified candidates (Human Rights House Zagreb 2022:9). It seems that the government is not genuinely invested in the meaningful involvement of civil society in decision-making processes or when it comes to human rights, including human rights monitoring and reporting.

The National Plan for the Protection and Promotion of Human Rights and Combating Discrimination for the period to 2027 acknowledges the need for enhanced cooperation with civil society and human rights defenders, while the accompanying Action Plan for the Protection and Promotion of Human Rights for 2023 identifies this as a specific objective.²⁵⁸ However, neither document introduced new or effective measures to address the identified issues (Government of Croatia 2023a; Government of Croatia 2023b). Moreover, civil society organisations working on human rights, the rights of marginalised groups, persons with disabilities, transparency, anti-corruption and civic education are frequently perceived as a threat by the government (GONG 2020: 17; European Civic Forum 2024: 105). In addition, according to civil society actors, consultations are often conducted merely to fulfil formal requirements (European Civic Forum 2024: 105).

In sum, the government seems reluctant to cooperate with civil society on human rights issues, including their monitoring and reporting. Although the state claims in its national reports to international bodies that it consulted civil society during the preparation of these

²⁵⁸ See Objective 4 'Improving cooperation with civil society organisations and the media in the protection of human rights and combating discrimination' (the Action Plan available at: https://pravamanjina.gov.hr/UserDocsImages/dokumenti/Akcijski_plan_zastite_i_promicanja_ljudskih_prava_2023.pdf, accessed 12 September 2024).

reports,²⁵⁹ this lack of effective cooperation is likely one of the reasons for a considerable number of alternative reports from civil society organisations.²⁶⁰ Joint educational activities to counter this are common, such as the preparation and delivery of training sessions.²⁶¹ However, these activities do not cover human rights monitoring and reporting and are not always adequate. For example, whilst the government claimed it is conducting training sessions on SLAPP lawsuits, the Croatian Journalists' Association and the Human Rights House Zagreb took the view that these trainings, based on the cases they have covered, are insufficient.²⁶²

4.4.7 Arrangements for international/domestic FoE/Fol report follow-up/implementation

Croatia has several mechanisms in place to support and follow up on the implementation of recommendations and findings from international human rights bodies. These mechanisms include the Ombudswoman, the Office for Human Rights and Rights of National Minorities and the judiciary. None of them are, however, specifically related to FoE and Fol monitoring and reporting. Additionally, among them, the Office for Human Rights and Rights of National Minorities is the only that functions as a governmental mechanism. The judiciary operates independently, while the Ombudswoman is the NHRI and acts more as an external 'watchdog' to the government.

The Ombudswoman issues recommendations to public bodies and assesses their implementation in regular reports to the Parliament. Recommendations are categorised into three groups: those acted or acting upon, those not implemented and those with no information on implementation (Ombudswoman of Croatia 2024: 312). According to the Ombudswoman's 2023 Report, only 44.12% of the recommendations from 2022 have been acted upon, which is even less compared to the 2021 Report (Ombudswoman of Croatia 2024). Additionally, the Ombudswoman noted that her recommendations are not consistently discussed in Parliament (Ombudswoman of Croatia 2024: 311). For example, it was only in May 2023 that her 2021 Report was discussed and endorsed, whilst the 2022 Report was reviewed solely by the Committee on Human and National Minority Rights in October 2023 (*i.e.*, not further discussed in a parliamentary session). The European Commission's 2023 Rule of Law Report, therefore, recommended that Croatia improve the implementation of the Ombudswoman's recommendations and respond more systematically to her requests for information (European Commission 2023a: 2).

The Office for Human Rights and Rights of National Minorities is responsible for overseeing the Ombudswoman's recommendations (Regulation on the Office for Human

²⁵⁹ See, e.g., paragraph 2 of the latest UPR report submitted by Croatia, or paragraph 6 of the report of the UPR Working Group from 2020, available at <https://documents.un.org/doc/undoc/gen/g20/348/78/pdf/g2034878.pdf?token=lrE5e1ZQvNrikwEPKT&fe=true> (accessed 12 September 2024).

²⁶⁰ See section 4.4.1.

²⁶¹ See, e.g., paragraph 56 in the latest Croatian report on ICCPR.

²⁶² Interview with a person working at the Croatian Journalists' Association, August 2024, on file with the author.

Rights and Rights of National Minorities 2019: art. 5). According to the Ombudswoman's latest report, this office has developed its own methodology for data collection within this mandate, though specific details are limited, apart from the fact that the Office consulted with the Ombudswoman (Ombudswoman of Croatia 2024: 313). There remains ambiguity regarding which recommendations have been implemented, which are in progress, and which have not been addressed, including the rationale from the relevant authorities. The Office only submitted a summary of the numerical self-assessment from the bodies without further explanation (Ombudswoman of Croatia 2024). Consequently, the Ombudswoman has recommended that the Office's report on the implementation of recommendations should include a self-assessment of each recommendation's status and a brief explanation (Ombudswoman of Croatia 2024).

In addition to overseeing the Ombudswoman's recommendations, the Office for Human Rights and Rights of National Minorities is tasked with monitoring and reporting on the implementation of national programmes related to human rights and the protection of national minorities (Regulation on the Office for Human Rights and Rights of National Minorities 2019: art. 5). Namely, Croatia develops and implements national strategies and action plans on human rights, often tailored to address international recommendations.²⁶³ For instance, the National Plan for the Protection and Promotion of Human Rights and Combating Discrimination for the period to 2027 aims to enhance the efficiency of public administration and the judiciary in human rights protection (Government of Croatia 2023b: 67). Progress is to be measured by tracking the implementation of the Ombudswoman's recommendations and the execution of ECtHR cases (Government of Croatia 2023b: 67). Monitoring responsibilities are shared among the Ombudswoman, the Office for Human Rights and Rights of National Minorities and the Office of the Representative of the Republic of Croatia before the ECtHR. Currently, there is no additional information on the progress made.

Lastly, Croatia produces **midterm reports** for UPR. The last one indicates that the Office for Human Rights and Rights of National Minorities is responsible for preparing these reports and has developed a draft questionnaire to be distributed to state administration bodies by the end of 2023 (Government of Croatia 2024a: 137.21). It is unclear whether this distribution has taken place.

4.5 Substantive FoE and Fol issues

4.5.1 Overview of record of international and domestic human rights reporting and follow-up in respect of FoE/Fol

i. Universal Periodic Review (UPR)

The UPR of Croatia addressed several important issues related to human rights, including FoE and Fol. Whilst recognising the state's efforts and progress in promoting human rights,

²⁶³ See, e.g., the above Action Plan for the Protection and Promotion of Human Rights for 2023.

the UPR highlighted key areas where additional measures are necessary to protect these rights and freedoms, ensuring they are fully implemented in practice.

During the review, Croatia received multiple recommendations to strengthen the protection of FoE.²⁶⁴ These recommendations stressed the need to ensure the safety and independence of journalists, combat threats and violence against them and avoid any legislative measures that might unduly restrict press freedom. The review also highlighted concerns about the potential misuse of defamation laws to intimidate or silence journalists and activists.²⁶⁵ Another recurrent theme was the issue of hate speech.²⁶⁶

Regarding FoI, the UPR underscored the necessity for Croatia to enhance transparency and ensure that public information is readily accessible to all citizens. Recommendations included improving the legal framework to guarantee FoI, streamlining procedures to request public information and increasing efforts to raise public awareness about this right (Office of the United Nations High Commissioner for Human Rights 2020: para. 45).

The review also brought attention to broader issues such as the protection of human rights defenders and the need to foster a more conducive environment for civil society organisations (Human Rights Council 2021: para. 899). It was recommended that Croatia take concrete steps to ensure that these groups can operate without fear of reprisal and that their contributions to public discourse and policy-making are valued and protected.

While it does not assert that the earlier criticisms are the cause, the government's 2024-2028 Programme, released in May 2024, identifies transparent institutions as a primary priority and objective (Government of Croatia 2024b: 4). As part of this agenda, the government has dedicated a special chapter – Chapter 3.2 – to the freedom of the media, the protection of human rights and the rights of national minorities in the Programme. The government announced introducing a new Media Act to bolster media independence, ensure stable funding and promote professional journalism (Government of Croatia 2024b: 37). Additionally, it announced that a new Croatian Radio-Television Act will be adopted, and also efforts will be made to enhance the security of journalists, expand funding opportunities for professional journalism and continue activities to combat SLAPP lawsuits (Government of Croatia 2024b: 37). According to the Programme, investments will be made in media literacy programmes to better equip citizens against disinformation (Government of Croatia 2024b: 37).

ii. 1966 International Covenant on Civil and Political Rights (ICCPR)

²⁶⁴ See, e.g., Compilation on Croatia Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/WG.6/36/HRV/2, 9 March 2020, paragraph 11, or UPR of Croatia (Third Cycle – thirty-sixth session), Thematic list of recommendations, 137.96 and 137.102.

²⁶⁵ See, e.g., Report of the Working Group on the Universal Periodic Review: Croatia, A/HRC/46/16, 16 December 2020, recommendations 137.108 and 137.109.

²⁶⁶ See, e.g., National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 Croatia, 25 February 2020, A/HRC/WG.6/36/HRV/1, paragraph 23.

The documentation Croatia sent and/or received during the monitoring and reporting cycles on the ICCPR extensively mentions FoE and, to a lesser extent, FoI. The general conclusion is that Croatia fails to fully protect these rights and freedoms.

The HRC noted insufficient investigation into acts of intimidation and attacks on journalists and expressed concern about the criminalisation of defamation (Human Rights Committee 2019: para. 19). The pressure of SLAPP lawsuits on journalists and the media remains high, affecting journalists' ability to work and inducing self-censorship. Journalists have also faced physical violence and death threats for their work (NGO submission 2024: para. 90). Additionally, Croatia continues to silence critical journalists by terminating their employment at state-affiliated media companies, such as the Croatian Radio-Television, and by initiating lawsuits against them (Advocates for Human Rights and Autonomous Women's House Zagreb 2019: para. 28). Although the state defended itself by citing positive developments in this area, such as court rulings that follow international standards²⁶⁷ and arguments on why the decriminalisation of defamation is not against FoE,²⁶⁸ alternative reports from NGOs highlight serious shortcomings (NGO submission 2024 and Advocates for Human Rights and Autonomous Women's House Zagreb 2019).

Regarding FoI, civil society reports highlight several areas that need improvement. They note, for example, that the 2027 deadline for publishing court decisions is misaligned with the urgency of the matter and argue that it should be significantly shortened (NGO submission 2024: para. 79). The reports also point out that many courts unjustifiably reject FoI requests, citing technical issues such as understaffing, dislocated files, and the high volume of decisions to be processed — factors which, according to the reports, should not constitute valid grounds for denying access to information (NGO submission 2024).

iii. 2009 Council of Europe Convention on Access to Official Documents (CETS No. 205) (Tromsø Convention)

Croatia is not a signatory to the Tromsø Convention.

iv. 2001 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)

Croatia became a party to the Aarhus Convention in 2007 (Law on the Ratification of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters 2007). In addition, the EU has been a party to the Aarhus

²⁶⁷ See, e.g., HRC Fourth periodic report submitted by Croatia under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2020, CCPR/C/HRV/4, 10 January 2023, para. 9, available at <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d/PPRiCAqhKb7yhshjU3LaU2UQcyenDH2qrlZR1X8A+kqfvp/hyPM778/HFQFB0sLPuGaP+DsvHyYcy6TdMP1LTHjKYtqlduHBZM7EKHXMzgn5W9a6phYXQW5DY>, accessed 12 September 2024.

²⁶⁸ *ibid.*, para. 144.

Convention since 2005 and has issued directives to ensure its implementation within its institutions and member states.²⁶⁹

Legislative implementation of the Convention in Croatia began by incorporating these instruments into the Environmental Protection Act and other national regulations (Law on the Ratification of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters 2007). Still, the practical application of these regulations varies across different regions. Civil society organisations have reported irregularities in the publication of public participation procedures. There have been instances where participation was organised *pro forma*, with only well-known non-governmental organisations or those with significant capacity to mobilise protests being invited to provide input on plans or projects (Zelena akcija n.d.: 2). For example, in 2008, the preparation of the waste management plan in Karlovac was carried out without public participation and lacked transparency (Zelena akcija n.d.: 2). Still, certain regional units stand out with positive practices. For instance, the City of Zagreb established an e-monitoring (*e-redar*) system for monitoring all city works in real-time on an interactive digital map and the e-application My Zagreb for direct communication between citizens and the City administration (Government of Croatia 2021a: 4).

The latest report on the implementation of the Aarhus Convention reflected on the laws, institutions and measures taken to ensure the Convention's implementation in Croatia. The report described in detail the official procedures important for the application of the Aarhus Convention without mentioning any significant obstacle occurring in practice. At the same time, the report stressed that, whilst public authorities were more responsible in line with their legal obligations, no significant positive developments were recorded either. Still, according to the report, umbrella institutions in the field of environmental and nature protection are examples of good practices in terms of proactive disclosure of information, including applications that allow users access to environmental data (Government of Croatia 2021a: 9).

However, it appears that users of FoI frequently opt to invoke the Act on the Right of Access to Information rather than the Aarhus Convention and Directive 2003/4/EC when asking for information. Specifically, in its 2023 report, the Information Commissioner noted that no procedures were handled based on the provisions of these two instruments. Instead, all received complaints were addressed following up on the provisions of the Act on the Right of Access to Information, as a *lex generalis* governing FoI. Upon examination of the complaints, the Information Commissioner determined that in 2023, there were 15

²⁶⁹ See, e.g., the Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1411734937657&uri=CELEX:32003L0004> (accessed 12 September 2024) and the Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC - Statement by the Commission, available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0035> (accessed 12 September 2024).

complaints about environmental information, a decline from 23 complaints in 2022 (Information Commissioner 2024: 93).

v. Other non-EU international instruments with reporting obligations relevant to FoE/FoI

a) International Convention on the Elimination of All Forms of Racial Discrimination (1965), Art. 5

The last reporting cycle scarcely mentions FoE and completely overlooks FoI. In Croatia's report, only constitutional and other provisions guaranteeing FoE are noted. However, alternative reports provide much more detail on these rights and freedoms, highlighting issues Croatia faces with hate speech.

For instance, the Serb National Council reported a rise in hate speech against Serbs (Serb National Council n.d.: 19), whilst the Ombudswoman emphasised the need for legal amendments, consistent prosecution, public campaigns and the introduction of mandatory human rights and equality education as part of civic education for all children, as a separate school subject (Ombudswoman of Croatia 2023: paras 36–43). Comparing her latest report with the previous one, more attention is given to hate speech. In the previous report, namely, she only noted in two paragraphs that the concept of hate speech is not clear enough, leading to political speech and criticism sometimes being perceived as hate speech, whilst FoE was sometimes misinterpreted, resulting in the dissemination of hate speech (Ombudswoman of Croatia 2023: paras 33–4).

The Human Rights House Zagreb dedicated a special chapter to the right to freedom of thought and expression. It highlighted the issue of SLAPP suits and lawsuits aimed at censoring, intimidating and silencing critics (Human Rights House Zagreb 2023: 7). The Human Rights House Zagreb also mentioned the Expert Working Group for Designing Policy to Suppress SLAPP Lawsuits, established by the Ministry of Culture and Media to exchange expertise and good practices and initiate improvements for journalists facing SLAPP lawsuits. However, it criticised this body for not including representatives from human rights and other civil society organisations (Human Rights House Zagreb 2023: 7).

In its Concluding Observations, the Committee on the Elimination of Racial Discrimination commended Croatia for criminalising public incitement to violence and hatred, as well as for adopting the revised protocol for procedures related to hate crimes (Committee on the Elimination of Racial Discrimination 2020: para 4. a and f). However, the Committee also expressed concern over ongoing issues of racism and discrimination in Croatia, including the prevalence of hate speech (Committee on the Elimination of Racial Discrimination 2020: para. 13, 14 and 22e). With respect to FoI, the Committee only recommended that Croatia ensure its reports are readily available and accessible to the public upon submission, and that the Committee's concluding observations regarding these reports be made similarly available to all state bodies responsible for implementing the Convention, including

municipalities, in both official and commonly used languages (Committee on the Elimination of Racial Discrimination 2020: para. 39).

b) Convention on the Rights of Persons with Disabilities (2006) and its Optional Protocol, Arts. 4, 9, 21, 23

The last (combined second, third, and fourth) report from 2021 has a separate chapter on FoE and Fol. Here, the Ministry of Labour, Pension System, Family and Social Policy highlighted Croatian legal regulations and institutions relevant to this field. For instance, the Ministry referenced, among other, the Act on Croatian Sign Language and Other Communication Systems of Deaf and Deafblind Persons (Government of Croatia 2021b: para. 120), the Electronic Media Act (Government of Croatia 2021b: para. 122) and the Electronic Media Agency (Government of Croatia 2021b: para. 121).

The report states that, as the Electronic Media Act does not prescribe the obligation of reporting to broadcasters on the shares of adapted programme content, data for publishers with national concessions are collected by analysing the publisher's programme, whilst data on programme content adapted to persons with hearing and visual impairments in local television programmes are collected from the tender for the Fund for the Promotion of Electronic Media Pluralism and Diversity (Government of Croatia 2021b: para. 123). Still, content adapted to people with visual impairments remains a rarity (Government of Croatia 2021b: para. 123). The report also mentioned, as an example of good practice, the e-Citizens platform, where it is possible to adjust accessibility for the partially sighted (adjustment for partial sight, dyslexia and adjustment of font size) (Government of Croatia 2021b: para. 125).

However, the alternative report submitted by the Croatian Union of Associations of Persons with Disabilities and its partners pointed out that practice in Croatia is not so successful. It indicated that audiovisual media services are not fully accessible for persons with disabilities, especially for deaf, hard of hearing, blind and partially sighted persons (SOIH and partners 2020: 18). Also, the e-Citizens platform is not fully accessible to all persons with disabilities and the lack of information in a custom digital format remains problematic for the accessibility of information and communication services (SOIH and partners 2020: 13).

The Concluding Observations of the Committee on the Rights of Persons with Disabilities include a section on "Freedom of expression and opinion, and access to information (art 21)", in which the Committee expresses concern over the failure of Croatia to provide all information in accessible formats, to effectively promote and facilitate the use of Croatian Sign Language, and to utilise other accessible means of communication (Committee on the Rights of Persons with Disabilities 2015: para. 31). Consequently, the Committee recommends that Croatia intensify its efforts to adopt measures ensuring the effective and timely implementation of the Convention on the Rights of Persons with Disabilities (Committee on the Rights of Persons with Disabilities 2015: para. 32).

c) European Charter for Regional or Minority Languages (ETS no. 148), Art. 11

The latest report from Croatia highlights the Operational Programmes for National Minorities 2021-2024, which include various activities aimed at fully ensuring the rights of national minorities. These rights encompass the use of minority languages and scripts in private, public and official contexts, as well as education in minority languages and scripts, and access to media and communication activities in minority languages (Government of Croatia 2022a: 14).

The Committee of Experts, in its March 2024 report, noted that Croatia continues to fully meet the requirements for FoE and the circulation of information in minority languages (Ukrainian, Czech, Hungarian, Italian, Ruthenian, Serbian) (Committee of Experts of the European Charter for Regional or Minority Languages 2024: 34, 41, 48, 55, 58, 70). However, it also highlighted that Croatia needs to better represent minority interests in media oversight bodies, which is only partially fulfilled, albeit with some improvements (Committee of Experts of the European Charter for Regional or Minority Languages 2024: 58). In addition, the Committee regretted the lack of progress in using minority languages in public media. It rated the relationship between the national minorities' population share and their representation in public broadcasting as insufficient (Committee of Experts of the European Charter for Regional or Minority Languages 2024: 86). It is, therefore, crucial to ensure adequate broadcasting duration, regularity, frequency and accessibility, potentially enhanced by the internet (Committee of Experts of the European Charter for Regional or Minority Languages 2024: 80).

Furthermore, the report praised the fact that newspapers are published in Czech, Hungarian, Italian and Serbian, exceeding Croatia's obligations (Committee of Experts of the European Charter for Regional or Minority Languages 2024: 85). However, Ruthenian, Slovak and Ukrainian are not used in newspapers (Committee of Experts of the European Charter for Regional or Minority Languages 2024: 85). The Committee specifically pointed out that the position of the Serbian language has weakened, despite the Charter's requirement for authorities to take positive action to promote minority languages and proactively ensure their systematic use. The Committee, hence, recommended that the Croatian authorities work to raise awareness of the Serbian language and culture as a key part of Croatia's cultural heritage, integrating it into mainstream education and media (Committee of Experts of the European Charter for Regional or Minority Languages 2024: 110).

Moreover, as the Committee underlined, Croatia should take decisive steps to promote respect, understanding and tolerance towards Serbs across its society (Committee of Experts of the European Charter for Regional or Minority Languages 2024: 110). It is also important to strengthen the use of Serbian and its script at the local branches of state authorities, as well as regional and local authorities, and to extend its equal and official use to more municipalities. Finally, the Committee noted that the representation of national

minorities in the Council for Electronic Media is lacking. It requested from Croatian authorities to provide detailed information on how minority interests are addressed in their next report (Committee of Experts of the European Charter for Regional or Minority Languages 2024: 86).

Regarding the recommendations of the Committee of Ministers adopted on 1 July 2024, they included taking resolute steps to promote awareness and tolerance towards minority languages and their culture, implementing necessary measures to introduce minority languages into equal and official use, ensuring their practical use at the level of local state authorities and providing public radio and television programmes in each minority language with sufficient duration, regularity and frequency (Committee of Ministers 2024). The Committee of Ministers invited the Croatian authorities to submit information on the recommendations by 1 September 2025 and to provide the next periodical report by 1 March 2028.

It is important to note, however, that the government's 2024-2028 Programme outlines a commitment to "continue to consistently protect and improve human and minority rights guaranteed by concluded international and interstate treaties, agreements and conventions and the Treaty on the Accession of the Republic of Croatia to the EU" (Government of Croatia 2024b: 37). The Programme emphasises the government's plan to improve education in the languages and scripts of national minorities. In the upcoming negotiations for the next contract with Croatian Radio-Television, the government plans to advocate for strengthening the capacity and functionality of the newsroom dedicated to minorities, ensuring the inclusion of journalists from national minorities who have expertise in covering minority issues (Government of Croatia 2024b: 38). Additionally, the government plans to support the establishment and operation of radio, television and other electronic media for minorities, either independently or in collaboration with other minority communities that have or are developing the necessary capacities (Government of Croatia 2024b: 38). Finally, the government promised to rigorously enforce the Electronic Media Act to more effectively address hate speech and discriminatory language in the media (Government of Croatia 2024b: 38).

d) Convention for the Protection of National Minorities (ETS No. 157), Arts 7, 9

The sixth report submitted by Croatia provided a comprehensive update on the progress made regarding the rights of national minorities in the previous reporting period.

Regarding Article 7, the report outlined the legal framework governing this area and highlighted numerous activities carried out by minority associations and their members under the Operational Programmes for National Minorities 2021-2024. It noted that these activities have been supported by significantly increased financial resources each year, as detailed in the relevant sections of the report (Government of Croatia 2023: 52). Additionally, many national minority associations receive funding through the Council for National

Minorities to support amateur cultural production and cultural events (Government of Croatia 2023: 53).

Concerning Article 9, the report underscored that both the Media Act and the Electronic Media Act prohibit the dissemination of content that promotes or incites hatred or discrimination (Government of Croatia 2023: 62). Violations of these laws are punishable under the Criminal Code, and if a media service provider is found guilty, the Electronic Media Council may revoke its concession either temporarily or permanently — a measure that has been enacted several times (Government of Croatia 2023: 62).

The report also detailed the investment in infrastructure, programmes and activities for national minority associations (Government of Croatia 2023: 62). It described how the Council for Electronic Media manages the allocation of resources from the Fund for Promotion of Pluralism and Diversity in Electronic Media (Government of Croatia 2023: 63).

However, the Council for National Minorities pointed out that the implementation of the Operational Programmes for National Minorities for 2017-2020 was unsatisfactory, particularly due to the lack of activities related to public media services in 2019 (Government of Croatia 2023: 68). As a result, the Council recommended the adoption of conclusions concerning Croatian Radio-Television's reports on programmes produced, co-produced and broadcast for national minorities in 2019 and 2020 (Government of Croatia 2023: 70, 71).

e) Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210) (Istanbul Convention), Arts 14, 17, 19, 21

In the Baseline Report, Croatia underlined several laws and bylaws crucial in combating violence against women and pertinent to the topic of this paper (GREVIO 2022: 28).

The general principles of the Media Act, the Electronic Media Act and the Gender Equality Act mandate respecting the privacy, dignity, reputation and honour of citizens. These laws prohibit favouritism and incitement to hatred or discrimination on various grounds and ban the publication of articles that offend human dignity or promote immoral and pornographic content or violence. The Gender Equality Act specifically requires the media to raise awareness about gender equality through their content, directives and self-regulatory acts. The Act on the Protection of Patients' Rights ensures patients are fully informed about recommended examinations and procedures in a manner understandable to them, bearing in mind their age, education and mental abilities. Protocols — such as the Protocol on the Procedure in Cases of Sexual Violence, Protocol on the Procedure in Cases of Domestic Violence, Protocol on the Integration/Reintegration of Victims of Trafficking in Human Beings, Protocol on the Procedures during Voluntary Return of Victims of Trafficking in Human Beings and the Protocol on the Procedure in Cases of Hate Crime — emphasise the need for timely access to information for victims (GREVIO 2022: 28).

It is also noteworthy that the government's 2024-2028 Programme mandates setting up an independent organisational unit within the Ministry of Labour, Pension System, Family and Social Policy (Government of Croatia 2024b: 40). This unit should enhance the coordination, implementation, monitoring and evaluation of policies and measures aimed at combating and preventing all forms of violence. Special focus will be on systematically collecting, strategically analysing and processing data related to violence against women and domestic violence, alongside fostering intersectoral cooperation.

The report also highlighted bodies significant for the Istanbul Convention and FoE and FoI. For example, the Committee on Information, Computerisation and the Media (*Odbor za informiranje, informatizaciju i medije*) within the Parliament is tasked with promoting FoI through new technologies and electronic communication. State bodies must provide victims with information on services and rights via their websites and the Ministry of Labour, Pension System, Family and Social Policy and the Ministry of Interior regularly does so (Government of Croatia 2024b: 32).

As for the Baseline Evaluation Report and Article 14, the Report stressed the need for Croatia to ensure that information on various forms of gender-based violence is included in formal curricula at all education levels (GREVIO 2022: 30-31). Alternative reports supported this, suggesting Croatia should provide informational leaflets in public institutions about access to rights and relevant non-governmental organisations (Women's Network Croatia n.d.: 36).

Concerning Article 17, despite some positive practices, the report noted that sensationalist reporting on violence against women and children persists in Croatian media, even among outlets that signed the ethics code on sensitive reporting on such issues (Women's Network Croatia n.d.: 36). GREVIO encouraged Croatian authorities to continue engaging with the media to raise awareness about violence against women and to monitor compliance with self-regulatory standards (Women's Network Croatia n.d.: 36).

In response, Croatia stated that competent state bodies, in cooperation with the public media service, will undertake activities to broadcast programmes highlighting the harm of gender-based violence, particularly sexual violence and harassment and promoting preventive actions (GREVIO 2023b: 24). Croatia also mentioned educational activities aimed at ensuring that professionals in relevant institutions take a proactive approach to inform victims and disseminate information about available support services and legal measures for victims of domestic and other forms of violence against women (GREVIO 2023b: 27).

f) EU-derived monitoring/reporting obligations (inc. implementation reports) and associated follow-up re. FoE/FoI

- 1. Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (recast) (Open Data Directive)**

The Directive was published on 26 June 2019, entered into force on 16 July 2019, and should have been implemented in national regulation by 17 July 2021 at the latest (European Union 2019). To comply, Croatia amended its Act on the Right of Access to Information in June 2022 (Government of Croatia 2022b). This amendment emphasised the importance of open data and the obligation of public bodies to recognise, prepare and open them for reuse. Additionally, thematic categories of data whose reuse is associated with important benefits for society, the environment and the economy, especially because of their suitability for creating value-added services, were introduced (Information Commissioner 2024: 73). These high-value data categories include geospatial data, environmental data, meteorological and statistical data, commercial data, beneficial ownership data and mobility-related data (Information Commissioner 2024: 73). Croatia also adopted by-laws introducing a national open data permit and establishing a register of exclusive rights, as well as a regulation on the costs of reuse of information, laying down objective, public and verifiable criteria for calculating these costs (Central State Office for Digital Society Development n.d.). Finally, in 2023, the Central State Office for Digital Society Development (*Središnji državni ured za razvoj digitalnog društva*) started drafting a new policy of open data and an action plan, which are expected to be adopted in 2024 (Central State Office for Digital Society Development n.d.). According to the Information Commissioner, the new Policy aim to encourage the opening and sharing of data and the adoption of standards to facilitate data exchange between the public and private sectors, thus encouraging innovation, economic growth and the development of new products and services through data sharing whilst respecting privacy issues and data security (Information Commissioner 2024: 74).

Interestingly, in 2023, the High Administrative Court issued 12 decisions on the termination of proceedings in cases initiated by lawsuits against the decisions of the Information Commissioner, since in one case it submitted a request to the Court of Justice of the EU for the interpretation of the provisions of the Open Data Directive (Information Commissioner 2024: 39). However, the High Administrative Court's practice was not always consistent. For example, in several judgments, it did not terminate the proceedings but took the view that the Directive does not refer to issues of FoI.²⁷⁰ The Information Commissioner believes that it is necessary to take stronger measures in educating public bodies on the legal obligations related to the opening of data and the regime of reuse of information, with greater coordination and action from the Central State Office for Digital Society Development. The upcoming adoption of the new Policy and the associated Action Plan should contribute to this goal (Information Commissioner 2024: 69).

2. Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the

²⁷⁰ See, e.g., cases UsII-169/22 of 21 September 2022; UsII-168/22-10 of 28 September 2022; UsII-5/23 of 13 April 2023; UsII-13/23 of 13 April 2023 (*ibid.*, 42).

provision of audiovisual media services (Audiovisual Media Services Directive), amended by the Directive (EU) 2018/1808 of 14 November 2018

The original Directive has been in effect since 5 May 2010, while the amendments adopted by Directive (EU) 2018/1808 have been applicable since 18 December 2018 and were required to be enacted into law by EU member states by 19 September 2020 (European Union 2010). Croatia amended 12 laws and bylaws in order to comply with the original Directive (European Union 2010). The work on implementing Directive 2018/1808, however, was slower and more limited, stirring a great deal of debate.²⁷¹ The main criticism was not directed at the Directive itself, but rather at its allegedly misinterpretation — specifically, the suggestion that the state should interfere with the editorial policies of commercial television channels and that members of the Croatian Association of Independent Producers are being placed in a privileged position compared to other (truly) independent producers (European Union 2010).

To date, Croatia has only amended its Electronic Media Act (Electronic Media Act 2021). It should be noted, however, that Croatia is not alone in not complying with this Directive. To justify this, the European Commission noted in its June 2024 report that the period from 2020 to 2021 was a transitional one and additionally included the onset of the Covid-19 pandemic (European Commission 2024: 3).

3. Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE)

The Directive has been in effect since 15 May 2007 and EU member states were required to incorporate it into their national laws by 15 May 2009 (European Union 2007). However, as Croatia became an EU member on 1 July 2013, it was not required to submit the INSPIRE monitoring and reporting forms before that date.

Croatia submitted its first report in 2016, covering the period from 2013 to 2016 (Government of Croatia 2016a). Based on the findings and the observed implementation gaps, the Action Plan for INSPIRE Implementing Gaps 2016-2020 was created (Government of Croatia 2016b). So far, Croatia has introduced three new measures. The Law on National Spatial Data Infrastructure was adopted in May 2013 and subsequently amended twice, in 2018 and 2020 (Law on National Spatial Data Infrastructure 2013). Meanwhile, the government adopted the National Spatial Data Infrastructure Strategy 2020 and the Strategic Plan of the National Spatial Data Infrastructure for the period 2017-2020 in 2017. These initiatives have helped stakeholders achieve compliance with the INSPIRE (European Commission 2023b).

²⁷¹ See, e.g., *Otvoreno, Novim nacrtom zakona o elektroničkim medijima, novac od RTV pristojbe postaje privilegija odabranih*, available at www.otvoreno.hr/kultura/novim-nacrtom-zakona-o-elektronickim-medijima-novac-od-rtv-pretplate-postaje-privilegija-odabranih/264261, accessed 13 July 2024.

In 2021, the State Geodetic Administration prepared a report on the implementation of measures and activities from the National Spatial Data Infrastructure Strategy 2020 and the National Spatial Data Infrastructure Strategic Plan for the period 2017-2020. This report was adopted by the government in early 2022 (European Commission 2023b).

Finally, in March 2024, the European Commission announced the results of the annual report on the INSPIRE monitoring for Croatia in 2023. The report concluded that there was an increase in conformity and accessibility of data through view and download services (State Geodetic Administration 2023). It also recognised Croatia as an example of good practice in three areas: the effective use of the INSPIRE Reference Validator for validating metadata, data and services, metadata conformity that is close to 100 per cent, and overall improvement of all monitoring indicators (State Geodetic Administration 2023).

4. Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC

The Directive fully aligned the national laws of EU Member States with the Aarhus Convention. It has been in effect since 14 February 2003, and EU Member States were required to integrate it into their national legislation by 14 February 2005 (European Union 2003). As Croatia was not a member of the EU until July 2013, the Directive was not applicable in Croatia prior to that date. Nonetheless, as previously mentioned, Croatia has been a signatory to the Aarhus Convention since 2007.

Croatia enacted various measures to adhere to the Aarhus Convention and the Directive. It specifically enacted the Act on the Right of Access to Information, the Environmental Protection Act (which has been revised multiple times), the Nature Protection Act, the Air Protection Act, and the Water Act (Government of Croatia 2021a: 2).

5. Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on Electronic Commerce), amended by the Digital Services Act

Croatia introduced and revised its Electronic Commerce Act multiple times to align it with the Directive on Electronic Commerce (Government of Croatia 2003). The Directive was, however, amended by the Digital Services Act in 2022 (European Union 2022).

Croatia supported this amendment. At its 11th session in 2021, the Committee on the Economy of the Parliament reviewed the Proposal for this amendment (Croatian Parliament n.d.). A representative from the Ministry of Economy and Sustainable Development highlighted that the Digital Services Act aims to create a modern legal framework for electronic commerce and digital services, strengthen the single digital market and ensure that digital service providers in the EU act responsibly to mitigate risks arising from their services whilst respecting EU rights and values (Croatian Parliament n.d.). The

representative emphasised that the new rules would enhance consumer protection and fundamental rights online, establish transparency and clear accountability for internet platforms, and promote innovation, growth and competitiveness across the internal market (Croatian Parliament n.d.). These measures were expected to encourage the offering of new, better and reliable internet services. Following the discussion, the Committee on the Economy recommended that the European Affairs Committee support the Proposal for a Digital Services Act (Croatian Parliament n.d.).

The new regulation has been in effect since 17 February 2024, with some provisions, including reporting obligations, independent audits, data sharing, supervision (including fees), investigation, enforcement and monitoring, having been applied since 16 November 2022 (European Union 2022).

4.6 Key substantive FoE/FoI issues identified in domestic reporting processes

The paramount domestic reporting on FoE and FoI is the previously mentioned reporting carried out by the Ombudswoman and the Information Commissioner.²⁷² An examination of their regular reports available on their official websites reveals that Croatia encounters multiple obstacles concerning FoE and FoI.

Key issues related to FoE include threats to media freedom, pressure on journalists, intimidation, SLAPP lawsuits and political influence over public broadcasters, as well as hate speech and online harassment. In the realm of FoI, the main challenges involve delays and non-compliance by public bodies with citizens' right to access information, lack of transparency and failure to proactively disclose key information. This aligns with the Croatian Journalists' Association's view on the key challenges concerning FoE and FoI in Croatia.²⁷³

The Ombudswoman and the Information Commissioner regularly call for reforms and stricter enforcement of existing laws to address these issues. For example, the Ombudswoman consistently urges public authorities to design and implement media campaigns that raise awareness about hate speech in public arena, especially on social media, and to more clearly define prohibitions on the public display and promotion of hate symbols (Office of the Ombudswoman of Croatia 2022: 154-155). The Information Commissioner, on the other hand, reiterates the demand for proper compliance with the obligation to proactively disclose information, ensure public access to meetings of public bodies and implement open data policies (Information Commissioner 2024: 103-106). Its reports also highlight an increase in the number of complaints filed, an expansion in the number of FoI users and a greater variety of information requested (Government of Croatia 2021a: 8). Additionally, there has been a negative trend of increased complaints due to administrative silence (Government of Croatia 2021a: 8).

²⁷² See sections 4.6 and 4.4.1.

²⁷³ See section 4.3.

4.7 Follow-up to domestic monitoring/reporting in respect of FoE/FoI-related issues

Section 4.4.1 details the arrangements for monitoring and reporting on human rights, including FoE and FoI, both nationally and internationally. As mentioned there, the Office for Human Rights and Rights of National Minorities is tasked with overseeing the Ombudswoman's recommendations. This office has developed its own data collection methodology in consultation with the Ombudswoman, though specific details are not extensively outlined.²⁷⁴

Regarding the Information Commissioner, this body includes proposals and recommendations for public authorities in its annual reports aimed at ensuring effective implementation of the Act on the Right of Access to Information. These recommendations are intended to improve user access to information, streamline the work of public authorities in handling requests and ensure compliance with legal obligations (Information Commissioner 2024: 100-101). However, these recommendations are quite general and broad. For instance, they refer to legal obligations for proactive information disclosure, public consultations and the publication of information suitable for reuse, and they emphasise that these apply to all public authorities (Information Commissioner 2024: 100-101).

The Information Commissioner relies on different methods in assessing the public bodies' implementation of its recommendations. In 2023, for example, it monitored the legality of actions and the use of administrative silence by public authorities, compliance with proactive information disclosure obligations and the implementation of public consultations through daily monitoring, in-depth monitoring at three ministries, and monitoring the publication of the composition of working groups (Information Commissioner 2024: 102). Among others, it had recommended for ongoing efforts to be made to enhance proactive information disclosure and ensure accurate reporting in annual reports regarding whether public bodies have met this legal obligation at both the local and regional levels (Information Commissioner 2024: 74). The Information Commissioner also relies on educational workshops to ensure public authorities implement its proposals and recommendations. For instance, in 2023, the Commissioner continued providing training on the practical application of the Act on the Right of Access to Information, organising targeted sessions for specific categories of public authorities (Information Commissioner 2024: 102). These sessions focused on strengthening the capacities of information officers and other personnel involved in handling requests and fulfilling their legal obligations.²⁷⁵

Each authority can assess on its own its compliance with the obligations and the effectiveness of the access and reuse system by completing the "Self-Assessment Compliance Questionnaire" and most of them do this. For instance, in June 2023, the

²⁷⁴ See section 4.4.1.

²⁷⁵ See, e.g., the webinar from June 2024; information available at: <https://pristupinfo.hr/webinar-izrada-i-objava-informacija-o-registrima-i-bazama-podataka-asset-lista-12-lipnja-2024-u-1400-sati/> (accessed 21 August 2024).

Information Commissioner sent an adapted self-assessment questionnaire to all public authorities on her list,²⁷⁶ and nearly 1,200 public authorities published and submitted their questionnaires (Information Commissioner 2024: 101).

4.8 Details of other national/international initiatives relevant to state in respect of FoE and Fol

Several official and unofficial initiatives aim to increase the transparency of public bodies, thereby more or less impacting FoE and Fol.

For instance, the Media Act requires annual reporting by all media outlets on ownership structure, financial results and data on average listenership/readership/viewership (Media Act 2004: art. 14). This Act also mandates that ownership data be published in the Official Gazette by 28 February every year (Media Act 2004: art. 32). The Electronic Media Act stipulates that media outlets must provide the Council for Electronic Media with data on media ownership shares by 31 January each year and publish them in the Official Gazette (Electronic Media Act 2021: art. 51). Additionally, the Council for Electronic Media must publish its annual report and submit it to the Parliament (Electronic Media Act 2021: art. 74). The Croatian Radio-Television Act requires annual reports to be sent to the Parliament and published on its website (Croatian Radio-Television Act 2010: 26). The Audiovisual Activity Act emphasises that the Supervisory Board must submit annual reports to the Ministry of Culture and Media (Government of Croatia n.d.a: art. 7).

Regarding unofficial initiatives, civil society organisations frequently measure the transparency and openness of public authorities in Croatia on their own initiative, impacting FoE and Fol as well. For example, non-governmental organisation Gong regularly monitors the openness of the judiciary²⁷⁷ and the legislature.²⁷⁸

Additionally, journalist associations from the Western Balkan states, with the support of the European Commission, have established a joint platform, Safejournalists.net, to monitor changes in legislation and practices in their territories and to engage in various advocacy activities aimed at improving the political, legislative and institutional environment in which journalists and media operate. Since 2020, platform members have monitored the situation in seven states, including Croatia (Safety of Journalists n.d.).

4.9 Summary of the assessment and conclusion

The study offers an in-depth examination of the frameworks for FoE and Fol in Croatia, highlighting its legal underpinnings and execution by governmental entities, public institutions, and independent organisations. Croatia's unitary parliamentary system is shaped by EU legislation and international human rights standards, particularly stressing

²⁷⁶ Available at: <https://tjv.pristupinfo.hr/> (accessed 21 July 2024).

²⁷⁷ See, e.g., here: <https://gong.hr/wp-content/uploads/2022/12/PREPORUKE-ZA-OTVORENOST-PRAVOSUDA-1.pdf> and <https://gong.hr/2023/12/08/gong-upozorava-ustavni-sud-treba-biti-otvoreniji/> (accessed 21 July 2024).

²⁷⁸ See, e.g., here: <https://gong.hr/wp-content/uploads/2023/10/Otvorenost-parlamenta-u-Hrvatskoj-i-regiji.pdf> (accessed 21 July 2024).

FoE and Fol as enshrined in the Constitution and domestic laws. The monitoring and reporting mechanism is organised among different governmental entities, each accountable for particular human rights domains. Nonetheless, although the country has a robust legal framework, it encounters challenges in practice. Critical concerns encompass insufficient media autonomy and transparency, alongside the necessity for enhanced collaboration between governmental and non-governmental entities in oversight and reporting. Initiatives to tackle these difficulties, as detailed in the study, exhibit potential but are confined to specific regions or select state entities. The operation of independent monitoring entities, such as the Ombudswoman and the Information Commissioner, is essential for the promotion and protection of fundamental liberties; yet, their efficacy may be obstructed by political pressures and procedural limitations.

Therefore, the overall assessment of Croatia's record on FoE and Fol monitoring and reporting reveals a mixed picture. International mechanisms, including the UPR and other human rights frameworks like the ICCPR, highlight Croatia's progress in promoting FoE/Fol but also underscore significant challenges that need further attention. The government has committed to addressing these issues, particularly through legislative reforms, yet implementation gaps persist. Civil society and human rights organisations point to ongoing concerns, particularly regarding the safety of journalists, misuse of defamation laws and obstacles in accessing public information.

Key challenges include insufficient investigations into violence and threats against journalists, the misuse of defamation laws to suppress critical voices, the prevalence of SLAPP lawsuits and the inconsistent application of access to information laws. Whilst Croatia has made notable strides in aligning its legal framework with international standards, including through media reforms and increased transparency efforts, practical enforcement remains uneven, with visible disparities across different areas of the country.

Key insights:

- **Legal framework:** Croatia has a robust legal foundation for FoE and Fol, embedded in both domestic and international laws.
- **Structured division of responsibilities:** Croatia's system delineates roles for ministries, the Ombudswoman and specialised ombudspersons in reporting and monitoring FoE and Fol.
- **Institutional mechanisms:** Several governmental bodies, including the Ministry of Justice, the Ministry of Culture and Media, and independent offices such as the Ombudswoman and the Information Commissioner, are crucial for monitoring and promoting human rights, particularly FoE and Fol.
- **Role of independent bodies:** Institutions such as the Ombudswoman and the Information Commissioner play a critical role in protecting human rights. However, their

independence can be undermined by political processes, especially concerning their appointment and functioning.

- **Importance of specialised ombudspersons:** Croatia's specialised ombudspersons are a strong model for Bosnia and Herzegovina in promoting and protecting specific rights.
- **Media independence and local governance:** Local governments in Croatia have limited influence, are often financially constrained and face scrutiny over media financing. Initiatives like the Model for Financing Local Media aim to improve transparency in funding, but adoption remains limited.
- **Civil society involvement:** Although significant, civil society involvement is often symbolic, with the government showing reluctance to engage substantively.
- **Absence of detailed international reporting guidelines:** The lack of clear guidelines for international reporting may hinder Croatia's ability to efficiently meet global standards.
- **Follow-up mechanisms:** The Croatian Government has weak mechanisms for following up on international human rights recommendations, with low compliance rates for domestic recommendations.
- **Challenges in public communication:** Authorities' reluctance to share information leads to distrust, a challenge relevant to Bosnia and Herzegovina.
- **Gaps in public education:** Insufficient investment in public awareness campaigns about FoI hampers transparency efforts.

Strengths:

- **Institutional structure:** Croatia has a robust legal framework that defines the mandates of bodies involved in human rights monitoring. Governmental and parliamentary committees, the Ombudswoman and local coordination bodies play critical roles in monitoring and protecting FoE and FoI.
- **Clear distribution of responsibilities:** Government departments, such as the Office for Human Rights and Rights of National Minorities, have well-defined roles in human rights monitoring and reporting.
- **Specialised ombudspersons:** Croatia has dedicated ombudspersons for gender equality, children's rights and persons with disabilities, all reporting to the Parliament. These institutions provide annual reports and have mechanisms for special reports when needed, ensuring focused oversight on issues including FoE and FoI.
- **Cross-sector cooperation:** Recent initiatives, such as the signing of the Cooperation Agreement for Journalist Protection, demonstrate progress in fostering better collaboration between the government and civil society.

- **Public authorities' reporting obligations:** Public authorities are required to report on the implementation of the Act on the Right of Access to Information to the Information Commissioner, which enhances transparency.
- **Civil society engagement:** Numerous civil society organisations are dedicated to media freedom, FoE and human rights in general, making significant contributions to the protection of FoE and Fol.

Challenges:

- **Coordination and reporting inefficiencies:** There is no single entity responsible for coordinating FoE and Fol reporting to international bodies, resulting in fragmented and often delayed reports. Although the Council for Human Rights was established to address these issues, its effectiveness is under scrutiny, including due to a lack of substantial progress on FoE and Fol.
- **Absence of detailed international reporting guidelines:** Whilst Croatia generally adheres to international standards, there is no specific domestic document outlining the reporting methodology for international bodies. This gap can lead to inconsistent reporting and difficulties in meeting international expectations.
- **Weak government-civil society cooperation:** The participation of civil society in decision-making processes is sometimes regarded as superficial, with the government demonstrating reluctance to engage meaningfully. For example, the Council for Civil Society Development has faced delays in appointments and has been sidelined for quite some time.
- **Reluctance to provide data and limited communication:** The Croatian Journalists' Association has noted a tendency among authorities to resist sharing data and to exclude public participation. This reluctance, combined with public distrust in institutions, undermines transparency.
- **Implementation issues:** Follow-up mechanisms for recommendations from international human rights bodies are weak, with low compliance rates for recommendations from the Ombudswoman's office and limited parliamentary engagement in discussing these reports.
- **Budgetary and educational gaps:** Recommendations from oversight bodies frequently highlight the need for training on FoE and Fol issues. The lack of investment in public education about these rights and insufficient resources to promote Fol represent significant challenges to ensuring effective protection of FoE and Fol.

Potential relevance to Bosnia and Herzegovina:

- **Legal and institutional frameworks:** Bosnia and Herzegovina may advance its legal and institutional mechanisms for FoE and Fol by learning from Croatia's well-established frameworks.

- **Decentralised human rights monitoring:** Like Croatia, Bosnia and Herzegovina may benefit from a decentralised system where specialised departments or ombudspersons handle specific rights-related areas, such as national minorities, gender equality or children's rights.
- **Coordination and reporting:** Bosnia and Herzegovina may benefit from adopting Croatia's approach of centralised coordination via a single coordinating body for human rights reporting. Clear roles and responsibilities across ministries could streamline and improve the reporting process.
- **Recommendation implementation:** Bosnia and Herzegovina can learn from Croatia's struggles with implementing recommendations from bodies like the Ombudswoman. Strengthening enforcement mechanisms and improving parliamentary oversight could enhance compliance with human rights standards.
- **Local-level initiatives:** Croatia's regional human rights coordination bodies, such as those in Medimurje County, provide a model for involving local governments in human rights protection, particularly for FoE and FoI. Bosnia and Herzegovina could adopt similar approaches.
- **Engagement with civil society:** Bosnia and Herzegovina could aim to foster more meaningful cooperation between the government and civil society, learning from Croatia's challenges in ensuring transparent and timely engagement with human rights organisations. Initiatives like *Safejournalists.net* in Croatia demonstrate the importance of grassroots efforts in promoting transparency and freedom of expression. Bosnia and Herzegovina could benefit from similar regional and civil society collaborations to improve its media environment and FoI practices.
- **Transparency in government:** Croatia's 2024-2028 Programme prioritises transparency and media freedom. Bosnia and Herzegovina could also focus on improving media independence and transparency, essential for promoting democratic governance. Both countries face challenges with regional inconsistencies in transparency laws, particularly regarding environmental issues. Adopting good practices, such as Zagreb's e-monitoring platform, could inspire more widespread use of digital tools for transparency in Bosnia and Herzegovina.
- **Accessibility to information:** Croatia's limited success in making media accessible to persons with disabilities highlights the need for further improvement. Bosnia and Herzegovina could enhance its digital platforms to ensure information is accessible to all citizens, particularly those with disabilities.
- **Media financing models:** Transparent media financing models implemented in some parts of Croatia could serve as a useful reference for Bosnia and Herzegovina to enhance local media independence and transparency.

- **Protection of journalists and civil society:** Strengthening laws to protect journalists and human rights defenders from threats like SLAPP lawsuits could be a key area for reform in Bosnia and Herzegovina, drawing from Croatia's efforts.
- **Defamation and hate speech:** Addressing the misuse of defamation laws and hate speech, as highlighted by Croatia's legislative amendments, remains a critical concern. Bosnia and Herzegovina could learn from these developments to better protect FoE.
- **Need for public education on FoI:** Croatia's challenges with public distrust and lack of awareness about FoI suggest that Bosnia and Herzegovina could invest in educating the public about their rights to access information. This could enhance transparency and accountability.

5. Austria

Andrei Richter

5.1 Governance: allocation of monitoring and reporting responsibilities

5.1.1 Overview of constitutional arrangements

The Republic of Austria is a parliamentary democracy with constitutional power shared between a popularly elected president and a bicameral parliament – the Federal Assembly. Austria is a federal state, composed of nine autonomous federal provinces or states (*Bundeslaender*) of Burgenland, Carinthia, Lower Austria, Upper Austria, Salzburg, Styria, Tirol, Vorarlberg and (city-state of) Vienna (Austria 1920: art. 2).

The Federal Assembly comprises 183 members of the National Council and 60 members of the Federal Council. Unlike the former, the latter is not elected by direct popular vote, as its members are delegated by the Provincial Diets in proportion to the relative strengths of the parties in the Diets. The number of members delegated by a federal constituent province depends on the population figure of that province. The parliament elects the government (headed by the Chancellor) which exercises most day-to-day governmental powers.

The main practical difference between Austria on one hand, and other federative countries in Europe, is that Austria's provinces have comparatively little autonomy – almost all matters of practical importance, including but not limited to defence, foreign policy, criminal law, corporate law, most aspects of business law, education, academia, welfare, telecommunications, and the health care lie with the Federation. The judiciary (including three top courts) is also almost exclusively federal, with the exception of nine provincial administrative courts.

The powers of the Federation include 'press affairs' (*Pressewesen*) (Austria 1920: art. 10, para. 1.6). The Constitution provides that these matters lie within the framework of the sphere of competence of the federal authorities (Austria 1920: art. 102, para. 2).

The human rights protection is guaranteed by both the federal and provincial legislation (Austria 1920: art. 148a),²⁷⁹ while both federal and provincial authorities, as well as the municipalities are required to promote human rights (Austria 1920: art. 148a, para. 19).

For example, Vienna, one of the federal provinces, has its own anti-discrimination legislation. According to the Vienna Anti-Discrimination Law (*Wiener Antidiskriminierungsgesetz*) (Vienna Anti-Discrimination Act 2004, ss. 7–7a), any direct and indirect discrimination as well as harassment of natural persons and their family members is forbidden with regard to the following issues falling within the competence of the province:

²⁷⁹ See also, Federal Constitutional Law of 29 November 1988 'On the Protection of Personal Freedom'; see also: 'Vienna - city of human rights' <https://www.wien.gv.at/english/social/integration/human-rights/index.html#:~:text=Vienna%20is%20a%20city%20that,role%20model%20for%20human%20rights> (accessed 23 August 2024).

social affairs, education, access to and supply of goods and services made available to the public (including housing) as well as access to self-employment. An anti-discrimination body has been set up by the city-province. It is the Office for Combating Discrimination with an advisory and mediating function, as well as responsible for arbitration procedures.²⁸⁰

Anti-discrimination is also promoted by the leading Austrian political parties through the self-imposed gender quotas, which facilitates equal representation in the Parliament. For instance, the current party statute of the Social Democratic Party of Austria (SPÖ) mandates no less than 40 % of women and no less than 40 % of men when electing officials and compiling lists of candidates. The Greens have a quota of 50 % women for the leadership positions (Hayek, Mayrl and Russmann 2024: 102–105).

The rule of law (*Rechtsstaat*) and (the existence of) human rights are two basic principles of the Constitution in Austria (Austria 1920: art. 83, para. 2). Austrian authorities believe that the courts are the most important actors in monitoring compliance with the Austrian Constitution, including compliance with the human rights. They are civil and criminal courts, administrative courts and the courts of public law. A two-tier administrative judicial system of 11 administrative courts, introduced in 2014, in particular, enables Austria to meet its obligations under international covenants on human rights and fundamental freedoms (Human Rights Committee 2013: para. 2). The Government reports that the courts are aware of their responsibility and may limit the right to freedom of expression only if this is justified and necessary (Human Rights Council 2020: para. 39), which – according to the European Court of Human Rights (ECtHR) – does not always seem to be the case (*Standard Verlagsgesellschaft mbH v. Austria* (no. 3) 2021). Still, judgments by the ECtHR are reportedly ‘fully implemented as fast as possible, recommendations by other treaty monitoring bodies are analysed and taken into account accordingly’ (Human Rights Council (2020: 5). More generally (and substantively), the ECtHR has constitutional status in Austria and therefore the case law is directly applicable. Even if the judgements have no direct impact on Austria, the Constitutional Court is guided by this case law (Gamsjäger and Reither 2024).

The Austrian Constitutional Court (*Verfassungsgerichtshof*, VfGH) actually plays the key role in the context of human rights as it reassesses the compliance of laws, regulations and administrative acts against constitutional standards (and, thus, essentially also the rights enshrined in relevant international law) (Human Rights Committee 2013: 3).

According to established case law of the Constitutional Court, the human rights protected by Austrian law, including those protected by the Austrian Constitution, must be interpreted in light of public international law (Human Rights Committee 2013: 2). Its judicial review includes compliance with constitutionally incorporated international human rights, including those guaranteed by the European Convention on Human Rights (ECHR) and its

²⁸⁰ See, e.g., *Gerichtsverfahren - Stelle zur Bekämpfung von Diskriminierungen* at: <https://www.wien.gv.at/verwaltung/antidiskriminierung/gerichtsverfahren.html> (accessed 23 August 2024).

additional protocols. Since 2012, the VfGH also uses the EU Charter of Fundamental Rights as a benchmark when applying European Union law (Human Rights Committee 2013: 2).

As a matter of principle, the Constitutional Court only acts upon submission of an application. The Constitution specifies when and by whom applications can be submitted. The details of the procedure are laid down, above all, in the Constitution (*Bundesverfassungsgesetz B-VG*) and the Constitutional Court Act (*Verfassungsgerichtshofgesetz VfGG*) (Constitutional Court of Austria n.d.).

The latest annual report of the Constitutional Court describes several cases to protect the fundamental rights of FoE and Fol (Constitutional Court of Austria 2023: 37–38).

5.2 Division of responsibilities across government units for human rights issues, including FoE and Fol

The legal basis for responsibilities for substantive protection of human rights, including FoE and Fol, at state and non-state level are so-called ‘National Action Plans’ (NAPs) and associated strategies, developed and approved by the Federal Government, as they play a central role in advancing the implementation of all rights protected under international conventions. The Austria’s work in the field of human rights is to focus on the implementation of existing thematic NAPs.

For example, the ‘National Action Plan on Disability 2022-2030’ includes numerous specific objectives and measures to ensure the implementation of the UN Convention on the Rights of Persons with Disabilities. It sets out, for example, that all centres for protection against violence, counselling centres and healthcare institutions should be designed to provide accessibility to the persons with disabilities (GREVIO 2023: 6–7).

NAPs are revised and reissued periodically by the responsible federal Ministry with the engagement of the civil society in this process: *ad hoc* teams are reportedly established by the line ministry to develop proposals for objectives and indicators as well as for specific measures (UN Committee on the Rights of Persons with Disabilities 2023: para. 30). For example, the above NAP on Disability 2022-2030 is already the second one on this particular issue. The Government reported that it was adopted following ‘a multi-annual, participatory process involving civil society (26 expert teams from all federal ministries and federal provinces)’ (Federal Chancellery of Austria 2023: para. 50) and (Austrian Communications Authority 2022: 71–95).

Austrian civil society organisations (CSOs), as well as the Austrian Ombudsman Board, (see below) insist on adopting a strategic National Action Plan *on human rights* by the Government and would prefer that to the current ‘patchwork’ situation (Austrian Ombudsman Board 2023a, citing civil society organisations). They argue, that such a ‘NAP Human Rights’ could, in particular, identify further possibilities for human rights improvements and contribute combining the diverse human rights-related monitoring and reporting processes more effectively. The Austrian Human Rights League, the leading

platform for CSOs, considers that the purpose of ‘NAP Human Rights’ is to plan strategically and in the long run, as well as to set priorities – and ideally allocate a budget for it.

These basic principles have also been set out in countless international recommendations. The introduction of such a NAP, if done appropriately, would also simultaneously address the current lack of coordination and strategic planning for the implementation of the UPR process recommendations (Austrian League for Human Rights 2023: 12–14). On the other hand, preparations of the NAP Human Rights serve as a reason for the Government not to foresee specific NAPs, such as for countering racism, racial discrimination, xenophobia and related intolerance (Human Rights Committee 2013: 32).

Successive federal government programmes have envisaged the development of such a NAP (Human Rights Committee 2013: 119). Nonetheless, despite comprehensive preparations, the project has been stagnant since the 2010s and, at the time of writing, has not been implemented (Austrian Ombudsman Board 2023a).

Otherwise, media affairs are within the mandate of the Federal Minister for Women, Family, Integration and Media. The Office of the Federal Minister for Women, Family, Integration and Media at the Federal Chancellery is a peculiar arrangement as it is formally not a ministry but a division placed directly under the Federal Chancellor and as such part of the structure of the Chancellery (alongside with one other quasi ministry – the Office of the Federal Minister for the EU and Constitution). This structure (as of 1 January 2024) included six sections, wherein the Section on Constitutional Service (*Sektion V – Verfassungsdienst*) was in charge of media affairs, which seemingly included (in Department V/3) media and information society issues together with the political parties’ affairs. General issues of human rights protection were in the portfolio of the Department V/7 of the Chancellery (Federal Chancellery of Austria 2024).

The Legal Basis for the responsibilities of all ministries in the Federal Government is the Federal Ministries Law (*Bundesministeriengesetz*, BMG, 1986), which was latest amended 18 July 2022 (*BGBI. I Nr. 98/2022*) (Federal Republic of Austria 2022).

This approach of division of responsibilities between ministries somewhat differs from the preparations for the Universal Periodic Review, which are conducted in a transparent process widely involving civil society (Human Rights Committee 2013: 145).

Implementing human rights is a systemic, persistent challenge also on the regional level. In this context, the Human Rights Cities Graz, Salzburg and Vienna (City of Vienna n.d.) are important actors;²⁸¹ both facilitated by the International Centre for the Promotion of Human

²⁸¹ For more on practicalities of human rights city Graz, see, e.g., here: International Centre for the Promotion of Human Rights at the Local and Regional Levels and UNESCO Chair in Human Rights and Human Security (2023) *Governing the City by Human Rights Objectives: Management Concepts and Instruments, Outcome Document and Explanatory Remarks of Human Rights’ Go Local: What Works* (Academy and Conference 8 February 2023) https://www.humanrightsgolocal.org/wp-content/uploads/2023/07/ACCO23_Outcome_Document_Explanatory-remarks.pdf (accessed 23 August 2024).

Rights at the Local and Regional Levels established in Graz in 2020 (Human Rights Committee 2013: 120).

5.3 Division of responsibilities across government units for international and domestic human rights monitoring and reporting, including FoE and Fol

The general national practice is that reports by Austria as a State party on compliance with its international human rights instruments are drawn up exclusively by governmental bodies, under the guidance of the Federal Chancellery (including the office of the Prime Minister or of the Chancellor).

Public officials – ‘human rights coordinators’ – are in place at all Federal Ministries and Provincial Government Offices. These ‘coordinators’ play a pivotal role in this process, and are tasked to assist their offices on human rights matters, including handling Austria’s reporting processes.²⁸² Typically, the human rights coordinator of the Ministry leading on the topic would engage with colleagues inside the Ministry and coordinate preparing such a report or other activities with other relevant ministries.²⁸³

As an illustration, the process of monitoring and reporting on the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (*Aarhus Convention*), including on Fol on environmental issues, falls within the responsibility of the Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology (BMK) (UNECE 2022), pursuant to the Austrian Environmental Impact Assessment (EIA) Act (Federal Republic of Austria n.d.a: art. 19, para. 6).

5.4 Conduct of monitoring and reporting

5.4.1 Overview of human rights monitoring and reporting cycles, including FoE and Fol

As for the overview,²⁸⁴ general information on reporting cycles of Austria is provided and updated on the webpage of the UN OHCHR (OHCHR n.d.a).

Most recently, Austria presented its general national report on human rights protection and implementation under UPR in 2020-21 (OHCHR n.d.b). The next one is to be presented in October 2025.

Initially due in 2021, the national report of Austria on ICCPR will take place in 2024 (sixth reporting cycle).

Austria presented its Voluntary National Review on implementation of the UN Sustainable Development Goals in 2020. The report failed to contain information on the state of access

²⁸² Interview with a Senior Researcher of a human rights CSO, Vienna, 16 April 2024.

²⁸³ *Ibid.*

²⁸⁴ See e.g., Belgium’s 2018 UNHRC report, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FBEL%2F6&Lang=en and Switzerland’s 2016 report, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FCHE%2F4&Lang=en (accessed 23 August 2024).

to information. The next one is to be presented in July 2024 (Federal Chancellery of Austria and Ban Ki-moon Centre for Global Citizens 2023: 46).

As of August 2023, Austria's combined twenty-first and twenty-second periodic reports to the monitoring mechanism – the Committee on the Elimination of Racial Discrimination (CERD), overdue since 2015.

In August 2023, the second and third official country review of Austria by the UN Committee on the Rights of Persons with Disabilities (CRPD) took place. The state provided contributions from all federal ministries and federal states (state party report).

The latest report on implementation of the European Charter for Regional or Minority Languages was submitted by Austria in 2021 and adopted in 2023, with recommendations of the Committee of Ministers of the CoE.

The latest (Fifth) Report submitted by on compliance with the CoE Framework Convention for the Protection of National Minorities was received by the Convention Secretariat on 30 September 2021.

In October 2023 Austria presented its first Progress Report on compliance with its obligations under the Aarhus Convention, with comments provided – in parallel – by national environmental NGOs (UNECE 2023).

As to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Austria submitted the report on preventing and combating violence against women and domestic violence in 2023.

5.4.2 Domestic legal/regulatory basis for monitoring and reporting arrangements

To assess the domestic legal/regulatory basis for *reporting* arrangements, we examine an example drawn from the explanations provided by the Government on the making of Austria's Voluntary National Review (VNR) in 2020 on its implementation of the UN Sustainable Development Goals (SDGs) (Federal Republic of Austria 2020: 13–15). As a reminder, the SDGs include implementation of Target 16.10 'Ensure public access to information and protect fundamental freedoms'.

The practical execution of commitments for the 2030 Agenda in Austria commenced with the formal decision of the Council of Ministers. All federal ministries were instructed to integrate the SDGs into all pertinent policies and programmes, as well as to formulate related action plans and implement other suitable measures within their respective sectoral jurisdictions. This mainstreaming method facilitates the effective integration of the SDGs across all levels and activities of national policies and government. In line with a multi-stakeholder strategy, provinces, towns, and municipalities engaged in the efforts, alongside social partners and stakeholders from the private sector, academia and civil society (Federal Republic of Austria 2020: 13–15). An Inter-Ministerial Working Group on the 2030 Agenda (IMAG) was established to focus on general coordination and dialogue with relevant actors, with the

general coordination of monitoring and reporting performed by the Federal Chancellery and the Federal Ministry for European and International Affairs (Federal Republic of Austria 2020: 97).

A relevant example of the federal *monitoring* mechanism for the rights of persons with disabilities – the Monitoring Committee (*Unabhängige Monitoringausschuss*), was established in 2008. The provinces have also established monitoring committees for their sphere of responsibility (Federal Ministry of Social Affairs, Health, Care and Consumer Protection 2020). The Monitoring Committee is an independent body (Monitoring Committee Austria n.d.), that organises annual public meetings gathering input on specific articles of the UN Convention on the Rights of Persons with Disabilities and other relevant topics (FRA 2023: 34). The members (and one alternate for each member) of the committee include representatives of:

- Organisations of persons with disabilities (four representatives),
- NGO specialising in human rights (one representative),
- NGO active in development cooperation (one representative),
- Academia (one representative), and
- A representative of the Ministry of Social Affairs and the relevant ministry on case-by-case basis or an executive body of the federal administration depending on an individual case (in advisory capacity only) (Federal Ministry of Social Affairs, Health, Care and Consumer Protection 2020).

Thus, regulatory grounds for monitoring and reporting arrangements in Austria mirror the need to conduct ‘close consultations between the federal ministries and the federal provinces.’ Such consultations would often involve other relevant federal offices, such as the office of the Ombudsman Board and the Public Prosecutor’s Office. Their engagement comes through providing them with explicit information on the preparations for monitoring and reporting and an invitation ‘to provide information on relevant activities for the purpose of presenting them accordingly’. Such a model in conducting this activity becomes evident from the content of Austria’s replies in relation to the latest (fifth) Periodic Report of the State party to the International Covenant on Civil and Political Rights (ICCPR) (Human Rights Committee 2013: 146-147).

The federal ministries provide the necessary funds in their respective areas for monitoring, reporting, and other relevant activities (GREVIO 2023: 9-10).

5.4.3 Inclusion of international standards for monitoring/reporting in domestic processes

The Manual on Human Rights Monitoring issued by the Office of the UN High Commissioner for Human Rights (OHCHR) is referenced in the Human Rights Manual, published by the Austrian Development Agency (ADA), the operational unit of Austrian Development Cooperation (ADC), as its policy document on human rights which defines and stipulates the

goals and principles in this sector. The Manual is primarily intended for the staff of the ADA. It also addresses staff responsible for development cooperation at the Federal Ministry for European and International Affairs (FMEIA), as well as the implementation partners of ADC or government partners, including consultants. It helps define ADC's goals with respect to human rights, the significance and status of human rights and the methods and instruments for their inclusion in the various projects and programmes (Austrian Development Agency 2010: 26).

The Austrian Human Rights Manual states that 'Monitoring and evaluation of human rights issues is still comparatively undeveloped [in the world]' (Austrian Development Agency 2010: 17). On the other hand, ADC claims that the Human Rights-Based Approach (HRBA) is well established within the Agency: human rights (HR) as a normative principle is the most embedded of the three HRBA intervention levels within ADC, followed by HR as a programmatic intervention and HR as part of political dialogue. Effective coordination between these three levels is in place. ADC's HRBA draws on Austria's unique and longstanding support for human rights protection confirmed by the ground-breaking World Conference on Human Rights that took place in 1993 in Vienna (Simsa 2019).

We have discovered minimal evidence that the pertinent domestic monitoring and reporting frameworks align with or integrate international standards and guidelines, specifically the OHCHR Manual on Human Rights Monitoring, along with directives on human rights indicators and data utilisation. Simultaneously, there is evidence indicating that the Austrian public authorities are cognisant of these requirements.

5.4.4 Identification of and basis for mandates of key government bodies, public agencies, and non-government (inc. international/national civil society) stakeholders in human rights monitoring and reporting, including FoE and FoI

The key domestic governmental bodies and public agencies in human rights monitoring and reporting, including FoE and FoI, are as follows:

1. The Communications Authority Austria (*Kommunikationsbehörde Austria, KommAustria*) is the independent NRA (National Regulatory Authority) for audio and audiovisual media services. It operates pursuant to the Federal Act on the establishment of an 'Austrian Communications Authority' (*KommAustria-Gesetz, KOG*). Its Board is a collegial authority and consists of five members, including Chair and Deputy Chair. They are appointed for a period of six years²⁸⁵ (most recently in 2022). The appointment is preceded by a public call for applications. The Federal Government proposes the candidates in agreement of the Head Committee of the National Council to the Federal President, who

²⁸⁵ See <https://www.rtr.at/en/m/KOG> (accessed on 23 August 2024).

confirms the appointments.²⁸⁶ The members are independent in performing their duties and not subject to any instructions.

The sphere of responsibility of KommAustria comprises administrative management and regulatory tasks in the field of electronic audio-media and electronic audio-visual media (Human Rights Committee 2013: 173). The authority is to ensure pluralism of the media and opinion, as well as fair competition in the broadcasting market with its private providers and the public broadcaster. KommAustria also provides funding in the area of print media and fulfils tasks under the Media Cooperation and Funding Transparency Act (MedKF-TG, *Medientransparenzgesetz*) and under the Television Exclusive Rights Act (*Fernseh-Exklusivrechtegesetz*, FERG).

Since 2010, KommAustria supervises the Austrian Broadcasting Corporation (ORF) and its provincial subsidiaries in accordance with the provisions of the KommAustria Act and the ORF Acts (ORF-G, ORF-Gesetzes). This includes checking the admissibility of new services prior to their launch as well as financial control of the ORF or checking compliance with the public remit.

More broadly, KommAustria oversees the compliance of electronic media with relevant legislation. The supervision during the election campaign is complaint-based and no media monitoring is conducted (OSCE/ODIHR 2022: 9–10). KommAustria also regulates access to media markets, specifically by assigning broadcasting frequencies, issuing broadcasting licences, accepting and reviewing notifications from cable broadcasters and other providers of audiovisual media services. This work also includes the issuing of digital multiplex licences to radio and television broadcasters (RTR 2023: 28).

KommAustria is responsible for the administration and allocation of subsidies from the Quality Journalism Fund, the Press Fund, the Journalism Fund (*Qualitäts-Journalismus-Förderung, die Presseförderung, die Publizistikförderung*). In order to support the self-regulation of the press, the Fund to Promote the Self-Regulation of the Press, with an annual budget of €150,000, has also been set up at KommAustria pursuant to the Press Subsidies Act 2004. The Fund to Promote the Self-Regulation of Commercial Communication and the Fund to Promote Self-Regulation for the Protection of Minors are also administered by KommAustria and endowed with an annual budget of €75,000 each (RTR n.d.a).

Appeals against decisions of KommAustria can be submitted to the Federal Administrative Court (BVwG). Further appeals may be submitted to the Austrian

²⁸⁶ See the profile of KommAustria on the website of EPRA:

https://cdn.epra.org/organisations/documents/1/original/Profile_AT_0417.pdf?1491570093 (accessed 23 August 2024).

Administrative Court (VwGH) and the Austrian Constitutional Court (VfGH) (Federal Republic of Austria 2001).

KommAustria receives administrative support to fulfil the wide range of tasks assigned to it as a regulatory body from the Media Division of the Regulatory Authority for Broadcasting and Telecommunications (*RTR - Media, Rundfunk und Telekom Regulierungs-GmbH*), fully owned by the Republic of Austria (RTR n.d.b).

RTR's core mandate is to promote competition in the broadcasting, telecommunications and postal markets, while achieving the goals set out in the KommAustria Act and the Telecommunications Act. RTR is headed by two managing directors and is structured into two specialist divisions: Media Division (RTR Media), and Telecommunications and Postal Services Division (RTR 2023:16).

RTR Media has been legally assigned the management of four funds, which receive an annual allocation of 59 million euros from government funds. They are the Private Broadcasting Fund (€20 million/year), the Non-Commercial Broadcasting Fund (€5 million/year), the Digitalisation Fund (€500 000/year), the Television Fund Austria (€13.5 million/year) and the Fund for the Promotion of Digital Transformation (€20 million/year). The latter 'is intended to ensure an independent and pluralistic media landscape in Austria to compete with online giants' (RTR 2023:12).

During the 2020 UPR process, UNESCO noted that members of the Supervisory Board of the *RTR* were appointed by the Federal Ministry of Transport, Innovation and Technology, and encouraged Austria to assess the system of supervision of the broadcasting sector in order to ensure that the process was independent (OHCHR 2021a: para. 32).

2. The Austrian Ombudsman Board (*Volksanwaltschaft*, Commission for Complaints from the Public or AOB) (Austrian Ombudsman Board n.d.a) was set up in the late 1970s. It is a collective ombuds-body, consisting of three persons nominated by the three largest political parties represented in Parliament and then elected by the Parliament and appointed by the Federal President. The members, whose six-year term can be renewed only once, exercise their function in full independence and can neither be suspended, nor removed or dismissed. Traditionally, the members are either former Members of Parliament or worked in another political function (Austrian Ombudsman Board n.d.a). There is a governmental programme in place, providing for further strengthening of the AOB (Human Rights Council (2020: 10).

AOB derives its mandate from the Constitution (chapter IX) and the Ombudsman Act 1982 (*Volksanwaltschaftsgesetz - VolksanwG*) (IOI – Europe Region n.d.). The Ombudsman Board submits annual report to the National Council and the Federal Council (that is, the two chambers of Federal Parliament) on its activities.²⁸⁷

Everyone can lodge a complaint with the Austrian Ombudsperson Board as to alleged maladministration by the Federation, provided that they are affected by such maladministration and in so far as they do not or no longer have recourse to legal remedy. All complaints must be investigated by the Board (Austria 1920: art. 148a, para. 1).

According to the law, all federal, provincial, municipal authorities and municipal associations as well as other self-administering bodies are required to support the AOB in the performance of its tasks, allow it to inspect their records, and on demand provide the information required. The AOB is tasked, in particular, ‘to monitor and concomitantly inspect the behaviour of executive bodies and officers of administrative authorities authorised to issue direct orders and carry out coercive measures’ (Austria 1920: art. 148b).

The federal executive bodies and officers responsible for handling the administrative matters are required to comply with recommendations addressed to them by the AOB within eight weeks and inform the AOB of the conclusion on the matter raised or give the reasons for non-compliance. Drafts of laws and regulations are submitted to the Ombudsman Board in advance for review and possible suggestions of amendments or on their adoption.

The Ombudsman Board employs a Human Rights Advisory Council (HRAC) of 16 members (plus 16 alternate members). Only individuals possessing the requisite competencies and expertise in human rights may be appointed as members. The Chair and their deputy are to be distinguished individuals in the realm of human rights, possessing comprehensive understanding of organisational operations and academic credentials in constitutional law (Federal Republic of Austria 1982: para. 15).

The Human Rights Advisory Council (*Menschenrechtsbeirat*) makes suggestions to the AOB on how to guarantee uniform human rights monitoring standards (Federal Republic of Austria 1982: para. 14). As a forum for dialogue for representatives of human rights CSOs and the relevant ministries, the HRAC has the potential of adapting international human rights standards and incorporating them into national monitoring priorities.

²⁸⁷ The latest being for 2022, see, e.g., (in English) <https://volksanwaltschaft.gv.at/en/reports> (accessed 23 August 2024).

The Ombudsman Board is required to accept one nomination for a member and an alternate member of the HRAC each, from the Federal Chancellor, the Federal Minister of the Interior, the Federal Minister of Justice, the Federal Minister of Health, the Federal Minister of Defence and Sports, the Federal Minister of Labour, Social Affairs and Consumer Protection and the Federal Minister for European and International Affairs.²⁸⁸ Seven non-governmental organisations, to be determined by the Ombudsman Board, specialising in human rights protection, also propose one member and one alternate member each; and the AOB is bound by these proposals (Federal Republic of Austria 1982: para. 15).

A federal province can by its constitutional law declare the AOB competent also in the HR sphere of the particular provincial administration. If at least one state declares so, two further members and two alternate members of the HRAC shall be appointed. One member and an alternate member come from a human rights CSO and the other pair is selected following a joint proposal of the provinces concerned. Otherwise, the province is to establish, by its constitutional law, an agency with tasks resembling those of the AOB (Austria 1920: art. 148i). Such agencies have been established in only two out of nine provinces: Vorarlberg and Tyrol, where general provincial ombudspersons exist (see below) (Austrian Ombudsman Board n.d.b).

In 2022, the AOB received nearly 24,000 complaints, as a record figure for complaints submitted.²⁸⁹ There is, however, no evidence found that the AOB is closely involved in FoE and FoI-related monitoring and reporting.

3. Regional Ombudsperson of Vorarlberg (*Landesvolksanwalt für Vorarlberg*) is based in Bregenz. The Vorarlberg provincial constitution and the 1985 Law on the province's ombudsman (*Die Vorarlberger Landesverfassung; das Gesetz über den Landesvolksanwalt*) form the legal basis for the tasks of the provincial ombudsman (Office of the Provincial Ombudsman 2022: 7). It monitors the human rights compliance of the province's and local government administration and indirectly Federal administration, mostly with the focus on persons with disabilities and non-discrimination (Office of the Provincial Ombudsman n.d.). It is also mandated as an external reporting point under the Whistleblower Protection Act. The Vorarlberg Ombudsman is independent in carrying its tasks under this law. It annually reports to the state parliament (Office of the Provincial Ombudsman n.d.).

²⁸⁸ See their current list with the links to the nominating authority here: https://volksanwaltschaft.gv.at/en/for-human-rights/human-rights-advisory-council/members/?utm_source=chatgpt.com

²⁸⁹ See, e.g., 'Austrian Ombudsman Board Publishes Annual Reports for 2022' (7 September 2023) press release <https://volksanwaltschaft.gv.at/artikel/Austrian-Ombudsman-Board-publishes-Annual-Reports-for-2022?topic_type=topic&topic=100&archiv=0> accessed 23 August 2024

There is no evidence found that it is closely involved in FoE and Fol-related monitoring and reporting.

4. Regional Ombudsperson of Tyrol (*Tiroler Landesvolksanwältin*), based in Innsbruck, is a self-defined as ‘a body of the Tyrolean state parliament that is independent of the state government and is intended to provide individual assistance as simply and unbureaucratically as possible in addition to the existing legal protection system’ (Provincial Government of Tyrol n.d.). The mandate is established under the province’s Constitution and the 2014 state law on Tyrolean Ombudsperson (*Gesetz über den Tiroler Landesvolksanwalt StF: LGBl*) (*Landesvolksanwältin von Tirol* (2022: 10-13). The state ombudsperson and the team of mostly lawyers provide free advice to anyone upon request and receive complaints in cases of potential mistreatment or mistakes by a regional authority, such as the Tyrol Communities, the Innsbruck Municipal Council, the district authorities and the Office of the Tyrolean Provincial Government. Examples of the areas of responsibility include social law, construction and spatial planning law, municipal law, agricultural legislation, commercial law and other. The team includes the disabled persons’ ombudsperson. It submits an annual report on its activities to the state parliament.²⁹⁰

There is again, however, no evidence found that it is closely involved in FoE and Fol-related monitoring and reporting.

5. There are also numerous federal and state-level ombudspersons to protect specific human rights or human rights of specific social groups, such as the Internet Ombudsman, ombudsmen for medical patients, students, children and youth, for the protection of non-smokers, animal protection, and others.²⁹¹ Again, *there is no evidence found that any of these bodies are closely involved in FoE and Fol-related monitoring and reporting.*
6. Human Rights Committee of the National Council (Parliament). The Human Rights Committee reviews all bills, motions and reports that relate to fundamental rights. This includes human rights policy, racism and xenophobia and anti-discrimination in Austria and in other countries. The European Convention on Human Rights and other international treaties are also a recurring topic in the Human Rights Committee’s work (Austrian Parliament n.d.a). According to the official response to this author’s request for information, the secretariat of the Parliament stated that the ‘function of the

²⁹⁰ See, e.g., *Regional Ombudsman of Tyrol: Body of the State Parliament of Tyrol* (Innsbruck, 2022) https://www.tirol.gv.at/fileadmin/landtag/landesvolksanwalt/landesvolksanwaeltin_folder_4-seitig_2022_englisch_WEB_DS.pdf (accessed 23 August 2024).

²⁹¹ See, e.g., https://www.oesterreich.gv.at/en/themen/leben_in_oesterreich/ombudsstellen_und_anwaltschaften.html (accessed 23 August 2024).

Committee (like of most other National Council committees) is the preliminary deliberation [bold in the original] of items of business (bills, motions, reports, etc.) assigned to it (Austrian Parliament n.d.b). ‘It does not have oversight functions.’²⁹² Although the U.S. Department of State reports that the ‘parliamentary human rights committee provides oversight of the government’s actions with respect to human rights’ (U.S. Department of State 2023), the secretariat of the Parliament puts matters differently, stating rather that: ‘Oversight of compliance with constitutionally guaranteed rights (fundamental rights, human rights) is the responsibility of the Constitutional Court of Austria’, probably having in mind judicial and not parliamentary oversight.

In short, this parliamentary committee does not appear to be engaged in FoE or FoI-related (or general) monitoring and reporting.

Traditionally, civil society has been a vital part of Austria, with more than 122,000 CSOs. Their political setting has traditionally been relatively good. CSOs are considered an important part of the ‘welfare state’, being generally in dialogue with the government on a variety of issues, as well as in legislative processes. The civil society sector is predominantly funded by public sources where half of the sector’s funding comes from contracts with public authorities, while another 17% from public subsidies (Simsa 2019). The non-profit organisations active in the field human rights, civil and political rights, democracy and transparency also enjoy preferential treatment in respect of their taxation (Federal Chancellery of Austria 2023: para. 56). According to the Austrian Human Rights League, the funding situation, however, especially for general non-profit activities to improve the human rights situation, remains precarious (Austrian League for Human Rights (ALHR 2023).

The process of recognising the right of CSOs to challenge acts or omissions by private persons or public authorities that contravene human rights is complicated and aims to ensure that a CSO actually exists and is indeed active in promoting human rights protection (Federal Republic of Austria n.d.a: art. 19, para. 6).

The key domestic civil society stakeholders in human rights monitoring and reporting, including FoE and FoI, are as follows:

1. Austrian League for Human Rights (*Österreichische Liga für Menschenrechte*). This federation coordinates more than 250 Austrian CSOs as their umbrella organisation. In the UPR process, the Austrian League for Human Rights submits reports on the status of implementation of the recommendation to the UN Human Rights Council (Austrian Ombudsman Board 2023a). It highlights FoE and FoI issues in its monitoring and reporting activities (see further below).

²⁹² E-mail titled “Ticket No. 694/2024-1: question about human rights oversight” from Benjamin Agostini (Infoteam, Parliamentary Administration) to Andrei Richter, 19 January 2024.

2. The ‘Self-regulatory Association of the Austrian Press – Austrian Press Council’ (*Verein zur Selbstkontrolle der österreichischen Presse – Österreichischer Presserat*) re-founded in 2010, works based on a voluntary code of conduct for journalistic work. The Press Council has a Code of Conduct for journalistic work (Austrian Press Council n.d.a), which is based on the Media Act (Federal Republic of Austria 1981) and provides ethical guidance for media professionals. It contains rules for the work of journalists to ensure professional ethics. For example, it forbids discrimination on racial, religious, national, sexual or any other grounds. For example, newspapers found disseminating hate speech or infringement of the Act that prohibits Nazism (Federal Republic of Austria 1947) are excluded from press subsidies in the relevant year (Human Rights Council 2020). Only print media and their online platforms, news agencies, and community radio and television stations may belong to the Austrian Press Council (Seethaler, Beaufort and Schulz-Tomancok 2023: 19).

The Press Council is a self-regulatory entity in the press sector with its own by-laws (Austrian Press Council n.d.b). It is funded through annual grants for the press self-regulation provided by KommAustria (RTR 2023: 53). According to the KommAustria Act (KOG), a media self-regulatory body may provide: 1) publication of its decision; 2) publication of its recommendation for future conduct; 3) the revocation of a quality seal granted in accordance with the body’s guidelines; 4) potential identification of a breach or warnings in accordance with the body’s by-laws (RTR 2023: 61).

The Austrian Press Council handled 407 cases in 2023. A total of 403 cases were submitted to the Press Council by external parties, while in four cases the body’s three chambers (*Senats*) reviewed cases arising from their own monitoring activities (RTR 2023: 53).

3. Since 2021, there is the Association for the Protection of Minors through Self-Regulation of Audiovisual Media Products and Services (*Verein zur Selbstkontrolle audiovisueller Medienangebote zum Schutz von Minderjährigen - Jugendmedienschutzverein*), which reviewed its first cases in 2022. These involved suspected infringements of access control systems, labelling requirements and rules on broadcasting times (RTR 2023: 51, 58-59).
4. The advertising industry has also established a self-regulatory association, ‘Self-Regulatory Society of the Advertising Industry’, also referred to as the ‘Austrian Advertising Council’ (*Gesellschaft zur Selbstkontrolle der Werbewirtschaft – Österreichischer Werberat*). A self-regulatory Code in the advertising sphere (Austrian Advertising Council n.d.) aims to prevent advertising which is discriminatory or misleading or violates human dignity. A special section of the Code (2.1.) deals with gender-discriminatory (sexist) advertising, an issue that brings most of the complaints to the Council. Everybody who feels harassed, hurt or misled by any advertising measure is entitled to submit a complaint to the Advertising Council (Human Rights Committee 2013: para. 24). In 2023, the Austrian Advertising Council received a total of 334 complaints, 235 decisions were

handed down. The Advertising Council is also funded by KommAustria through grants for self-regulation in the advertising market (RTR 2024: 126).

5. 'Austrian Presseclub Concordia'. Founded in 1859, this is the oldest functioning press club in the world. The original intention of its founders was to provide a platform to support journalists in need. Today, while still serving as an advocate for the professional interests of its 580 (journalist) members, Concordia's mission includes acting as a guardian of media freedom, ethical standards and quality in journalism (Concordia Social Projects n.d.).

There is, however, no evidence found that it is closely involved in FoE and FoI-related monitoring and reporting.

6. 'SDG Watch Austria' – a broad, cross-sectorial coalition of more than 220 civil society and non-profit organisations in Austria acting in alliance with the private sector and academia.²⁹³ Together, they work on the implementation of the UN 2030 Agenda and its 17 Sustainable Development Goals (SDGs) (United Nations n.d.a). Those goals include SDG 16 that targets, in particular, to 'ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements' (United Nations n.d.b). 'SDG Watch Austria' is a member of 'SDG Watch Europe', a broad, cross-sectorial civil society alliance based in Brussels (SDG Watch Europe n.d.).

There is, however, no evidence found that it is closely involved in FoE and FoI-related monitoring and reporting.

7. Reporter ohne Grenzen (ROG) Österreich (Reporters Without Frontiers (RSF) - Austria), contributes to the RSF reports on the media freedom scene (Reporters Without Borders Austria 2023).
8. Austrian chapter of Transparency International, the prominent international coalition against corruption, which regards FoI as a crucial tool to attain its objectives, also conducts monitoring for general TI purposes.
9. *Oekobuero*, an alliance of the Austrian Environmental Movement. It consists of 20 Austrian organisations engaged in environmental, nature, and animal protection and serves on the political and legal level the environmental movement. It submits comments concerning compliance by Austria with provisions of the Aarhus Convention,²⁹⁴ including its first progress report in 2023.²⁹⁵

²⁹³ List of members in the human right field available here: <https://www.sdgwatch.at/de/wer-wir-sind/mitglieder/menschenrechte/> (accessed 23 August 2024).

²⁹⁴ See, e.g., https://unece.org/sites/default/files/2022-10/frCommVII.8b_C48_24.10.2022.pdf (accessed 23 August 2024).

²⁹⁵ See https://unece.org/sites/default/files/2023-11/frCommVII.8b_C48_31.10.2023_Redacted.pdf (accessed 23 August 2024).

5.4.5 Cross-government management and coordination of monitoring and reporting practices

This analysis examines the management of coordination among various state, sub-national, and public bodies in the preparation of internationally mandated reports, specifically through the case study of Austria's 2020 Voluntary National Review (VNR) regarding its implementation of the UN Sustainable Development Goals (SDGs) (refer to 5.5.2).

The compilation process for VNR presents a broad and transparent multi-stakeholder approach. Over 40 organisations were reportedly actively involved last time from the outset in all phases, assisting – through dialogue, networking and cooperation between state and non-state actors – to determine the process design, timeline and review structure. The review underwent four consultation rounds, with 320 responses collected in a total volume of 520 pages. Progress was analysed based on independent data by Austrian Institute of Statistics (*Statistik Austria*) (Federal Republic of Austria 2020: 13–15).

This review uncovers the detail of the relevant activity in/by the Austrian provinces. Some of the UN SDGs were linked to the performance targets for the public sector at federal and state level (for example, in Styria) and taken into account in public funding (such as in Lower Austria) (Federal Republic of Austria 2020: 13–15).

As a reminder, the legal foundations for the compilation process of the VNR were laid, first, through the decision of the Council of Ministers to acknowledge the compilation of the review, and, second, by the Inter-Ministerial Working Group on the 2030 Agenda (IMAG) convening the editorial group co-chaired by the Federal Chancellery and the Foreign Ministry. The editorial group included representatives of three ministries with primary responsibility for the three dimensions of sustainable development. Editorial committees were set up, comprising representatives from the federal ministries, federal provinces, the Austrian Association of Cities and Towns, the Austrian Association of Municipalities, as well as 'social partners' and stakeholders from business, academia and civil society. The editorial group coordinated discussions with the editorial committees (Federal Republic of Austria 2020: 13–15).

The VNR was prepared in four phases. The stakeholders contributed text suggestions, success stories ('flagship initiatives') and comments in all phases. Discussions in all phases were held during regular meetings with all stakeholders, smaller *ad hoc* meetings, relevant events, and continuously by email and phone on an ongoing basis.

Phase 1: Preparation and planning. During this two-month period, the editorial team established the mandate to compile the VNR in close collaboration with the editorial committees. This mandate outlined the process design, the participation of editorial committees, the timeline, and the review structure. Simultaneously, three principal cross-cutting topics of the Voluntary National Review were collectively defined. The editorial team engaged closely with the editorial committees to establish a list of enquiries to collect

pertinent input and a set of criteria to identify success stories and flagship initiatives. A total of 170 responses were collected in this phase. (Federal Republic of Austria 2020: 13–15).

Phase 2: Overview of the current situation and data collection. During this four-month phase, the focus shifted to collecting information on numerous activities related to Austria's national and international implementation of the 2030 Agenda. Responding to a list of questions, members of the editorial committees provided information on 159 success stories and flagship initiatives, governance measures and the next steps in the implementation of the 2030 Agenda envisioned by its institutions. A total of 100 responses were collected in this phase (Federal Republic of Austria 2020: 13–15).

Phase 3: Compiling the review. This five-month phase was dedicated to compiling the review. The editorial group prepared drafts of individual parts of the review. Four consultation rounds were held with the editorial committees for each chapter of the Voluntary National Review. The work done by *Statistik Austria* (Federal Republic of Austria 2020: 13–15) was vital in monitoring the progress in the implementation of the SDGs, based on its National Indicator Report, compiled in connection with the VNR. Trends and international benchmarks were provided (Federal Republic of Austria 2020: 13–15).

Phase 4: Communication and final steps. This four-months phase focused on coordinating communication and dissemination of the VNR with the editorial committees. The aim was to make the review accessible to broad target groups. This phase involved preparations for the presentation of the review at the UN High-Level Political Forum (HLPF) with the stakeholders. A short video and a brochure summarising the review were produced, as well as a website focusing on the success stories and flagship initiatives, all produced at the same time. Also, social media presence was agreed with the editorial committees. In the final step, the VNR was acknowledged by the Council of Ministers (Federal Republic of Austria 2020: 13–15).

Our study revealed rather similar processes of cross-government management and coordination of monitoring and reporting practices in the compilation of the national report of Austria for the Universal Periodic Review (UPR) at the United Nations Human Rights Council (UNHRC) in 2020 (Human Rights Council 2020: fn. 1) and in the process of reporting on Aarhus Convention, including on FoI on environmental issues (in submission of final Plan of Action in autumn of 2023) (UNECE 2022).

5.4.6 *Standing/ad hoc* arrangements for government/public sector-civil society cooperation in human rights monitoring and reporting

According to the authorities, preparations for the Universal Periodic Review are conducted as a transparent process involving civil society. Civil society is also involved in dissemination and implementation of international recommendations. In the context of UPR process, relevant recommendations made by international bodies are discussed in a systematic dialogue with the civil society. Where appropriate, thematic dialogues also take place (Human Rights Committee 2013: para. 145, 148). The Government also reports that the

Federal Minister responsible for particular human rights issues and once a year holds a 'dialogue meeting' with relevant CSOs (Human Rights Council 2020: para. 26).

According to the US State Department reports, government officials are generally cooperative with CSOs and responsive to the views of national and international human rights groups that operate without government restriction (U.S. Department of State 2023).

On the other hand, according to the head of a leading media CSO, she is not aware of any systematic involvement of CSOs in governmental FoE and FoI monitoring and reporting on a national level. There is occasional exchange, sometimes initiated by government bodies, but mostly contact comes on the initiative of CSOs.²⁹⁶

According to the study by Ruth Simsa, a major challenge in the sphere of arrangements for government/public sector-civil society cooperation in human rights monitoring and reporting is that they very much depend on the composition of the political coalition in power. In recent years, CSOs were systematically excluded from legislative processes, with minimum dialogue between them and the Federal Government or individual ministries.

This reflected a shift dating back to the previous right-wing 'populist' coalition, with certain civil society organisations characterising the resultant governmental policies as progressively authoritarian and less transparent. Simsa notes that the absence of collaboration has resulted in pressure and polarisation, with numerous civil society leaders indicating a substantial rise in their workloads (e.g., correcting false reports, obtaining information, and fundraising). Civil society organisations encountered polarisation within the populace, political sphere, and media. It necessitated a heightened endeavour to substantiate their work. Repercussions on civil society frequently manifested as uncertainty and heightened individual strain (Simsa, R. 2019).

Even earlier, CSOs often had direct contacts with ministries, appointments with ministers were possible and public hearings took place (Simsa, R. 2019).

The situation apparently improved by 2023. According to the recent report by the Austrian Human Rights League (ALHR 2023), plenary sessions were reintroduced under the coordination of the Federal Ministry for European and International Affairs, or Foreign Ministry, and the responsible department of the Federal Chancellery, where representatives of interested civil society organisations can meet once a year with representatives of the federal ministries and federal states. Civil society was invited to help shape the agendas. It has now been made possible for the civil society to provide their concerns and information on the progress of selected topics. This is an improvement compared to earlier plenary events, which, eventually, were no longer seen as useful by many civil society organisations (ALHR 2023: 2).

²⁹⁶ Interview with head of a media freedom CSO, 30 January 2024.

According to the AHRL, another positive development is the commitment of the officials involved in the planning of these plenary events, to greater involvement of civil society and more constructive cooperation. However, it criticised the Austrian federal provinces which do not actively participate in such cooperation on their level, with the exception of Vienna and Burgenland. 'This is particularly alarming due to Austria's federal structure, where many responsibilities for human rights-related issues lie with the federal states' (ALHR 2023: 2).

On the other hand, good cooperation might be too formalistic, as there is currently 'no effective follow-up' in regular exchange of the ministries with the CSOs. The conclusions of the plenary events are not recorded, and in some instances, there are no agreed minutes (ALHR 2023: 2).

To understand the standing arrangements to facilitate CSO participation in/support of human rights monitoring and reporting, let us zoom in on the governmental initiative under implementation by the Federal Ministry for Arts, Culture, Civil Service and Sport. Its results were published in 'Practical guide on Public Participation in the digital age' (*Praxisleitfaden: Partizipation im digitalen Zeitalter*) (Federal Ministry for Public Service and Sports 2024). The practical guide provides a new approach for goal-orientated participatory public policy. Among basic criteria for successful participation projects, the Guide seeks to provide public sector employees and the civil society with a basic set of knowledge and tools (ranging from decision trees, methods of stakeholder-analysis, risk assessments up to checklists and the description of exemplary participation methods) in order to manage and successfully integrate participation projects in the context of public administration (Federal Chancellery of Austria 2023: para. 57).

The Practical Guide provides Guiding Principles for participation with CSOs (para 1.3). These principles represent the basis for participation and promote good cooperation between government and CSOs to increase, on the one hand, the quality of the results and, on the other, the identification of those involved with the project and the results of the participation process.

Firstly, the legal framework must be maintained. In addition, process agreements and the rules and framework conditions contained therein must be consistently communicated. Furthermore, impartiality can be ensured by ensuring balance, equal opportunities, respect and fairness. This is followed by the principle of freedom from discrimination, through which all target groups are factored in and the processes are barrier-free. Furthermore, a certain attitude towards public participation is essential for successful participation processes, including, among other, direct dialogue, requiring mutual acceptance, understanding and trust, as well as the ability to change perspectives, through which other, varying views can be adopted. It is also important to respect and take each other seriously by maintaining objectivity in viewing and communicating. Taking shared responsibility for the collaboration and the outcome is also an important factor. Traceability should always accompany the entire process of public participation. Next, communication principles are beneficial for

promising participation processes. The most important thing here is early, personal, clear, target group-oriented, simple and honest communication between the administration, decision-makers and the public. In addition, there is the unhindered flow of information between the actors involved and a conducive environment. Finally, the general requirements for public participation must be noted. Above all, political decision-makers must agree to and support public participation. Citizens should be affected by or interested in the project. In any case, there must be scope for design in which there is still room for development and not all decisions have yet been made, as well as the appropriate resources (time, financial and personnel) for public participation (Federal Ministry for Arts, Culture, Public Service and Sport 2023: 13–14).

5.4.7 Arrangements for international/domestic FoE/FoI report follow-up/implementation

The key issue here seems to be lack of a national mechanism in Austria, responsible for follow-up/implementation of recommendations. During the latest UPR (2020-2021), Austria was encouraged by the UN High Commissioner for Human Rights (UNHCHR) ‘to establish a national mechanism for comprehensive reporting and follow-up in relation to recommendations received from all international and regional human rights mechanisms and to treaty obligations, while linking them to the Sustainable Development Goals’ (OHCHR 2021b). To this end, the UNHCHR ‘strongly recommended the use of OHCHR practical guide’ to effective state engagement with international human rights mechanisms on this topic (OHCHR 2016).

In the view of the Austrian Ombudsman Board, this problem is related to the absence of a sufficient governmental wish to put in place an effective human rights monitoring. In 2023, to improve this situation, the Austrian League for Human Rights, in cooperation with the AOB and partially financed by the Future Fund of the Republic of Austria (*Zukunftsfonds des ROE*) (*Zukunftsfonds Austria* n.d.), has developed its own online monitoring tool for the UPR (ALHR n.d.). This tool provides an up-to-date status of the implementation of the human rights recommendations in Austria, it allows monitoring by categories, which include FoE (*Meinungsfreiheit*) and media sector (*Medien*) (ALHR n.d.). The monitoring tool lists particular issues raised by the UN states (in German and English), and includes the contact information for the responsible Ministry or other public body, the official response by the Government on the issue, names of relevant CSOs, and detailed notes of the League on the progress to implement the recommendations (if any).

That non-governmental initiative aside, however, according to the Austrian Human Rights League, there is no effective mechanism for coordinating the implementation measures of the UPR between the federal ministries with the involvement of civil society in this exercise. Consequently, there is no targeted work on the implementation of the UPR recommendations: recommendations may be implemented by chance, insofar as a project, which is already being pursued nationally, may incidentally fulfil a recommendation (ALHR 2023). In respect of key FoE and FoI issues (such as criminal defamation and access to

information) the federal authorities, moreover, at times rebuffed both international and national reports and recommendations (see below).

5.5 Substantive FoE and FoI issues

5.5.1 Overview of record of international and national human rights reporting and follow-up in respect of FoE/FoI

The following section surveys and highlights the key FoE and FoI-related issues identified in the context of the relevant arrangements.

i. Universal Periodic Review (UPR)

The UPR process is an instrument of the UN Human Rights Council, created to monitor the human rights situation in the member states. Austria is now midway through the cycle that allows both the Government and civil society to present midterm reports. The Austrian League for Human Rights coordinates Austrian civil society activity on the Universal Periodic Review (Austrian Ombudsman Board 2023a). On 7 November 2023, the League submitted the midterm report of civil society regarding the UPR of Austria to the UN (ALHR 2023).

In its most recent UPR report, the Austrian Government acknowledged many significant issues that must be addressed in the implementation of human rights in Austria. They include guaranteeing all human rights in relation to applications of artificial intelligence (AI). The latest UPR report stated, for example, that intensive work is underway on the national AI strategy, which also addresses fundamental ethical principles. Austria is to establish a nationwide legal framework and standards for developing and using AI systems, taking into account international regulatory standards – especially existing obligations under human rights and IHL – and implementing the European Ethics Guidelines for trustworthy AI. Protecting personal data, ensuring effective enforcement possibilities, and verifying compliance by the Data Protection Authority is highlighted as the second priority (Human Rights Council 2020: 123).

ii. 1966 International Covenant on Civil and Political Rights (ICCPR)

Initially due in 2021, the national report of Austria on ICCPR will take place in 2024 (VI reporting cycle) (OHCHR n.d.c). Its previous State party's report was submitted in 2013 with a great deal of information provided therein now outdated (Human Rights Committee 2013).

No record of international and domestic human rights issues in respect of FoE/FoI was found in the materials of the national report and the follow-up discussion.

iii. 2009 Council of Europe Convention on Access to Official Documents (CETS No. 205) ('Tromsø Convention')

Austria has neither joined nor ratified the Tromsø Convention, despite appeals from international NGOs for the Austrian government to take action (Access Info Europe 2024). Until 2024 it had no national Access to Information Law.

iv. 2001 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters ('Aarhus Convention')

Austria is a party to this Convention. The Federal Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology (BMK) represents Austria in the Meetings of the Parties to the Aarhus Convention and prepares the replies to the Aarhus Convention Compliance Committee in Geneva on the recommendations of the Meetings regarding the implementation of Convention. Most recently (October 2023) Austria submitted its Plan of Action outlining the measures that it agreed to implement in reply to criticism from the Meeting (none of it relates to FoI issues), with comments provided – in parallel – by national environmental CSOs (UNECE) (2023). The implementation includes adoption of legal amendments in federal and state law, for example the Salzburg Environmental Protection and Environmental Information Act (UNECE 2022).

No record of international and domestic human rights issues in respect of FoE/FoI was discovered in the relevant materials of the Aarhus Convention Compliance Committee.

v. UN Sustainable Development Agenda 2030 (including annual reporting to UNESCO on SDG-16 (access to information))

The 2030 Agenda for Sustainable Development encourages countries to 'conduct regular and inclusive reviews of progress at the national and sub-national levels, which are country-led and country-driven'. In this regard, Voluntary National Reviews (VNRs) (United Nations n.d.c). serve as a follow-up and review mechanism through which countries assess and present progress in achieving the SDGs. Countries present the VNRs voluntarily, at the UN High-level Political Forum (HLPF) on Sustainable Development, an annual meeting under the auspices of the UN's Economic and Social Council (ECOSOC) (United Nations n.d.c). In its resolution on the HLPF review, the General Assembly encouraged countries to conduct a review once during the four-year cycle of the HLPF (United Nations General Assembly 2021: annex, para. 19). In 2023, the HLPF was held on 10 to 14 July in New York.

Austria presented its VNR on implementation of the Sustainable Development Goals in 2020. *The report did not contain information on the state of access to information.* The next one is to be presented in July 2024 (Federal Republic of Austria 2020: 46).

Other non-EU international instruments with reporting obligations relevant to FoE/FoI

i. International Convention on the Elimination of All Forms of Racial Discrimination (1965), Art. 5

As of August 2023, Austria's combined twenty-first and twenty-second periodic reports to the monitoring mechanism – the Committee on the Elimination of Racial Discrimination (CERD) – have been overdue since 2015 (Committee on the Elimination of Racial Discrimination 2023).

The ALHR confirmed that Austria has largely adopted various recommendations concerning the implementation and promotion of measures to combat racism, discrimination, xenophobia and intolerance, referring, among other, to the planned NAP against Racism (ALHR 2023: 9). Contrary to this assurance and contrary to the agreement in the current government programme, however, the NAP against Racism has not been adopted and no significant other programmes in the field of anti-racism work have been implemented because of the preparations of NAP on Human Rights (see also above). CSOs believe that there is a lack of political will in Austria to recognise racism as a systemic and institutional problem. There is no clearly defined responsible body at the level of the Federal Government responsible for combating racism. There is also no systematic and sustainable financial support for civil society and community organisations that advocate for the development of a society critical of racism (ALHR 2023: 9).

As far as inclusion of this issue in policies of public broadcasting is concerned, a norm of the ORF Law (*Bundesgesetz über den Österreichischen Rundfunk*) stipulates that advertising must not discriminate on grounds of race or ethnicity, sex, age, disabilities, religion or belief, nationality or sexual orientation (Human Rights Committee 2013: 23).

ii. Convention on the Rights of Persons with Disabilities (2006) and its Optional Protocol, Arts. 4, 9, 21, 23

The Federal Government, the provinces and municipalities have been equally required to implement the Convention in Austria. In addition to the administration, both the federal and the provincial legislators as well as the judiciary are required to take measures or make decisions in accordance with the Convention (Austrian Ombudsman Board 2023b).

The Ministry of Social Affairs serves as the federal government's focal point for the national implementation and monitoring of the UN CRPD in Austria. The provinces have established their own focal points within their realm of responsibility in accordance with Article 33 of the UN CRPD.

In August 2023, the second and third official country review of Austria by the UN Committee on the Rights of Persons with Disabilities (CRPD) took place (OHCHR n.d.d). The state provided contributions from all federal ministries and federal states (state party report). In addition, civil society (coordinated by the Austrian Disability Council), the Austrian Monitoring Committee, the AOB and the Disability Ombudsman submitted their reports to the UN CRPD Committee. The Committee critically examined the issues of responsibility of the federal provinces, education, de-institutionalisation and accessibility.

According to experts, there is room for improvement in the current policy framework on access to media for persons with disabilities. Both public service broadcasters (ORF Act para. 5 (2) and private broadcasters (Audiovisual Media Act para. 30 (3)) are required by law to provide access to media content. Still, only the public service broadcaster has been continuously improving the accessibility of media content for hearing and visually impaired

people – though there is an imbalance between the extent of media access for the hearing impaired (relatively well-developed) and visually impaired (rather underdeveloped). Community media work towards inclusion of persons with special needs (Seethaler *et al.* 2023: 24).

iii. European Charter for Regional or Minority Languages (ETS no. 148), Art. 11

The European Committee of Experts oversees the execution of the Charter. The most recent report was submitted by Austria to the Committee on 15 November 2021, subsequently adopted on 15 March 2023, accompanied by evaluations and suggestions from the Committee of Experts, and on 4 October 2023, with adopted proposals from the Committee of Ministers of the CoE.

The Austrian report recognises the significance of national minorities' representation in the media. The ORF provides an extensive array of services for the six national minorities throughout its terrestrial and satellite radio and television stations, in addition to its online platforms (Committee of Experts of the European Charter for Regional or Minority Languages n.d.). The country report also provides information on the funding of 'main periodicals' in minority languages and on specific regular broadcasts on public service broadcaster ORF and regional radio (Committee of Experts of the European Charter for Regional or Minority Languages n.d.). The Committee of Experts found, however, that the funding is insufficient to properly cover the newspapers' costs, be it development of the online version or staff costs.

The online service *volksgruppen.orf.at*, with a dedicated page for each ethnic group, also provides news and information in all six minority languages, as well as links to the radio and television programmes. While the offer of radio programmes offers more options, the Committee of Experts notes that certain television programmes are still broadcast only six times per year, which is far from sufficient to make a genuine contribution to language promotion (Committee of Experts of the European Charter for Regional or Minority Languages n.d.).

According to the civil society, in 2021, after almost three decades, funding for the national minority groups has indeed increased again. This increase, however, only covered the loss due to inflation. In addition, more than 10% was earmarked for the language media of the national minority groups. The CSOs call to systematically secure the language media of the ethnic groups by adjusting the press and journalism funding accordingly. Likewise, the proportion of the language of the ethnic groups in public broadcasting should be continuously increased (ALHR 2023).

Experts note that the ORF Act guarantees the representation of the six legally recognised minority groups and requires an 'appropriate' share of airtime. They claim that albeit the law does not provide any framework for the assessment of 'appropriateness', the public service broadcaster complies with the spirit of the law to a considerable extent. However, only one

weekly TV programme is reported to be devoted explicitly to all minorities (Seethaler *et al.* 2023: 24).

iv. Framework Convention for the Protection of National Minorities (ETS No. 157), Arts. 7, 9

The latest (Fifth) Report submitted by Austria on compliance with the CoE Framework Convention for the Protection of National Minorities was received by the Convention Secretariat on 30 September 2021. The 15-pager Report (very much along the lines of the earlier report on the European Charter for Regional or Minority Languages, see above) details the availability of minority media (Republic of Austria 2021). The CoE Advisory Committee on the Framework Convention provided its opinion in June 2023 on the use of minority languages in the media.

Still, the Advisory Committee also noted as crucial that the production of content in minority languages should adequately meet the information needs of all generations of persons belonging to national minorities, highlighting that there were no programmes for children belonging to national minorities. Linked to this, the Advisory Committee emphasised digital media's considerable potential to make audiovisual productions available in minority languages at a lower cost than incurred by traditional media and irrespective of broadcasting hours. It therefore commended the already-existing digital offers, such as the ORF's online platform. At the same time, it considered that 'digitalisation could be a lever to remedy the above-highlighted issues with regard to access to information in minority languages' (Republic of Austria 2021).

v. Council of Europe Convention on Human Rights, Art. 10.

In the Declaration on the protection of journalism and safety of journalists and other media actors adopted on 30 April 2014, the Committee of Ministers of the Council of Europe 'decide[d] to facilitate the development of an Internet-based platform drawing on information supplied by interested media freedom organisations to record and publicise information on possible infringements of the rights guaranteed by Article 10 of the European Convention on Human Rights' (Council of Europe 2014).

The 'Platform to promote the protection of journalism and the safety of journalists' includes reports on serious threats to the safety of journalists and media freedom in Europe in order to reinforce the Council of Europe's response to the threats and member states' accountability. Contributing Partner organisations – invited international CSOs and regional associations of journalists – issue alerts on media freedom violations and publish annual reports on the matter in the countries of Europe (Council of Europe n.d.).

There were only two alerts regarding Austria in 2023 (out of a total of 11 since 2015), and in both cases the Government provided a response through its Permanent Representation to

the Council of Europe (Council of Europe n.d.a).²⁹⁷ As a general remark, the Government has consistently confirmed that it ‘attaches particular importance to the unrestricted exercise of journalistic activity and the guarantee of freedom of the press.’²⁹⁸

The most serious alert so far came in September 2018, when the spokesperson of the Federal Criminal Office of the Interior Ministry of Austria instructed the press departments of provincial police to limit their cooperation with the media deemed to be too critical of the law-enforcement. The leaked instruction, which the Ministry itself has confirmed as authentic, explicitly named the dailies *Der Standard* and *Kurier* and accused them of ‘negative and one-sided’ reporting, ‘ignoring facts’. It also named the weekly news magazine *Falter*, which carried out several investigations into the inner workings of the Ministry. The police departments were urged not to grant critical media any ‘privileges’, such as police ride-along.

The Ministry of the Interior defended the contents of the leaked instruction and insisted that it did not originate with the Minister. It said the guidelines were rather non-binding suggestions and not firm orders (MAPMF n.d.) (Council of Europe n.d.b).

In reaction, on 25 September 2018, Alexander van der Bellen, Federal President, and Sebastian Kurz, then Federal Chancellor, declared that freedom of expression, media and the press are the pillars of liberal democracy and of the rule of law in Austria; that the media must have the same free access to information, without discrimination or boycott on the part of the public institutions’ public relations officers.

On 30 April 2019, the Ministry of the Interior dissolved the Press Service at the Federal Criminal Office (which issued the controversial recommendations) and integrated it into the Ministry. On 3 July 2019, when the new Government was established, the new Minister of the Interior reported that the Press Service had been re-established within the Federal Criminal Office.

On 11 February 2021, the partner organisations to the Platform declared this case to be ‘resolved’, concluding it was no longer an active threat to media freedom (Council of Europe n.d.b).

The case law of the ECtHR on art. 10 of the Convention is another mechanism to report on national flaws in the realm of FoE and FoI. In its latest national report during the UPR (2020), Austria informed the UNHRC that in 2018, the ECtHR confirmed certain decisions of Austrian courts and considered their judgments, that restricted the right to freedom of expression, in conformity with human rights (ECtHR judgement of 25/10/2018, *E.S. v. Austria*, no. 38450/12) (Human Rights Council 2020: fn. 61). Already the following year, however, the ECtHR found problematic issues in the appellate courts’ and the Austrian Supreme Court’s

²⁹⁷ Notably, the Government of Austria has replied to *all* 11 cases raised in the Platform.

²⁹⁸ See, e.g., ‘Council of Europe Platform to promote the protection of journalism and safety of journalists – alert No 200/2023 – response by the Austrian authorities’ (Strasbourg 23 November 2023) <https://rm.coe.int/austria-en-reply-orf-tv-crew-attacked-in-vienna-after-a-concert-23-11-/1680ad651c> (accessed 23 August 2024).

evaluation of the freedom of expression case ‘in the absence of any weighing-up of [freedom of expression] interests’ and found violation of freedom of expression in their judgments as they ‘were not supported by relevant and sufficient reasons to justify the interference’ with the freedom of expression (ECtHR 2021).

vi. Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210) (Istanbul Convention), Arts. 14, 17, 19, 21

In 2015 Austria established the ‘National Coordinating Body – Protection of Women against Violence’ in the Department for Prevention of and Protection against Violence at the Federal Ministry for Women, Family, Integration and Media, the federal authority that coordinates monitoring and reporting on these issues, together with the Directorate General for Women and Equality of the Federal Chancellery (Federal Chancellery of Austria n.d.).

Austria was among the first two countries to undergo the baseline evaluation by GREVIO (Group of Experts on Action Against Violence Against Women and Domestic Violence). The report submitted by Austria to GREVIO in 2023, stated that, as of the school year 2022/2023, a compulsory subject of ‘*Digitale Grundbildung*’ (**digital literacy**) was introduced at schools in Austria. Pupils and students must learn the necessary skills for using digital media responsibly and reflectively at a young age, avoiding harming themselves or others (GREVIO 2023: 17).

vii. CoE Convention on Cybercrime (Budapest Convention), Additional Protocol

Although signed in 2003, Austria did not ratify the First Additional Protocol to the Convention on Xenophobia and Racism (Council of Europe n.d.c).

EU-derived monitoring/reporting obligations (including implementation reports) and associated follow-up (where relevant) regarding FoE/FoI

I. Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information (recast) (Open Data Directive)

The Austrian transposition report specifies amendments to the laws on the Obligation to Provide Information, Information Reuse and Statistics Act of the provinces, as well as the new Federal Act on the reuse of information from public bodies, public companies and research data (Information Reuse Act 2022 - IWG 2022) and amendments to the Research Organisation Act, the Geodata Infrastructure Act, the Commercial Register Act and the Surveying Act.²⁹⁹

There is, however, no evidence found that Austria’s implementation of the Directive led to FoE and FoI-related monitoring and reporting.

²⁹⁹ Available at: https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=uriserv:OJ.L_.2019.172.01.0056.01.ENG (accessed 23 August 2024).

ii. Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive)

The measures taken by Austria to comply with the Directive include adoption of the Federal Law on the exercise of exclusive television broadcasting rights (Exclusive Television Rights Act (*Fernseh-Exklusivrechtgesetz* — FERG)), which amended, in 2001, the ORF Act (*Österreichischer Rundfunkgesetz* — ORF-Gesetz) on the issue of broadcasting the ‘events of substantial social interest’ (European Commission 2007). Then, in the wake of implementing the Directive as well as meeting the requirements of subsidy law regarding the legal framework for public broadcasting, the Austrian broadcasting laws were again subject to comprehensive amendments in 2010 (Human Rights Committee 2013: para. 172).

There is, however, no evidence found that Austria’s implementation of the Directive led to FoE and FoI-related monitoring and reporting.

iii. Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE)

Austria has provided two reports on the implementation of the Directive (latest in 2013), specifying relevant changes made in the legislation of the provinces, *status quo* of the construction and development of the INSPIRE Infrastructure for Spatial Information in Austria. They described the coordination activity in Austria and the tasks, methods and objectives of those involved (Republic of Austria 2013). The responsible Federal Ministry for Agriculture, Forestry, Regions and Water Management operate the INSPIRE portal (Republic of Austria n.d.). Thus, Austria ensures that appropriate structures and mechanisms are designed for coordinating, across the different levels of government, the contributions of all those with an interest in their infrastructures for spatial information.

There is, however, no evidence found that Austria’s implementation of the Directive led to FoE and FoI-related monitoring and reporting.

iv. Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC

According to a recent legal review of developments and despite the existence of numerous legal frameworks for freedom of environmental information, such as the Federal Act on Environmental Information (UIG) and the EU Environmental Information Directive, ‘Austrian authorities continue to be creative in finding reasons to refuse to provide information.’ It points to a recent decision of the Higher Administrative Court, which has shown that the ‘national UIG does not comply with the requirements of the EU Environmental Information Directive’ (Jirak 2021).

The reason of Austria's lagging behind the international standards in this area is that the comprehensive Access to Information Federal Act was adopted only in 2024 and enters into force in 2025 (see below).

v. Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)

Implementation of the E-Commerce Directive through Austrian national law and policy has recently been challenged in the Court of Justice of the European Union (CJUE) which issued a judgment in a case of *Google Ireland Limited, Meta Platforms Ireland Limited and TikTok Technology Limited* that filed complaints against *KommAustria*, on 9 November 2023 (Lacourt 2023). The case originated in 2021, when *KommAustria* declared in a set of decisions, that the three services were subject to an Austrian law.³⁰⁰ This law imposes a set of obligations on national and international providers of communication platforms for monitoring and notifying allegedly illegal content. The claimants argued that the obligations introduced by the Austrian law were disproportionate and incompatible with the free movement of information society services and with the principle of control of those services by the member state of origin, which is the state on whose territory the service provider is established, as provided in the E-Commerce Directive. The CJUE upheld the complaint against Austria by concluding that 'a EU member state may not subject a provider established in another member state to general and abstract obligations' (Lacourt 2023). In 2024, the national law that served as the legal basis for the *KommAustria* decisions was replaced by the EU Digital Services Act (DSA) (Seethaler *et al.* 2023: 17).

There is, however, no evidence found that Austria's implementation of the Directive led to FoE and FoI-related monitoring and reporting issues.

vi. The EU Whistleblowing Directive 2019/1937

The Directive was transposed into Federal Act only in February 2023 (*HinweisgeberInnenschutzgesetz*, HSchG) (Federal Republic of Austria 2023) after the European Commission had opened infringement proceedings against Austria because of missing the 2021 deadline. The HSchG applies to persons (whistleblowers) who have obtained information about violations of law due to a current or previous professional relationship with a legal entity in the private or public sector (Widner and Micheuz 2024).

The latest report of the Council of Europe's Group of States against Corruption (GRECO) also attested to the gross deficiencies in transparency of the Austrian government (Graber and Schmid 2023). It recommended the full implementation of the EU Whistleblower Directive,

³⁰⁰ Namely, *Bundesgesetz über Maßnahmen zum Schutz der Nutzer auf Kommunikationsplattformen* - BGBl. I, 151/2020 (Federal Act on Measures for the Protection of Users on Communication Platforms).

including disclosure of the financial standing of relatives and partners of top political figures, and disclosure of politicians' contacts with lobbyists.³⁰¹

viii. Monitoring by the European Union Agency for Fundamental Rights (FRA)

The Agency was set up in Vienna in 2007, designed to ensure that all EU legislation and the resulting provisions within the individual Member States are in line with the human rights and fundamental freedoms guaranteed in Europe. Its main task is to act as a competency hub for fundamental rights questions for the European Parliament, the Commission, the Council and the EU Member States in the implementation of Community law. To this end, it collects and analyses data on fundamental rights issues and accordingly provides EU institutions and Member States with expertise by means of thematic reports and comments on specific legal or political measures. It works in close collaboration with civil society organisations and international organisations (Federal Ministry for European and International Affairs n.d.).

There is, however, no evidence found that FRA has been involved in Austria's FoE and FoI-related monitoring and reporting issues.

5.5.2 Key substantive FoE/FoI issues identified in national reporting processes

According to the monitoring done by the national team of experts for the *Media Pluralism Monitor* (MPM), a research tool that was designed to identify potential risks to media pluralism in the Member States of the European Union. In Austria, 'foundations of a democratic media system are intact and robust: Freedom of expression is well protected, even on the Internet. Media authorities work independently. Public TV and radio signals reach almost everyone, and access to journalism is unrestricted. There still is a varied supply of regional and local media services, including a lively community media sector. During election campaigns, the public service broadcaster ORF reasonably represents the parliamentary parties in its programmes. Regulatory safeguards that preclude government officials and political parties from media ownership in the audiovisual and radio sector, the Austrian Press Agency's (APA) professional work, and editorial statutes (wherever they are in place) are among the precautions that seek to safeguard against political interference in journalism' (Seethaler *et al.* 2023: 8). Similar conclusions are also reflected in the EU monitoring report (European Commission 2024).

As evident, the public bodies in Austria are not particularly involved in FoE and FoI-related national monitoring and reporting. As an illustration, the only case related to *FoE* in the latest annual report of the AOB refers to an incident with a pupil at a private school. The person who was critical of the school's anti-COVID-19 measures, spreading 'views that, under the principle of freedom of speech, he was entitled to hold.' The annual report of the AOB states that the pupil 'became a victim of discrimination: he was given an assignment in which he

³⁰¹ See, e.g., 'Austria 'grossly deficient' in the fight against corruption, EU says' (*The Local*, 13 January 2023) <https://www.thelocal.at/20230113/austria-grossly-deficient-in-the-fight-against-corruption-eu-says> (accessed 23 August 2024).

had to watch a documentary about ‘conspiracy theories’ and then discuss it during class’, thus ‘suggesting that (only) he was susceptible to ‘conspiracy theories’’. Moreover, his grade was apparently lowered. The report cited the Federal Ministry of Education for lack of cooperation as it refused to supply all as requested by the AOB documents. Further, it failed to provide any grounds for this breach of duty to collaborate. In the AOB’s view, ‘the lack of transparency was an indication that the complaint was justified’ (Office of the Austrian Ombudsman Board 2022).

The only case related to *FoI* from the same report concerns the AOB proposal of an increased requirement to be imposed upon authorities to inform the parties to proceedings about the possibility of applying for legal aid. Such an obligation could fall under Section 61 (1) of the General Administrative Procedure Act (*Allgemeines Verwaltungsverfahrensgesetz*). Information on the court of jurisdiction for the appeal proceedings and about the decision on legal aid should also be provided (Office of the Austrian Ombudsman Board 2022: 41-42).

The latest annual reports of regional ombudspersons had no references to FoE or FoI-related issues.

According to national expert monitoring for the European *Media Pluralism Monitor* (MPM), the greatest weakness in the legal framework protecting FoE lies in criminal **defamation** provisions (Seethaler et al. 2023: 19). The Austrian Criminal Code provides for increased prison sentences (up to one year) where offences are committed through mass media (art. 111, 115, 116, 248(1)) and also criminalises insults to state symbols and recognised religious communities (art. 248(2), 188). Insults to the Austrian federal flag, an Austrian provincial flag, a national emblem, the national or provincial anthems (art. 248 (2)), a nationally recognised church or religious community and a religious doctrine or custom (art. 188) are punishable with up to six months in prison or a fine of 360 times the daily rate (Criminal Code 1974).

Another substantive issue pointed in this MPM report is: access to information. In the past, when asked during reporting process to international organisations on the legal guarantees of access to information, the Austrian authorities tended to refer to Art. 10 of the ECHR (constitutional provision); Art. 20 para. 4 of the Federal Constitutional Law; Duty to grant information Acts (of the Federation and the Laender/provinces); Environmental Information Acts (of the Federation and the provinces); and Geodata Acts (of the Federation and provinces) as legal guarantees.

The situation, however, has changed. After years of wrangling over the text of the draft federal law on access to information, it was finally submitted by the Government to the Parliament in October 2023 and adopted in February 2024.³⁰² Once it enters into force, in September 2025, it would abolish official confidentiality and enable pro-active disclosure of information through a constitutionally guaranteed fundamental right of access to information, as well as

³⁰² See, e.g., also Krisztina Rozgonyi, ‘Austria: The End of Official Secrecy (Amtsgeheimnis) and a New Right to Freedom of Information’ (IRIS 2024-3:1/16) <https://merlin.obs.coe.int/article/9989> (accessed 23 August 2024).

a new Freedom of Information Act (Federal Republic of Austria n.d.b). With its entry into force, ‘information of general interest’ is to be proactively published online and kept available free of charge by the bodies of: the federal legislature, the federal and provincial administration, and local municipalities (with at least 5,000 inhabitants), the judiciary and the Austrian Ombudsman Board.

While the new legislative package is hailed, criticism remains: freedom of information civil society and advocacy CSOs – Epicenter.works, Forum Informationsfreiheit and Saubere Hände – pointed to the issues with the potential for subordination of the new rules to other laws ‘cancelling freedom of information’ and the insufficient oversight of the information provision process, meaning that no specialised appellate body overseeing implementation has been foreseen in the new law (Forum Informationsfreiheit 2024).

One other relevant issue, that the MPM report notes is lack of **editorial independence**, a matter highlighted by the European Media Freedom Act of 2024. ‘Information on the appointment and dismissal procedures of editors-in-chief is hardly publicly available, and the framework of self-regulatory measures that should guarantee freedom from interference in editorial decisions and content is underdeveloped.’ The report points to the reasons of this negative development: 1) editorial statutes that could restrict influence on editors-in-chief’s appointment and dismissal procedure are in place only in a few media undertakings; 2) only broadcasters are required to have editorial statutes; 3) the Press Council, with its limited scope over the media industry, ‘lacks the power to impose penalties and compensation measures and has to rely on ‘soft’ sanctions such as naming, shaming, and blaming’ (Seethaler et al. 2023: 20).

5.5.3 Follow-up to domestic monitoring/reporting in respect of FoE/FoI-related issues

The adoption of the Freedom of Information Act in 2024 can be considered an achievement of the international and national monitoring and reporting in Austria. With its adoption, the earlier recommendation of the EU Rule of Law report ‘on the reform of access to official documents was fully implemented’ (European Commission 2024: 24).

In several cases the authorities are defiant to criticism from reports on the state of affairs. It includes, for example, continues criticism of the criminal defamation.

Another example, is that in response to a proposal of the AOB annual report on FoI (concerning an increased obligation to be imposed upon authorities to inform the parties to proceedings about the possibility of applying for legal aid, see above), the Federal Chancellery responded, in 2022, that no legal amendment was needed. It stated that from a legal policy standpoint, there was no need for any reform. Contrary to what the AOB found in practice, it argued that the costs of proceedings before the administrative courts were low, and that even individuals who lacked knowledge of the law did not usually require legal representation in these proceedings. The AOB continues to insist on the view that the reform

is needed in the interests of transparent, citizen-friendly administration (Office of the Austrian Ombudsman Board 2022: 41-42).

5.5.4 Details of other national/international initiatives relevant to state in respect of FoE and FoI

Priorities of the Austrian Chair of the OSCE (2017): The Austrian Chairmanship in the OSCE continued the practice of highlighting media freedom as a priority issue for the Organisation (Richter and Yazici 2019: 339–368). Throughout the year, this was realised through several activities. Following the High-Level OSCE Chairmanship Conference on Media Freedom in the Western Balkans, held in Vienna, the Chairmanship, together with the OSCE Representative on Freedom of the Media, presented the ‘Vienna Conclusions on Safety of Journalists and Media Ethics’. In particular, Austria offered its reassurances to the participating States that it will ‘promote the 2017 Chairmanship priority topic of freedom of expression and freedom of the media, by promoting good practices and enhancing media freedom’ in its further activities (OSCE 2017).

For the 2017 OSCE Ministerial Council meeting held in Vienna, Austria tabled a draft decision on the contribution of free and pluralistic media to security and cooperation in the OSCE region. The topic was intentionally broad, to facilitate a discussion on the core principles of media freedom, with its elements addressing impunity and the safety of journalists and their unequivocal link to comprehensive security (Permanent Delegation of Norway to the OSCE 2017). While consensus was not reached on the draft decision, there was a sense of constructive discussions and general agreement on a number of thematic issues that had proven to be challenging in the past, not least on the safety of journalists (Richter and Yazici 2019).

Priorities of the Austrian Presidency of the EU Council (2018): The Programme of the Austrian Presidency of the Council of the European Union in the second half of 2018 set certain FoE and FoI priorities, including to promote exchanges between the EU Member States and the European Commission on implementation issues of the Audiovisual Media Services Directive and thus contribute to rapidly establishing conditions of fair competition. Another priority for Austria in all areas affected was the question of how to deal with large platforms (VLOPs) (Federal Ministry for European and International Affairs 2018: 65).

Election campaign monitoring by the OSCE-ODIHR: The Office for Democratic Institutions and Human Rights of the Organisation for Security and Co-operation in Europe in Warsaw, conducts election monitoring with reports focusing, among other, on freedom of the media. In its latest report (2020), ODIHR report noted the following FoE/FoI problems (OSCE/ODIHR 2022: 9–10):

Despite a previous ODIHR recommendation, defamation, libel, insult and slander have not been decriminalised and are punishable with a fine or imprisonment from three up to 12 months. Media outlets and journalists may also be prosecuted for such

offences under the Media Services Act, with fines up to EUR 50 000. Several ODIHR interlocutors noted certain bias against some parliamentary parties, limited access to the media for new and smaller parties, as well as undue influence of the ruling political parties in the recent appointment of the ORF director. Concerns were also raised regarding the lack of transparency in the allocation of state contracts to different media and the extraordinary public support provided during the COVID-19 pandemic, which could affect editorial independence. Furthermore, the extraordinary public support provided to media to mitigate the economic impact of the COVID-19 pandemic has also raised questions regarding fair distribution.

5.6 Assessment and Conclusion

5.6.1 Analysis of respective strengths, weaknesses and implications regarding FoE/FoI monitoring/reporting and protection/promotion

i. Governance

There is lack of progress in reviving the process of adopting a comprehensive national action plan on human rights (NAP Human Rights) and allocating an adequate budget and clear indicators and objectives for its implementation (OHCHR 2021: para. 11). There is also lack of progress towards the adoption of a national plan of action on business and human rights (OHCHR 2021: para. 17).

The governance of human rights monitoring institutions has been subject to criticism throughout reporting periods. The key problem seems to be susceptibility of the Austrian Ombudsman Board (AOB) to political influence. In the latest (2020) UPR, Austria received recommendations from 13 countries to reform the institution so as to meet the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (OHCHR n.d.e). Despite certain reforms, such as establishment of the Human Rights Advisory Council, the Austrian civil society organisations remain concerned about the state of compliance of the AOB as a NHRI with the Paris Principles. These concerns are a result of a study conducted by Amnesty International Austria (Amnesty International Austria and partners 2021).

Austria definitely lacks a national institution specifically in charge of the follow-up and implementation in relation to recommendations coming human rights monitoring and reports.

ii. National monitoring and reporting arrangements

Since November 2023, an online independent monitoring instrument has been established that allows the civil society nation-wide monitoring and reporting. It includes topics and issues related to FoE/FoI, that were raised during the monitoring/reporting cycles and generally discussed in this chapter (ALHR n.d.).

Long-awaited establishing and implementation of a general National Action Plan – Human Rights (NAP Human Rights) would facilitate national monitoring and reporting arrangements as a strategic coordination tool.

iii. National approaches to substantive FoE and FoI issues

The key substantive national problem that raises concern of both citizens and human rights bodies seems to be lack of protection against ‘hate speech’. The Office of the United Nations High Commissioner for Refugees (UNHCR) noted that, following the arrival of some 89,000 asylum seekers and the transit of another 700,000 refugees and migrants through Austria in 2015, the discourse on refugees and asylum seekers had become even more polarised, coupled with a rise in hate speech against those groups (OHCHR 2021: para. 14). In the latest (2020) UPR, Austria was recommended by six countries to consider enacting comprehensive legislation that provides full and effective protection against hate speech, particularly on the Internet while respecting freedom of expression (OHCHR) (n.d.e).

Austria agreed that Internet discussion forums make an important contribution to open discussion in a pluralistic, democratic public arena. ‘However, the right to freedom of expression ends where its exercise endangers public peace and harms others.’ To counteract hate speech and hate crime on the internet, numerous measures have been taken, including the Government Programme on this issue, providing for specific trainings for public prosecutors, judges and police officers (Human Rights Council 2020: para. 33). Moreover, Austria noted it was prioritising the fight against online hate speech.³⁰³

Other recommendations during the latest UPR included to ‘decriminalise defamation under the Criminal Act in accordance with international best practices’ (Sierra Leone). To this Austria responded that in view of ‘European and national efforts to step up the fight against online hate speech, decriminalisation of relevant individual offences, including defamation (Section 111 Criminal Code), is not envisaged.’³⁰⁴ In fact, insulting or verbal abuse of individuals is punishable as the offence of ‘insulting’ in accordance with Section 111 of the Penal Code or as the offence of ‘defamation’ in accordance with Section 115 of the Penal Code. Moreover, we consider that Austria – in its reporting – somehow has confused ‘criminal defamation’ with ‘hate speech’ and therefore declines to abolish it (Human Rights Committee 2013: para. 181).

The response to recommendation to ‘secure adequate resources for minority media and improve access to public media’ (Slovenia) (OHCHR 2021: para. 31) was that as ‘independence and diversity of the media are guaranteed, Austria currently sees no need for

³⁰³ The first Act in question here is Kommunikationsplattformen-Gesetz gegen Hass im Netz (Act on Communications Platforms against Hatred Online), it has not been adopted. The second act mentioned here is Bundesgesetz über Maßnahmen zum Schutz der Nutzer auf Kommunikationsplattformen (Kommunikationsplattformen-Gesetz – KoPl-G) (Federal law on measures to protect users on communication platforms (Communications Platforms Act – KoPl-G)), see <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20011415&FassungVom=2024-02-16> (also referred to in the case *Google Ireland and Others v. Austria* above).

³⁰⁴ UNHRC, ‘Report of the Working Group...’, para 57.

further action'. Austria noted that since 2021, there is a dedicated budget for national minority media totalling €700 000. In Austria, says the reply, 'non-discriminatory access to all media is guaranteed for everyone – regardless of membership of a national minority... Further measures going beyond the government programme are not envisaged.'³⁰⁵

In 2019, the Committee on the Elimination of Discrimination against Women recommended that Austria adopt a comprehensive strategy to eliminate discriminatory stereotypes regarding the roles and responsibilities of women and men in the family and in society, and encourage the media to convey positive images of women and their equal status with men and to eliminate the portrayal of women as sexual objects (OHCHR 2021: para. 15). In response, Austria pointed out that in accordance with Section 4, sub-paragraph 11 of the ORF Act, it is one of the key tasks of public broadcasting in Austria to take into account equality between women and men in an appropriate manner (Human Rights Committee 2013: para. 23).

5.6.2 Summary of key points in chapter

- Austria is a federal state, comprising nine autonomous federal provinces or states.
- National action plans (NAPs) and strategies play a central role for improving the implementation of all rights protected under international conventions.
- Still, the strategic NAP on Human Rights has been in the drafting for about a decade.
- The Federation has powers of legislation and execution in certain matters, including 'press affairs'.
- Human rights protections are guaranteed by both the federal and provincial legislation.
- Federal law incorporates international covenants on human rights as part of the constitutional law.
- The courts are the most important actors in ensuring compliance with the Austrian Constitution, including compliance with the human rights.
- The Austrian Constitutional Court plays a vital role in this context as it reassesses the compliance of laws, regulations and administrative acts with constitutional standards (and, thus, essentially also the rights enshrined in the international law) and has the power to repeal such acts should they infringe the Constitution.
- The general Austrian national practice is that reports by Austria as a State party in respect of its international human rights instruments are drawn up exclusively by governmental bodies, under the guidance of the Federal Chancellery.

³⁰⁵ UNHRC, 'Report of the Working Group...', paras 9-10, 38

- Austria is yet to establish a national mechanism for comprehensive reporting and follow-up in relation to recommendations received from all international and regional human rights mechanisms and to treaty obligations, while linking them to the UN Sustainable Development Goals.

6. Switzerland

Jelena Protić

6.1 Governance: allocation of monitoring and reporting responsibilities

Switzerland does not have a standardised national mechanism or a uniform practice for international human rights monitoring and reporting procedures. In 2016, the UN Office of the High Commissioner for Human Rights categorised the Swiss reporting and monitoring system as an *ad hoc* mechanism that is the least institutionalised type of mechanism. Moreover, the Swiss system in this area is characterised by the absence of national legal or regulatory grounds for monitoring and reporting arrangements and a wide disparity in terms of leading government units, reporting processes, cross-government and cross-entity coordination as well as inclusion of non-government stakeholders. However, as a federal state, one thing is clear from the outset: the Federal Government (Federal Council) is in the lead in drafting and submitting reports, including receiving the recommendations, with own discretion to include the federated units (the cantons) and other stakeholders in the process.

As for the freedom of expression (FoE) and access to information (Fol), no Swiss authority, whether federal or cantonal, is specifically assigned to these issues. The distribution of responsibilities among the federal authorities for monitoring and reporting therefore depends on their competence for the underlying treaty.

We now turn to the issue of the allocation of monitoring and reporting responsibilities in the Swiss system. We will first present an overview of the constitutional arrangements (A.), then explain in general terms the division of responsibilities across governmental units for human rights issues (B.) before focusing more precisely on the division of responsibilities across government units for international and domestic human rights monitoring and reporting (C.).

6.1.1 Overview of constitutional arrangements

Switzerland is a three-tiered federal state, with the Confederation at the highest level, 26 cantons at the intermediate level, and communes as the smallest political entity. Swiss federalism is fundamentally based on two principles: the principle of subsidiarity and the notion of cantonal sovereignty. Powers are distributed among the Confederation, cantons, and communes based on the principle of subsidiarity, whereby the Confederation retains only those powers conferred by the Constitution, with all other powers falling under cantonal jurisdiction (articles 42, 43, and 43a of the Federal Constitution). Cantons possess sovereignty to the extent that it is not constrained by the Federal Constitution and exercise all rights not assigned to the Confederation (art. 3 of the Federal Constitution). The autonomy of the communes is guaranteed within the constraints established by cantonal law (art. 50 of the Federal Constitution).

The system of allocation of powers between the Confederation and the cantons is based on three types of competences: exclusive competences of the Confederation, exclusive

competences of the cantons and shared competences. While certain areas are generally, or even exclusively, the responsibility of the Confederation, such as foreign affairs (art. 54 para. 1 of the Federal Constitution), customs duties (art. 33 of the Federal Constitution), monetary policy (art. 99 of the Federal Constitution), postal services and telecommunications (art. 92 of the Federal Constitution), the army and nuclear energy legislation (art. 60 and 90 of the Federal Constitution), animal protection (art. 80 of the Federal Constitution), transportation (art. 87 of the Federal Constitution) and metrology (art. 125 of the Federal Constitution), other sectors are the sole responsibility of the cantons, for example religious worship, police and social welfare. In other matters, powers are shared between the Confederation and the cantons. Firstly, legislative competence itself may be shared, as in the case of taxation (art. 127 and following Federal Constitution), healthcare (art. 117a of the Federal Constitution), and education (art. 62 of the Federal Constitution), for example. Secondly, the Confederation may be responsible for legislating, while the cantons are responsible for enforcement, for example in civil law (art. 122 of the Federal Constitution), criminal law (art. 123 of the Federal Constitution), social insurance (art. 106, 112, 114, 116, 117, 130 of the Federal Constitution) or road traffic (art. 82 of the Federal Constitution).

On foreign affairs, the competence to negotiate and adopt treaties containing international obligations lies with the federal state according to Articles 54, 166 and 184 of the Federal Constitution. However, the implementation of these obligations in national legislation follows the division of powers between the various political entities depending on the area in question as laid down in the Federal Constitution (Federal Council 1996). In other words, cantons are required to implement obligations they have not negotiated and should they fail to do so, the Confederation's international responsibility might be in question (Kaempfer 2023).

6.1.2 Division of responsibilities across governmental units for human rights issues, including FoE and FoI

According to Article 35 of the Federal Constitution, all authorities carrying out state duties must respect and are responsible for the protection of human rights. This includes all federal, cantonal and communal authorities. The Federal Constitution contains a catalogue of human rights (Articles 7 through 34 of the Federal Constitution) including the freedom of opinion and information covered by Article 16. As each canton has its own constitution, catalogues of fundamental freedoms and rights also exist at cantonal level. For example, Article 17 of the Constitution of the Canton of Vaud also covers the freedom of opinion and information. However, the Federal Court grants these cantonal norms autonomous scope only in the rare case where this protection goes beyond the one offered by federal constitutional law. In line with its monist tradition stemming from Article 190 of the Federal Constitution, an international treaty ratified by Switzerland becomes part of the Swiss legal order as soon as it enters into force in Switzerland, without the need to transpose it into

national legal order through enactment of a special law. Therefore, the constitutional catalogue of human rights is complemented by, for example, substantive provisions of other international instruments ratified by Switzerland (Federal Council 2022).

Government bodies and agencies responsible for substantive protection of human rights exist at both federal and cantonal level. Some were set up to protect human rights in specific areas, for example at the federal level the Federal Office for Gender Equality (Article 16 of the Federal Act on Gender Equality), the Federal Office for Equality of People with Disabilities and the Service for Combating Racism (Article 19 of the Federal Act on the Elimination of Discrimination against People with Disabilities) within the Federal Department of Home Affairs while others are of a more general nature the International Human Rights Unit within the Federal Office of Justice within the Federal Department of Justice and Police and the Federal Office of Communications within the Federal Department of the Environment, Transport, Energy and Communications.

Similar specific units were also set up at the cantonal level, for example, the Office for Gender Equality (*Bureau de l'égalité entre les femmes et les hommes*) in the Canton of Vaud (art. 4 of the cantonal law implementing the Federal Law of 24 March 1995 on equality between women and men), the Office for the Rights of Persons with Disabilities (*Bureau pour les droits des personnes en situation de handicap*) in the Canton of Valais (art. 36c of the cantonal law on the rights and inclusion of persons with disabilities), and the Office for the Integration of Migrants and Prevention of Racism (*Bureau de l'intégration des migrant-e-s et de la prévention du racisme*) in the Canton of Fribourg (art. 8 of the cantonal law on integration of migrants and prevention of racism).

There are no government bodies or agencies specifically mandated for substantive protection of FoE and FoI at any governance level in Switzerland. However, all the authorities cited in previous paragraphs are responsible for substantive protection of FoE and FoI within their specific realm. For instance, the Federal Office for Equality for People with Disabilities and competent cantonal authorities such as the one in the Canton of Valais would be responsible for the substantive protection of FoE and FoI of people with disabilities while the Federal Office for Communications is competent for ensuring FoE and FoI protection in relation to the media.

6.1.3 Division of responsibilities across government units for international and domestic human rights monitoring and reporting, including FoE and FoI

Switzerland does not have a standardised national mechanism or practice for international human rights monitoring and reporting procedures. In 2016, the UN Office of the High Commissioner for Human Rights categorised Swiss reporting and monitoring system as an *ad hoc* mechanism that is the least institutionalised type of mechanism (OHCHR 2016). According to this study, an *ad hoc* mechanism is set up by a single ministry or by an inter-ministerial committee for the sole purpose of preparing a specific report and is dissolved once the report has been submitted, thus not perpetuating a set of long-term practices.

However, it is not excluded that some of these mechanisms may include some minor aspects of standardised reporting practices.

In Swiss practice, responsibility for preparing and coordinating a periodic report lies within an office of the federal department competent for implementing the relevant treaty (OHCHR 2016). However, according to the Federal Office of Justice, these reporting competences are neither based on any specific legal foundation, nor definitively established, and may be modified by agreement between the concerned government offices (Federal Council 2022). Interested Federal Government offices and units, cantons, communes and sometimes other stakeholders are consulted or, if they are particularly concerned by the report in question, are included in the drafting process (Federal Council 2022).

Regarding treaties containing international reporting obligations relating to FoE and FoI, the following federal departments and units are in charge of report drafting and coordinating as provided by the website on the Federal Office of Justice:

- Universal Periodic Review: Federal Department of Foreign Affairs ('FDFA'), Peace and Human Rights Division, Human Rights Diplomacy Section.
- International Covenant on Civil and Political Rights: Federal Department of Justice and Police, Federal Office of Justice, International Human Rights Unit.
- Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters ('Aarhus Convention'): Federal Department of the Environment, Transport, Energy and Communications, Federal Office for the Environment.
- International Convention on the Elimination of All Forms of Racial Discrimination: Federal Department of Home Affairs, Service for Combatting Racism.
- Convention on the Rights of Persons with Disabilities: Federal Department of Home Affairs, Federal Office for Equality for People with Disabilities.
- European Charter for Regional or Minority Languages: Federal Department of Home Affairs, Federal Office for Culture.
- Framework Convention for the Protection of National Minorities: Federal Department of Foreign Affairs, Directorate for International Law.
- Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention): Federal Department of Home Affairs, Federal Office for Gender Equality (Federal Council 2021).

The only institutionalised aspect of Switzerland's reporting preparation system is the work of the International Human Rights Policy group (*Kerngruppe internationale Menschenrechtspolitik* 'KIM group'). The KIM group is an informal interdepartmental coordinating body established by a decision of the Federal Council and chaired by the FDFA's Peace and Human Rights Division. According to the website on the Federal Office of Justice, it is composed of the Federal Government offices in charge of report drafting and

coordinating, as well as the cantons and interested extra-parliamentary commissions namely independent advisory bodies. Since 2016, the KIM group has been coordinating Swiss state reporting procedures by meeting twice a year. In addition, the International Protection of Human Rights Unit of the Federal Office of Justice acts as the focal point and almost as a central monitoring and reporting secretariat by preparing and implementing the decisions taken by the KIM group, gathering relevant information and making it available to the relevant departments and interested parties, answering general questions on reporting procedures, keeping a timetable of the various stages in the reporting process and an up-to-date thematic overview of the latest recommendations made to Switzerland by monitoring bodies.

6.2 Conduct of monitoring and reporting

Having briefly described how responsibilities for reporting and monitoring are allocated in the Swiss system, we will now focus on how this reporting and monitoring is conducted in practice. We will first give an overview of Switzerland's reporting and monitoring cycles (A.), explain that there is no specific legal ground for preparing reports (B.) and that the use of international standards in this context is not standardised across the competent authorities (C.). We will then identify the key government bodies, public agencies, and non-government stakeholders in human rights monitoring and reporting (D.). We will conclude by dealing with the cross-government management and coordination of monitoring and reporting practices (E.), the non-existence of formal partnership or standing arrangements between the responsible public authorities and civil society (F.) and the absence of standing mechanisms to support and follow-up on the implementation of recommendations of international monitoring bodies (G.).

6.2.1 Overview of human rights monitoring and reporting cycles, including FoE and Fol

In Switzerland, monitoring and reporting is conducted in respect of the eight following international human rights regimes with relevance to FoE and Fol. The Federal Office of Justice regularly updates the timetable of Swiss monitoring and reporting cycles on its website.³⁰⁶

- Universal Periodic Review: Switzerland submitted its last report during the 4th cycle of the Universal Periodic Review in October 2022 and received its last concluding observations in January 2023. Its next report and review will take place during the fifth cycle, but a precise date has not yet been set. These concern FoE/Fol issues mainly insofar as certain provisions of Swiss law allow restrictions on freedom of expression and hinder the free dissemination of information (Human Rights Council 2023).
- International Covenant on Civil and Political Rights: Switzerland submitted its 4th report in July 2016, received the final observations in July 2017, and carried out its

³⁰⁶ Unless otherwise stated, the information in the forthcoming list is based on this publication on the website of the Federal Office of Justice. Available here: www.bj.admin.ch/bj/fr/home/staat/menschenrechte/staatenberichtsverfahren/kalender.html.

last follow up in July 2018. It planned initially to submit its 5th report in 2024, but this deadline has been extended to July 2026. These concern FoE/FoI issues mainly regarding Switzerland's reservation on Article 20, paragraph 1 as well as the existence of hate speech in political circles and the media (Human Rights Council 2017b).

- Convention on Access to Information, Public Participation in Decision- Making and Access to Justice in Environmental Matters (2001) (Aarhus Convention): Switzerland has submitted three periodic reports to date, the first in 2017, the second in 2021 and the third in 2025. Certain issues relating to FoE and FoI have systematically arisen as part of the implementation of Article 4, namely, the perception of what constitutes a request on access to information by the authorities, assessment of the grounds to restrict the right of access and absence of documents in relation to sensitive subjects that render the access to requested information impossible.
- International Convention on the Elimination of All Forms of Racial Discrimination: Switzerland submitted its 10th, 11th and 12th reports in a single document in January 2018, received the final observations in February 2021, and followed up in November 2022. The next report is scheduled for December 2025. These concern FoE/FoI issues mainly regarding the need to sensitise legal personnel, including the judiciary, to international norms protecting freedom of opinion and expression and norms against racist hate speech (Federal Council 2018).
- Convention on the Rights of Persons with Disabilities and its Optional Protocol: Switzerland submitted its first and latest report in June 2016, received final observations in April 2022 and its next report is scheduled for May 2028. The main issues regarding FoE and FoI arose under Article 21 and its implementation: the lack of recognition of the three Swiss sign languages as official languages and the barriers faced by persons with disabilities in gaining access to public information and communications, including on websites and media services (Committee on the Rights of Persons with Disabilities 2022).
- European Charter for Regional or Minority Languages (ETS no. 148): Switzerland submitted its 8th report, in the form of a combined report together with the one on the implementation of the Framework Convention for the Protection of National Minorities in October 2021. It received the Committee of Ministers' recommendations in November 2022 and submitted an interim report on the implementation of the recommendations in September 2023. The Committee of Ministers made their recommendations on the interim report known in February 2024. Switzerland's next report is scheduled for 1 December 2025. Regarding FoE and FoI, the main issues regarded promotion of the Italian and Romansch-language media in the Canton of Graubünden (Committee of Experts of the European Charter for Regional or Minority Languages 2022).

- Framework Convention for the Protection of National Minorities (ETS No. 157): Switzerland submitted its 5th report, in the form of a combined report together with the one on the implementation of the European Charter for Regional or Minority Languages in October 2021. It received the final observations in February 2023 and followed-up in June 2023. Switzerland's next report is scheduled for 1 December 2025. Regarding FoE and Fol, the following issues were concerned under Article 9: support of production of television and radio programmes aimed at promoting Yenish and Sinti/Manush minorities and of broadcast and printed media in Italian and Romansh languages in the Canton of Graubünden (Advisory Committee 2023).
- Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210) (Istanbul Convention): Switzerland submitted its first and latest report to GREVIO in June 2021 (Federal Council 2021) and the Committee of the Parties published its recommendations in December 2022. The next report is planned for December 2025 (Committee of the Parties 2022). Under Article 17, FoE and Fol were concerned in the sense that no full review in Switzerland has ever been undertaken across measures to encourage the media to establish policies to prevent violence against women and that no binding standards at national level exist regarding sexism in advertising. Under Article 19, the main issues concern substantial gaps in information for violence-affected migrant and asylum-seeking women.

Switzerland also conducts monitoring and reporting within the framework of other international human rights regimes less relevant for FoE and Fol. They are briefly listed here for the purpose of exhaustivity: International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), Convention on the Rights of the Child (CRC) and International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).

Regarding national monitoring/reporting obligations relevant to FoE and Fol, the Service for Combating Racism carries out regular monitoring of all relevant data sources, from which it draws conclusions about trends, the extent and consequences of racism and racial discrimination (Service for Combating Racism 2024a). The Service for Combating Racism subsequently organises a public information session on its report that is published every other year, inviting primarily journalists and specialists to engage.

The Federal Office of Communications also conducts an annual reporting procedure for licensed radio and television broadcasters. According to Article 18 of the Federal Act on Radio and Television, licensed radio and television broadcasters must submit to the Federal Office of Communications, by 30 April of the following year, their annual activity reports³⁰⁷

³⁰⁷ Broadcasters whose operating costs do not exceed 1 million CHF are exempt from the obligation to submit an annual report.

and accounts drawn up in accordance with Federal Office of Communication's chart of accounts and related documents mentioned in a supplementary guide. Annual activity report data is collected using an online questionnaire. The Federal Council determines the information that the Federal Office of Communications may publicly reveal. This procedure remains however limited only to general recommendations following the submitting of reports.

A domestic monitoring procedure is in place regarding media diversity and the possibility of freely forming an opinion. 'Media Monitor Switzerland' is an annual study carried out by Publicom AG, a company commissioned by the Federal Office of Communications. The study examines the media's contribution to opinion-forming in Switzerland, as well as the balance of power and interdependencies between companies in the media market (Publicom 2023).

Finally, the Federal Data Protection and Information Commissioner ought to be mentioned in the context of national monitoring/reporting obligations relevant to FoI. Whereas the Federal Data Protection and Information Commissioner is the competent data protection authority for data processing carried out by private individuals and federal authorities, data processing carried out by communal and cantonal authorities falls within the competence of the cantonal or communal data protection supervisory authorities (for example, the Data Protection and Right to Information Authority (*l'Autorité de protection des données et de droit à l'information*) in the Canton of Vaud). However, the Federal Data Protection and Information Commissioner (as well as cantonal and communal data protection supervisory authorities) is not a governmental agency but an independent authority, elected by the Federal Parliament (art. 43 of the Federal Act on Data Protection). Its main task regarding data protection is conducting investigations against federal authorities or private actors, either on its own initiative or based on a complaint, provided that there is sufficient evidence to suggest that data processing may be in breach of national data protection provisions (art. 49 of the Federal Act on Data Protection). It is also responsible for informing the public by submitting an annual report on its activities to the Federal Assembly and the Federal Council (art. 57 of the Federal Act on Data Protection). Regarding FoI more broadly, this Agency conducts mediation procedures in the case of a disagreement between a private individual and a federal authority regarding access to official documents (art. 13 of the Federal Act on Freedom of Information in the Administration), gives its opinion on draft federal acts and measures concerning the Federal Act on Freedom of Information in the Administration and provides citizens and authorities with general information and advice on access to official documents.

While the Swiss Human Rights Institution does not act as an ombuds-institution according to Article 10b, paragraph 3 of the Federal Act on Civilian Peacebuilding and Promotion of Human Rights, it does provide information on the state of human rights implementation in Switzerland on its website. On 27 March 2025, it launched an online information platform

intended for both experts and non-experts. This platform is the successor to a similar one previously operated by the non-governmental organisation *humanrights.ch*.

6.2.2 National legal/regulatory basis for monitoring and reporting arrangements

There is no specific legal or regulatory grounds for the preparation of international human rights and other FoE/FoI related monitoring and reporting initiatives in Switzerland. According to the Federal Office of Justice, the responsible authorities for each reporting process mainly rely on the reporting requirements and structures laid down by the relevant international bodies, such as lists of issues. Outlines and models for national reports do exist within the federal administration, however there is no legal or regulatory basis as such.

The only element common to all of Switzerland's reports is the 'Common Core Document' (*Document de base commun faisant partie intégrante des rapports de la Suisse*). This document is based on the 'Harmonised guidelines on reporting under the international human rights treaties' drawn up by the Secretariat of the UN Office of the High Commissioner for Human Rights for the preparation of the first part of State reports (Federal Council 2022). It mainly contains general information relevant to all the reports and was updated in late 2022. It primarily provides the international bodies with a better understanding of the political, legal, social and economic contexts that determine the implementation of human rights in Switzerland. However, it does not give any guidelines to the competent administrative units on how to prepare the reports. Apart from the KIM group's role as a platform for exchange and the International Protection of Human Rights Unit of the Federal Office of Justice competence to answer general questions, no other government unit or document may give such guidelines.

6.2.3 Inclusion of international standards for monitoring/reporting in national processes

There is no uniformity in the use, integration or reflection of international standards and guides in national monitoring and reporting arrangements due to the wide disparity in the way the competent offices operate and the absence of a legal or regulatory basis for national monitoring and reporting. Each office responsible for preparing a report has its own method and its own structure. For example, when directly asked by the author whether the OHCHR Manual on Human Rights Monitoring and Guidance on Human Rights Indicators and Use of Data, the Federal Office for Gender Equality did not proceed to give an answer. Nevertheless, according to the Federal Office of Justice and the internal documents of the Federal Office for the Environment provided to the author, the authorities in charge follow the existing instructions and guides of the various monitoring bodies for each treaty, such as the Guidelines for the Treaty-specific Document to be submitted by States parties under Article 40 of the International Covenant on Civil and Political Rights or the Guidelines for 2017 National Implementation Reports of the United Nations Economic Commission for Europe.

Moreover, there is no common effort to encourage the competent offices to use international standards and guides, at least not explicitly. The only general suggestion in place is to exchange information via the KIM group; for all other aspects, the competent government unit as listed under section 6.2.5 remains autonomous.

6.2.4 Identification of and basis for mandates of key government bodies, public agencies, and non-government (inc. international/domestic civil society) stakeholders in human rights monitoring and reporting, including regarding FoE and Fol

Due to its federal system and Switzerland's sectoral approach to human rights monitoring and reporting, the following list of key stakeholders involved in human rights monitoring and reporting with close interests in FoE and Fol-related areas is not exhaustive.

i. Key government bodies

Key government stakeholders must be considered at three levels: federal (a), intercantonal (b) and cantonal (c).

a) Federal level

For the federal level, reference is made under section 6.2.5.i of this chapter. In a nutshell, the following federal offices and units have been identified as responsible for preparing Switzerland's various periodic reports on FoE/Fol aspects: Federal Department of Foreign Affairs (Peace and Human Rights Division and Directorate for International Law), Federal Office of Justice (International Human Rights Unit), Federal Office of the Environment, Federal Department of Home Affairs (Service for Combatting Racism, Federal Office for Equality for People with Disabilities, Federal Office for Gender Equality and the Interdepartmental Working Group Responsible for Implementing the Istanbul Convention, Federal Office for Culture), Federal Office of Communications and the Interdepartmental Group on International Human Rights Policy (KIM group).

b) Intercantonal level

The intercantonal level enables a coordinated exchange of information between the federal authorities and the cantons. This role is fulfilled by the Conference of Cantonal Governments and the various thematic cantonal conferences. They can also contribute directly to the drafting of a report or be consulted. It is therefore worth mentioning the four following authorities.

The Conference of Cantonal Governments' mandate is based on the intercantonal Convention on the Conference of Cantonal Governments of 8 October 1993. It allows cantons to get involved in federal policy in a targeted and coordinated way and acts as the cantons' focal point for important national and foreign policy issues. More specifically, it contributes directly to the preparation of Switzerland's combined report on the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities (Federal Council 2021b).

Three thematic cantonal conferences are particularly concerned with human rights monitoring and reporting in relation to the FoE and FoI. They are all based on intercantonal agreements as provided for in Article 48 of the Federal Constitution. More specifically, these are the Conference of Cantonal Justice and Police Directors, the Conference of Cantonal Directors of Social Affairs and the Conference of Cantonal Ministers of Education.

In the context of human rights monitoring/reporting, the Conference of Cantonal Justice and Police Directors is the main contact for cantonal practices in the field of justice, police and deprivation of liberty. It is therefore particularly important for FoE/FoI issues (for example hate speech, freedom of expression for detainees, demonstrations). It has also appointed the Swiss Conference against Domestic Violence that is responsible for coordinating the section of the report on the Istanbul Convention dealing with measures taken by the cantons (Federal Council 2021).

The Conference of Cantonal Directors of Social Affairs brings together, within the governments of each of the 26 cantons, the heads of social affairs departments and includes the Conference of Cantonal Delegates for Disability Issues. It is the main point of contact for the Federal Office for Equality for People with Disabilities and responsible for cooperation and exchanges between the cantonal and federal authorities during the drafting process (Federal Council 2016).

Finally, the Conference of Cantonal Ministers of Education brings together the directors of public education from the 26 cantons and coordinates national education and cultural policy. More precisely, it contributes to the drawing up of the combined report on the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities (Federal Council 2021b).

c) Cantonal level

Finally, at the cantonal level, in the absence of specific FoE and FoI offices, the various departments of the 26 cantons responsible according to the subject of the report may be involved in its drafting process or consulted directly in addition to the collaboration via the intercantonal level (Federal Council 2021b).

d) Other

Communes and towns can also be consulted during the preparation of a report, either through the Association of Swiss Communes and the Union of Swiss Cities, or individually. For example, in the case of Switzerland's combined report on the implementation of the Council of Europe Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages minority languages, both organisations were consulted, as well as certain communes directly concerned by the application of the Charter, such as Ederswiler, Bosco Gurin and Murten/Morat (Federal Council 2021b).

ii. Key public agencies

Among the main non-governmental public stakeholders, we have identified extra-parliamentary federal commissions (a) and the Swiss Human Rights Institution (b).

a) Extraparliamentary commissions

Federal independent and extra parliamentary commissions may be appointed by the Federal Council according to Article 57a of the Government and Administration Act. These commissions are composed of specialists and are set up mainly when the state must take on new tasks and the administration does not yet have the necessary know-how. They therefore assume a critical role vis-à-vis the Government and may be consulted during the drafting process or on a preliminary version of the report. The Federal Commission against Racism, the Federal Commission on Migration, the Federal Media Commission and the Federal Commission for Women's issues, the latter dealing in particular with the issue of raising media awareness of gender representations (Federal Council 2021), may be involved in preparation process of reports containing elements relating to FoE and FoI. For example, the Federal Commission against Racism was consulted on Switzerland's latest Combined Report on the implementation of the Council of Europe Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages in 2021 (Federal Council 2021b).

b) Swiss Human Rights Institution

In May 2023, a permanent and legally established Swiss Human Rights Institution ('Swiss Human Rights Institution'), that operates based on the UN's Paris Principles, was set up, with a broad mandate to promote and protect human rights by interacting with all stakeholders but does not assume any administrative tasks, does not act as an ombudsman, nor deals with individual cases (art. 10b para. 3 of the Federal Act on Civilian Peacebuilding and Promotion of Human Rights). More precisely, the institutions' mandate covers information, documentation, research, advice, education and raising awareness of human rights in Switzerland by collaborating with federal and cantonal authorities, non-governmental organisations, the private sector, the scientific community, and international organisations. Questions relating to the implementation of international commitments in Switzerland are also expressly part of its area of competence. Due to the institution's recent establishment, we have not been able to identify any concrete examples in which it has already contributed to the drafting of a Swiss report. However, given its mandate, we can only assume that it will be involved in such processes in the future. In addition, the Conference of Cantonal Governments has great expectations from the Swiss Human Rights Institution's role in reporting and monitoring procedures hoping it will bring additional coordination to Swiss practice.

While this chapter was being drafted, the Swiss Human Rights Institution commissioned a more general study of Switzerland's reporting procedures from Interface Politikstudien

Forschung Beratung AG. The aim of the study was to draw up a comprehensive overview of the application of reporting and monitoring procedures in Switzerland, and to consider the role that the Swiss Human Rights Institution could and should play in the latter (Thorshaug and Müller 2024). One of the results of the study consists of two tables, one describing the functioning of Swiss reporting procedures and the other drawing up an inventory of recommendations made to Switzerland under general thematic categories. As for the role that the Swiss Human Rights Institution should play in this area, the authors of the study are of the opinion that it should primarily play ‘a driving and mobilising role, fostering a global vision of human rights and advancing developments to ensure effective application of state reporting procedures and implementation of recommendations’ (Thorshaug and Müller 2024).

iii. Non-government stakeholders

We have found that non-government stakeholders are not always included in the preparation of Switzerland’s reports. According to the Federal Office of Justice, this depends on the approach taken by the authority in charge of preparing the report or on the instructions given by the treaty body. Where this is not the case, the non-government stakeholders themselves prepare shadow reports or provide information independently of the authorities to the treaty bodies.

The following three examples of non-government organisations are particularly relevant to the FoE and FoI aspects. First, *humanrights.ch*, an NGO active in the field of human rights protection is consulted on the combined report on the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities (Federal Council 2021b) and participates in drafting shadow reports such as the Contribution of the Swiss NGO Platform for Human Rights Universal Periodic Review of Switzerland or the NGO Report on Switzerland’s combined tenth to twelfth periodic reports to the UN-Committee on the Elimination of Racial Discrimination. Second, organisations involved in language issues such as *Helvetia Latina*, *Fondation Forum du bilinguisme*, *Movetia* and *Forum Helveticum* are consulted on the first draft of Switzerland’s combined report on the implementation of the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities (Federal Council 2021b). Third, *Inclusion Handicap*, the political umbrella organisation of disabled people’s organisations, is given the opportunity to express their central positions and demands, including those relating to FoE/FoI issues, which are incorporated into Switzerland’s report on the implementation of the Convention on the Rights of Persons with Disabilities (Federal Council 2016).

6.2.5 Cross-government management and coordination of monitoring and reporting practices

The issue of cross-government management and coordination of monitoring and reporting practice needs to be addressed in two stages. First, we look at how coordination takes place

at federal level, namely at how the federal office responsible for drawing up reports includes other interested parties (1.). Secondly, we focus on the specific issue of involving the cantons in the preparation of these reports (2.).

i. Coordination at the federal level

The role of the KIM group is to coordinate Swiss practice in relation to reporting procedures. However, it is limited to an exchange of best practice and amounts to a general platform for dialogue between the various authorities represented (federal administrative units dealing with the international protection of human rights, interested extra parliamentary commissions and cantons through the Conference of Cantonal Governments). According to a source from the Federal Office of Justice, it is a weak mechanism, with no real decision-making powers that generally does not intervene in individual reporting procedures.

Offices within the federal administration as listed above have the lead for preparing reports to be submitted to the human rights treaty monitoring bodies, varying by which unit is responsible for the underlying treaty. They are free to decide how to proceed, and there is, therefore, no uniform method for drafting reports and for cooperation between the different levels in this area. The lead office generally does not have all the information and expertise needed to draw up the report, however. Accordingly, it will typically first convene a kick-off meeting with the various state stakeholders concerned, then draft a first version before consulting with the stakeholders closely involved, then consolidate everything before submitting the report for official consultation of the offices and for validation by the Federal Council.

There is no uniformity in terms of the involvement of other state, sub-national and other public bodies in the preparation of FoE and FoI-related international-mandated reports. Other federal offices and units that may be interested are present at the kick-off meeting and directly consulted. These are identified by the government unit responsible for drafting the report.

Before the report is submitted to the Federal Council for approval, a broad formal consultation procedure is systematically organised at the federal level (Federal Council 2022). This procedure is called *Ämterkonsultation* or ‘consultation of offices’. The lead office submits the report to all the units of the federal administration concerned by the subject by using an internal IT system. This request to consult the offices is forwarded directly to one or more specialist collaborators by each unit’s staff office. This phase enables all concerned units to be informed and to submit their final proposals for modifications in writing within an appropriate timeframe, often three weeks, if they so wish.

ii. Involvement of the cantons

Coordination with the cantons takes place on an *ad hoc* basis. Usually, the lead federal office coordinates via the Conference of Cantonal Governments, and the relevant cantonal conferences, depending on the topic of the issue (Federal Council 2022). The latter also

participate in the KIM group. For example, collaboration and exchanges between cantonal and federal authorities during the preparation of the report on the Convention on the Rights of Persons with Disabilities are ensured by the Conference of Cantonal Directors of Social Affairs that brings together heads of social affairs departments from all 26 cantons (Federal Council 2016). There is particular tension between the Confederation and the cantons when it comes to deadlines. The Conference of Cantonal Governments feels that all too often the deadlines imposed by the responsible federal offices for consultation are too short.

Concerning the manner in which the Conference of Cantonal Governments coordinates with the cantons, different procedures are adopted depending on whether purely technical issues or political positions are involved, the latter involving a more cumbersome and formalistic procedure.

According to the Federal Office of Justice, apparently in spring 2015 the Conference of Cantonal Governments adopted a concept for coordination between the cantons and between the cantons and the Confederation in the context of reporting procedures (Federal Office of Justice 2016). However, the Conference of Cantonal Governments confirmed that the Confederation never adopted this concept, calling for the setup of a proper coordinating body, due to a lack of resources. As a result, the document was never implemented. Nonetheless, there is currently willingness within the Conference of Cantonal Governments to draw up a document on good practices or guidelines for coordination between the Confederation and the cantons.

When parts of the report relate specifically to one or more cantons, as in the case of the cantons of Ticino and Graubünden in the reports on the European Charter for Regional or Minority Languages, these cantons are consulted directly in addition to the relevant cantonal conference and contribute to the drafting of the report (Federal Council 2018b). In other words, the cantons are contacted via the Conference of Cantonal Governments and other cantonal conferences for general questions and directly when the list of issues submitted by the treaty body poses a specific question concerning one or a couple of cantons. The Conference of Cantonal Governments is always informed of direct exchanges between the Confederation and the cantons. The cantons are also consulted directly by the Federal Council when the deadline imposed by the latter is deemed too short by the Conference of Cantonal Governments, which prefers in this case to leave the task of ensuring contact with the cantons to the Federal Council.

Regarding the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, for example, the coordination between state and sub-national levels operates as follows: the Federal Office for Gender Equality is responsible for compiling data and information at federal level, while the Swiss Conference against Domestic Violence, commissioned by the Conference of Cantonal Justice and Police Directors and the Conference of Cantonal Social Affairs Directors collects data and

information in the cantons and forwarding it to the Federal Office for Gender Equality that draws up the report (Federal Council 2021).

This invitation to cantons to give their opinion themselves or via cantonal conferences on the subjects within their competence may take the form of a possibility to comment on the draft report, a questionnaire, or information gathering on the situation in the areas in question (Federal Council 2022). For example, in the case of the 2021 and 2025 reports on the Aarhus Convention, a representative survey was carried out by sending a questionnaire on the implementation of the Convention to several federal agencies and cantons for a consultation period of eight weeks. More specifically, according to documents provided by the Federal Office for the Environment to the author, after establishing an action plan, it consulted seven cantons by email sending relevant questions from the questionnaire of the international monitoring body in the attachment. The contact persons in the cantons were identified by the Federal Office for the Environment by the list of participants to a conference of cantonal environmental lawyers. Their answers were then incorporated into the draft that was sent again to the previously consulted stakeholders for a second consultation period of four weeks. In the second round of consultation, in addition to the cantons consulted, the Conference of Cantonal Directors of Construction, Planning and Environment was included. The possibility of a discussion about the feedback after the second round of consultation by telephone or by meeting of cantonal environmental lawyers was offered in the action plan. Comments on the draft were definitely included into the final report.

6.2.6 Standing/*ad hoc* arrangements for government/public sector-civil society cooperation in human rights monitoring and reporting

There is no formal partnership or standing arrangements between the public authorities responsible for preparing Switzerland's reports and civil society for cooperation in human rights and reporting. Nevertheless, there is some engagement between the two on an *ad hoc* basis. According to the Federal Office of Justice, civil society organisations act mainly as 'critical friends' to the Government in these processes and it is not inconceivable that they might be included in exchanges within the KIM group.

More specifically, civil society may play a part in human rights monitoring and reporting in two practical ways. First, in some cases, the authorities drafting the report do consult civil society organisations on the latter (OHCHR 2016). In summer 2022, for example, Switzerland's fourth UPR report was the subject of an extensive consultation process involving the federal administration, the cantons and extra-parliamentary federal commissions, but also civil society and interested parties (Human Rights Council 2022). According to international documents received by the author, during the preparation of Switzerland's latest report on the Aarhus Convention, the previously mentioned questionnaire was also sent to organisations focusing on environmental protection (and access to information *Pro Natura*, *WWF Schweiz*, *Stiftung Landschaftsschutz Schweiz*, *BirdLife Schweiz*, *Mountain Wilderness*, *Öffentlichkeitsgesetz.ch*) whose answers were then

incorporated into the report. Civil society organisations were also consulted by the authorities when drafting the report on the implementation Convention on the Rights of Persons with Disabilities and the Framework Convention for the Protection of National Minorities. Both reports took account of the views of the organisations of those concerned, namely disabled persons and national minorities through their umbrella organisations *Inclusion Handicap* (Federal Council 2016) and *Radgenossenschaft der Landstrasse* among others for the Yenish and Sinti people (Federal Council 2021b).

Second, civil society organisations usually submit alternative reports for the committees. For example, civil society was not involved in the preparation of Switzerland's fourth report on the International Covenant on Civil and Political Rights. In this case, the Federal Office of Justice considered that the preparation of answers to the Committee's questions was a task for the State and that it was more appropriate for civil society to express its views independently (Federal Office of Justice 2016). Therefore, the NGO Platform *humanrights.ch*, a network of over eighty Swiss NGOs from both the German and French-speaking parts of Switzerland representing a wide range of topics in the field of human rights, submitted their shadow report in 2017.³⁰⁸

Finally, civil society organisations play a part in ensuring that Switzerland's reports and monitoring bodies' concluding observations are disseminated, commenting on them, participating in oral presentations and follow-up procedures as well as ensuring a more effective implementation of recommendations (Federal Council 2022).

6.2.7 Arrangements for international/national FoE/Fol report follow-up/implementation

There are currently no standing mechanisms in place in the country to support and follow-up on the implementation of recommendations of international monitoring bodies. As far as the recommendations on FoE and Fol are concerned, follow-up practices are carried out instrument by instrument and not by subject-matter. The concluding observations and recommendations are first translated into German and Italian, before being published online and forwarded to relevant federal departments and cantons (Egbuna-Joss and Kälin 2012). In its role as focal point of the KIM Group, the Federal Office of Justice maintains a thematic overview of recent recommendations issued to Switzerland. In addition, and as mentioned above, the study commissioned by the Swiss Human Rights Institution produced a mapping document containing an overview of the recommendations made to Switzerland during the last reporting cycles of sixteen of its reporting procedures, which is now available on its website.³⁰⁹ According to this 2024 study, the Swiss Human Rights Institution should ensure that the Confederation creates mechanisms for systematic documentation of recommendations from international monitoring bodies, and support the development of

³⁰⁸ Available here: www.humanrights.ch/fr/pfi/jurisprudence-recommandations/onu/comite-droits-homme/rapport-2014-2017/.

³⁰⁹ Available here: <https://www.isdh.ch/en/shri/what-we-do/state-reporting-procedures>.

such a documentation tool, for example by conducting this development work itself as an onerous additional service to the public authorities (Thorshaug and Müller 2024).

According to the Federal Office of Justice, the office responsible for drawing up the report is also responsible for the follow-up and establishes its own operating procedures. It decides unilaterally on the organisation of follow-up sessions and the involvement of other stakeholders such as civil society organisations, and it contacts the sub-national level. We can therefore attest to a wide disparity in domestic follow-up procedures, depending on the instrument in question. In addition, regarding the UPR procedure, the Federal Council must first accept or reject each recommendation in consultation with the relevant federal services and cantons, the responsibility for following-up on accepted recommendations laying afterwards mainly with the Federal Department of Foreign Affairs (Federal Council 2023).

A 2012 study conducted by the Centre for Human Rights had already concluded that there was little uniformity in the follow-up procedure at federal level, ranging from decisions not to introduce any further measures to elaboration of action plans (Egbuna-Joss and Kälin 2012). For example, in its comments on the evaluation report of the Group of Experts on combating violence against women and domestic violence, the Federal Council refers to the National Action Plan for the implementation of the Istanbul Convention (*Plan d'action national de la Suisse en vue de la mise en œuvre de la Convention d'Istanbul de 2022 à 2026*) (Federal Council 2022b). In its communication to the author, the Federal Office for Gender Equality refers to the same document. This is a document drawn up by the Confederation, cantons and municipalities, containing 44 concrete measures, the authorities responsible for implementing them both at state and sub-national levels and their status. It is part of the wider action plan called *Stratégie Egalité 2030*. According to the Federal Office for Gender Equality, the recommendations made by GREVIO and the ensuing measures have been incorporated into the above national action plan.

According to the Federal Office of Justice, coordination with the cantons is carried out in the same way as during the preparation of reports, either through cantonal conferences or directly when one or more cantons are specifically affected by one or several recommendations. The main challenge in practice in this regard in Switzerland lies in the fact that implementation of most of the recommendations falls within cantonal competence: the Confederation cannot prescribe what cantons should do, but must provide information on the measures taken in subsequent reports (Schmid and others 2020). In the same 2012 study, all the federal agencies surveyed stated that they did not feel empowered to take any action whatsoever to improve the implementation of recommendations falling within the remit of the cantons (Egbuna-Joss and Kälin 2012). The same feeling was confirmed in the latest 2024 study commissioned by the Swiss Human Rights Institution (Thorshaug and Müller 2024). For their part, of the six cantons consulted, only two confirmed that they carry out other follow-up activities, such as organising

meetings between the cantonal departments concerned (Egbuna-Joss and Kälin 2012). This difficulty in engaging the cantons, their feeling of weariness and reluctance to implement the numerous recommendations of monitoring bodies was also expressed by the Federal Office of Justice employee we interviewed. Whereas, the employee of the Conference of Cantonal Governments, whom we spoke to, pointed to disorganisation at the federal level, extremely tight deadlines and insufficient consideration of differing situations and resources in the cantons.

6.3 Substantive FoE and FoI issues

We will now take a closer look at the substantive issues relating to FoE and FoI of concern to Switzerland by giving an overview of Switzerland's record of international human rights reporting and follow up in respect of FoE and FoI (6.3.1), presenting key substantive FoE and FoI issues identified in national reporting processes (6.3.2) and observing that there is no follow-up to the latter (6.3.3).

6.3.1 Overview of record of international human rights reporting and follow-up in respect of FoE/FoI

In this first sub-section, we will concentrate on Switzerland's record under following international human rights reporting mechanisms: Universal Periodic Review, International Covenant on Civil and Political Rights (i.), Convention on Access to Information, Public Participation in Decision- Making and Access to Justice in Environmental Matters (iv.) as well as five other non-EU international instruments with reporting obligations relevant to FoE/FoI (v.).

i. Universal Periodic Review (UPR)

In all four Switzerland's review cycles, three main issues relating to FoE and FoI were observed: questions relating to the prohibition of hate speech under Article 261bis of the Criminal Code, freedom of expression for whistleblowers and other restrictions on freedom of expression.

Firstly, Switzerland tends to reject the recommendations on amending the criminal provision prohibiting hate speech. It thus rejected, at the time, the recommendation to adopt a special law prohibiting incitement to racial and religious hatred during the first cycle (Human Rights council 2008) and the recommendation to extend Article 261bis of the Criminal Code to include other factors such as language, skin colour, gender, mental or physical disability, sexual orientation or other similar grounds during the second cycle (Human Rights Council 2013). However, the ground of sexual orientation was nevertheless introduced into Article 261bis of the Criminal Code in 2018. Switzerland also accepted a recommendation to ensure that freedom of expression is not hindered by unnecessary restrictions in order to guarantee freedom of religion during the second cycle and responded that Article 261bis provides for an individualised assessment on case-by-case basis, in accordance with the principles of freedom of expression (Human Rights Council 2017). As

of 2025, Article 261bis prohibits hate speech only on the grounds of race, ethnic origin, religion or sexual orientation.

Further, in its 4th report as a response to a recommendation to maintain provisions of Article 261bis of the Criminal Code, in particular those establishing liability for denial, trivialisation and attempted justification of genocide and other crimes against humanity, Switzerland confirmed that the application of this prohibition had not posed any significant difficulties but needed clarification regarding the issues of criminal responsibility and territorial jurisdiction in cases of racist hate speech on social media (Human Rights Council 2022b).

Second, on recommendations to ensure freedom of expression for whistle-blowers and abolish penalties imposed, Switzerland noted these but considered it inappropriate to propose new legislation on the matter since the partial revision of the Code of Obligations on the protection of whistleblowers did not receive majority support in Parliament in spring of 2020 (Human Rights Council 2023).

Third, Switzerland accepted recommendations on other restrictions to freedom of expression. In particular, it supported the recommendation to amend the banking law provisions limiting freedom of the press 2020 (Human Rights Council 2023). However, after a parliamentary request to amend, the Swiss Banking Act was adopted by one of the chambers of Parliament in February 2023 but rejected by the second one in December 2023. The banking law was thus not amended.

ii. 1966 International Covenant on Civil and Political Rights (ICCPR)

The key FoE/FoI-related issues raised during the four rounds of Swiss reporting on the International Covenant on Civil and Political Rights to the Human Rights Committee are freedom of expression of foreigners who do not hold a permanent residence permit, Switzerland's reservations to Article 20, paragraph 1 of the Covenant and the struggle to combat hate speech in practice.

Firstly, in its final observations on Switzerland's initial report, the Committee noted with concern the existence of the 1948 Federal Act on Political Discourse by Foreigners subjecting the freedom of expression of foreigners without a residence permit to restrictions contrary to Article 19 of the Covenant and recommended its repeal (Human Rights Council 1996). Under this Federal Act, foreigners without settlement permit could only address a political issue in public or private assemblies with special authorisation. In its second report, Switzerland reported that the Act was repealed on 9 March 1998, coming into effect as of 30 April 1998 (Federal Council 1998).

Second, both in its concluding observations on Switzerland third and fourth reports, the Committee noted with concern Switzerland's reservation to Article 20, paragraph 1 of the Covenant (Human Rights Committee 2009, Human Rights Committee 2017). Switzerland still maintains its reservation whereby it has reserved the right not to adopt new measures to prohibit war propaganda, prohibited by Article 20, paragraph 1.

Third, in its final observations on Switzerland's latest report, despite welcoming different measures undertaken to prevent hate speech such as participation in numerous campaigns, the Committee remained concerned by reports of racist and xenophobic discourse in political circles and the media as well as growth of hate speech cases against Muslim, Jewish and Roma communities (Human Rights Committee 2017). It therefore considered that Switzerland should increase its efforts in combatting racial and religious hate speech and acts, by strengthening the mandate of the Federal Commission against Racism and by considering the adoption of a national plan to combat racism (Human Rights Committee 2017). Switzerland will have to respond to these requests in its next report, but on 7 March 2024 one of the chambers of Parliament instructed the Federal Council to draw up a national action plan against anti-Semitism and racism, deeming the current measures to be insufficient.

iii. 2009 Council of Europe Convention on Access to Official Documents (CETS No. 205) ("Tromsø Convention")

Switzerland has not signed nor ratified the 2009 Council of Europe Convention on Access to Official Documents (CETS No. 205) ("Tromsø Convention").

iv. 2001 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters ("Aarhus Convention")

In all three reports, two FoE/FoI-related issues were raised with regards to the implementation of Article 4.³¹⁰

First, the reports note that many requests for information submitted to the authorities are not always perceived as requests on access to information within the meaning of Article 4 of the Convention, which in some cases leads to an important delay in processing these requests. Second, the assessment of the grounds to restrict the right of access might be challenging, especially the question whether company data should be deemed as industrial or commercial secrets. Third, in 2021 and 2025 in particular, some of the civil society organisations consulted found it problematic that, in several cantons, the authorities exempt the records of non-public meetings from the principle of public access, as well as the overly broad use of exceptions to access to information by some authorities. In addition, it was pointed out that in some cases documents are simply not drafted in relation to sensitive subjects, making access to the requested information impossible.

Despite these three points, the Meeting of the Parties decided neither in 2017 nor in 2021 on any measures concerning Switzerland's compliance with the provisions of the Convention.

³¹⁰ Aarhus Convention national implementation reports, including Switzerland's, are available on the United Nations Economic Commission for Europe's website.

v. Other international instruments with reporting obligations relevant to FoE/FoI³¹¹

Switzerland's record under the following other non-EU international instruments with reporting obligations relevant to FoE/FoI is examined: International Convention on the Elimination of All Forms of Racial Discrimination (a), Convention on the Rights of Persons with Disabilities (b), European Charter for Regional or Minority Languages (c), Framework Convention for the Protection of National Minorities (d) and Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (e).

a) International Convention on the Elimination of All Forms of Racial Discrimination (1965), Art. 5

A key FoE/FoI-related issue was raised on Switzerland's combined 7th to 9th reports. In its concluding observations, the Committee recommended that Switzerland 'sensitises legal personnel, including the judiciary, to international norms protecting freedom of opinion and expression and norms against racist hate speech, as set out in the Committee's general recommendation No. 35 (2013) on combating racist hate speech' (Committee on the Elimination of Racial Discrimination 2014). Switzerland confirmed that the relevant federal agencies would conduct an analysis of the situation and develop, as appropriate, information and awareness raising measures, specifically for prosecutors and judges of courts of first and second instance, based on the results of a study by the Swiss Competence Centre for Human Rights on the mechanisms that facilitate or hinder access to justice for victims of discrimination (Federal Council 2015). The issue was not further raised in Switzerland's combined 10th to 12th reports.

b) Convention on the Rights of Persons with Disabilities (2006) and its Optional Protocol, Arts. 4, 9, 21, 23

Three main issues related to FoE and FoI were raised regarding Switzerland's initial report. All three concern the implementation of Article 21 of the Convention (Committee on the Rights of Persons with Disabilities 2022). Firstly, the Committee recommended that Switzerland recognises the three Swiss sign languages as official languages at both the federal and the cantonal levels, promotes their access and use of sign and ensures the availability of qualified sign language interpreters. Secondly, the Committee considered that Switzerland should develop legally binding information and communications standards at federal, cantonal and communal levels to ensure the accessibility of information. Finally, the Committee recommended sufficient funding to be allocated for the development, promotion and use of accessible communication formats. As these recommendations date from March 2022, Switzerland has yet to comment on them.

³¹¹ Reflecting Switzerland's non-member state status, Switzerland does not usually implement nor report on any key EU obligations related to FoE and FoI, with the exception of the Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE).

c) European Charter for Regional or Minority Languages (ETS no. 148), Art. 11

Since its 7th report, all of Switzerland's undertakings regarding Article 11 have been considered fulfilled. In its 8th evaluation report on Switzerland however, the Committee of Experts could not conclude on consistency in support of training of journalists and other staff for media using Italian in the Canton of Graubünden and considered the aspect regarding the encouragement and/or facilitation of the creation of at least one private radio station in Romansh in the Canton of Graubünden only partly fulfilled (Committee of Experts of the European Charter for Minority Languages 2022). In its Interim report on the implementation of the recommendations for immediate action in the 8th evaluation report of the Committee of Ministers, Switzerland is taking the following measure regarding the promotion of the Italian-language media in Graubünden: commission of two reports, the first describing the current situation and needs and the second proposing measures, based on the cantonal Government's decision (Council of Europe 2023).

d) Framework Convention for the Protection of National Minorities (ETS No. 157), Arts. 7, 9

Two recommendations closely linked to FoE and FoI problems under Article 9 of the Convention emanating from the 5th monitoring cycle are rather noteworthy. First, the Advisory Committee called on the federal and cantonal authorities to support the production of television and radio programmes aimed at promoting cultures, traditions and history of persons belonging to Yenish and Sinti/Manush minorities and to carry out awareness-raising activities among the persons belonging to these minorities in relation to the existing complaint and monitoring mechanism of the media content exercised by the Swiss Press Council (Advisory Committee on the Framework Convention for the Protection of National Minorities 2023). The Federal Government replied that it could only oblige broadcasters in a very general way to take account of minorities in their broadcasted content as broadcasters could not be required to broadcast specific productions or information under the relevant federal laws and the Federal Constitution (Federal Department of Foreign Affairs 2023). The Federal Government advised, though, that it does, however, support projects that contribute to the diversity of Swiss films and co-productions, including a recent documentary on the Yenish. Secondly, Switzerland was encouraged to pursue its efforts to support both broadcast and printed media in Italian and Romansh languages in the Canton of Graubünden. The Government has confirmed that this remains a major issue, and that the funds needed for federal support will be set by Parliament as part of its deliberations on the 2025-2028 culture message.

e) Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210) (Istanbul Convention), Arts. 14, 17, 19, 21

Two main substantive FoE/FoI issues emerged in Switzerland's first reporting cycle on the Istanbul Convention. First, under Article 17, the issue lies in the fact that there are no binding standards at national level regarding sexism in advertising and that no full review of measures to encourage the media to establish policies to prevent violence against women

has ever been made throughout Switzerland. GREVIO has therefore recommended Swiss authorities to exploit the potential for extensive awareness-raising about this issue, and to promote the development of specific standards of self-regulation concerning the balanced, non-sexist coverage of violence against women (GREVIO 2022). The government simply replied that it shared GREVIO's view of the importance of the role of the media in reducing violence against women and gave the example of the financial support given by the Federal Office for Gender Equality to an information campaign in French-speaking Switzerland (Federal Council 2022b).

Second, the key issue regarding the application of Article 19 concerned substantial gaps in information for violence-affected migrant and asylum-seeking women, who often lack information concerning the possibilities to access an autonomous residence permit in 'cases of hardship'. GREVIO has therefore strongly recommended to Switzerland to pursue its efforts to provide all women victims of domestic violence and other forms of violence with appropriate and timely information in a language they understand (GREVIO 2022). The government pointed to several relevant cantonal campaigns and the adoption of a parliamentary motion calling for the regular introduction of national anti-violence prevention campaigns tailored to the target group and aimed at different audiences (Federal Council 2022b).

6.4 Key substantive FoE/FoI issues identified in national reporting processes

In the context of the Service for Combatting Racism's annual monitoring, issues related to FoE and FoI such as hate speech are generally addressed in the analysis of the various forms of racial discrimination present in Switzerland, in particular by the terms 'verbal racism' (Service for Combating Racism 2024b).

Regarding the FoI issues identified in the Media Monitor 2022 report, Switzerland has a functioning media system that guarantees free opinion-forming in all regions of the country. However, media diversity and thus diversity of opinion are under pressure, particularly in connection with regional concentration and changes in media use as a result of digitalisation (Publicom 2023).

6.4.1 Follow-up to national monitoring/reporting in respect of FoE/FoI-related issues

None of the above-mentioned national monitoring and reporting procedures trigger follow-up requirements. For example, Media Monitor Switzerland does not produce explicit recommendations in its reports that the authorities may or may not follow. No concrete action based on Media Monitor Switzerland reports has been identified.

Equally so, the Federal Office of Communications does not publish explicit general recommendations following the annual reporting procedure for licensed radio and television broadcasters. It only initiates a supervisory procedure when the deadline for submitting the report is not met and after sending a single reminder.

6.5 Assessment and conclusion

This last section provides an overall analysis of respective strengths and weaknesses regarding FoE and Fol monitoring, reporting, protection and promotion in Switzerland (A.), before summarising key insights from the chapter (B.).

6.5.1 Analysis of respective strengths, weaknesses and implications regarding FoE/Fol monitoring/reporting and protection/promotion

Our analysis of the Swiss system is divided into three parts and follows the general structure of the chapter. First, we offer an assessment of the general allocation of responsibilities in Switzerland (1). Second, we focus on Swiss arrangements for human rights monitoring and reporting (2). Third, we discuss Switzerland's approach to the substantive issues relating to FoE and Fol (3).

i. Governance

The main strength of Swiss governance certainly lies in the founding principles of the division of powers between the Federal Government and the cantons, namely the principles of subsidiarity and cantonal autonomy. The Federal Council's observation that these two principles allow the Swiss federalism to remain a dynamic and constantly renegotiated process of delegation is largely borne out by the preceding analysis (Federal Council 2022).

The fact that there are no government bodies or agencies specifically mandated for substantive protection of FoE and Fol at any governance level in Switzerland does not seem to be a problem. Their substantial protection falls under more specific issues such as the combating of racism or the question of minority languages and is protected by the authorities specifically mandated in these areas. In addition, authorities dealing more generally with the protection of human rights, such as the Human Rights Diplomacy Section (FDFA) and the International Human Rights Unit (FOJ) at the federal level, are also concerned with substantial FoE and Fol issues.

The main challenge for Swiss governance is the fact that the implementation of many international obligations falls under cantonal competence. The implementation of international obligations follows the division of powers between the Confederation and the cantons as laid down in the Federal Constitution, while the Confederation is exclusively competent for concluding international treaties (Federal Council 1996). The cantons therefore find themselves in the position of having to implement international obligations that they themselves have not concluded (Kaempfer 2023). The main difficulty is that the Confederation cannot take the place of the cantons in the event of non-implementation of obligations falling within their areas of competence but can only use internal implementation mechanisms (Biaggini 2017, Wyttenbach 2017).

ii. National monitoring and reporting arrangements

There are two positive points worth highlighting in terms of monitoring and reporting arrangements in Switzerland. The first relates to the work of the KIM group and the second to communication between the federal government and the cantons.

As previously mentioned, the only institutionalised aspect of Switzerland's monitoring and reporting system is the work of the KIM group. This group brings together representatives of most federal and cantonal government units involved in human rights treaties with reporting obligations and is also responsible for coordinating the monitoring of the implementation of recommendations made by international bodies. It also organises events providing an opportunity to exchange views with civil society, academic institutions, and other stakeholders (Federal Council 2016). The Federal Office of Justice argument that a body such as the KIM Group is the ultimate guarantor of a transparent and participatory approach is reasonable. However, the KIM group is a highly informal body with no decision-making powers, which means that the federal government units remain independent in reporting and monitoring procedures for which they are responsible. There may accordingly be scope to broaden and strengthen KIM group's competences. First, it could include more government units responsible for reporting and monitoring (for example, the unit of the Federal Office for the Environment responsible for the Aarhus Convention). There may also be advantages in granting more powers to the KIM group in order to possibly standardise Swiss monitoring and reporting practice and to become a proper coordination office as suggested by the Conference of Cantonal Governments. It goes without saying that such a reinforcement would require more resources, particularly in terms of personnel, as, at this stage, the KIM group is only composed of representatives of the various units concerned, without having its own staff. The 2024 study commissioned by the Swiss Human Rights Institution comes to a similar conclusion. According to its authors, the creation of a national coordination mechanism, with sufficient resources, would be necessary if one wishes to contribute to the effectiveness of Switzerland's reporting procedures, and the Swiss Human Rights Institution should actively promote the creation of such a national mechanism (Thorshaug and Müller 2024).

The second strength of the Swiss system is the practical way in which exchanges take place between the Federal Government, tasked with reporting and monitoring vis-à-vis international bodies, and the cantons, which are often the main holders of information and are responsible for implementation. In fact, the Federal Government's main interlocutor representing the cantons is the Conference of Cantonal Governments and its thematic cantonal conferences. As explained above, the latter bring together representatives from 26 cantons, depending on the subject concerned. The fact that these bodies are in place means that information can be passed on in a targeted, uniform, and exhaustive manner. Communication is thus facilitated, and no canton is at risk of being excluded. The Federal Government remains free to also contact the cantons directly when some of them are

specifically concerned. However, according to the source from Conference of Cantonal Governments, the coordination between the Confederation and the cantons would be improved by standardisation of Swiss practice and uniformisation of different human rights reporting procedures via the establishment of a coordination body (strengthening of the KIM group), notably in terms of a longer-term planning and consideration of cantonal realities, since the current distribution of competences seems to be too dispersed at the federal level.

Switzerland's monitoring and reporting arrangements face three main challenges. We shall deal with the major challenge in more detail and only briefly mention the remaining two. We have observed that there are considerable disparities in the way the responsible units operate in two areas, namely the use of incorporation or reflection of international standards and guides and the involvement of civil society stakeholders. These disparities are areas that the KIM Group could standardise if its competences were strengthened. It should also be noted that the authors of the 2024 study observed that Swiss direct democracy can present another challenge in this area, in that the implementation of recommendations can be limited in some cases by the results of popular votes (Thorshaug and Müller 2024).

Since the implementation of many international obligations falls within cantonal competence, so does the implementation of most recommendations. This is the biggest challenge in practice in Switzerland regarding monitoring and reporting arrangements (Thorshaug and Müller 2024). For example, more than half of the recommendations accepted by Switzerland following its third universal periodic review in 2017 were addressed to the cantons (Kaempfer 2022). However, the Confederation cannot prescribe what the cantons should do, but must provide information on the measures taken in subsequent reports (Schmid and others 2020, Kaempfer 2023). Furthermore, not only do they lack any power to impose coercive measures on the cantons, but the federal units do not feel empowered to take any action whatsoever to improve the implementation of recommendations falling under cantonal competence (Egbuna-Joss and Kälin 2012). While cantons may seem reluctant to implement recommendations from international monitoring bodies and the absence of political will may be one of the reasons behind cantonal inaction, Niederhauser and Maggetti also identified more concrete reasons, such as the lack of resources available to the administrations of small cantons (Niederhauser and Maggetti 2023). Nevertheless, a reformed and intensified collaboration between the cantons and the Confederation via a formal federal coordination body may contribute to achieving a more satisfactory implementation of international monitoring bodies recommendations in cantons and overall. In addition, the idea of a periodic review, in which the cantons would be able to evaluate each other's implementation of human rights, along the lines of the UPR as a way of improving the implementation of Switzerland's international human rights obligations was discussed at a conference organised by a team from the University of Lausanne supported by the Swiss National Science Foundation, in partnership with the

Institute of Federalism and the Swiss Centre of Expertise in Human Rights in 2022 (Kaempfer 2022).

iii. National approaches to substantive FoE and Fol issues

We can identify two main groups of substantive FoE and Fol issues arising from the reports and documents analysed – hate speech and media-related issues.

Hate speech issues have been raised in the UPR, ICCPR and International Convention on the Elimination of All Forms of Racial Discrimination monitoring procedures. Switzerland is rather reluctant to accept recommendations that would entail legislative amendments of problematic national provisions relating to hate speech such as the recommendation to amend Article 261bis of the Criminal Code (Human Rights Council 2013) as well the recommendation to withdraw its reservation to Article 20, paragraph 1 ICCPR (Human Rights Committee 2009, Human Rights Committee 2017). This reluctance may be due to the likelihood that such legislative changes would not obtain a majority in the Federal Assembly, either because of the current political landscape or because they would involve major political issues in Switzerland.

Issues regarding minority representation and sexism in the media have been raised in monitoring procedures relating to the following treaties: European Charter for Regional or Minority Languages, Framework Convention for the Protection of National Minorities and Istanbul Convention. Switzerland seems to admit that the representation of national languages in certain cantons constitutes a major problem and is quite proactive regarding these issues (for example, commission of reports analysing the situation and submitting funding requests to the Parliament) (Federal Department of Foreign Affairs 2023). However, Switzerland seems more reserved about making such similar explicit declarations about issues regarding the representation of other minorities or the presence of sexism in the media.

6.6 Summary of key points

- Switzerland is a three-tier political entity federal state operating primarily based on the principles of subsidiarity and cantonal sovereignty.
- Switzerland does not have a standardised national mechanism or practice for international human rights monitoring and reporting procedures.
- In Swiss practice, responsibility for preparing and coordinating a periodic report lies within an office of the federal department competent for implementing the relevant treaty.
- Interested federal government offices and units, cantons, communes and sometimes other stakeholders are consulted or, if they are particularly concerned by the report in question, are included in the drafting process.
- The only institutionalised aspect of Switzerland's reporting preparation system is the work of the KIM group, an informal interdepartmental coordinating body composed

of the Federal Government offices in charge of report drafting and coordinating, as well as the cantons and interested extra-parliamentary commissions.

- There is no specific legal or regulatory basis for the preparation of international human rights and other FoE/FoI related monitoring and reporting initiatives in Switzerland. Therefore, there is no uniform method for drafting reports and for cooperation between the different levels in this area.
- Coordination with sub-national stakeholders is carried out mainly via the Conference of Cantonal Governments, and the relevant cantonal conferences, depending on the topic of the issue. The Federal Government may also directly contact a canton.
- No formal partnership or standing arrangements exist between the public authorities responsible for preparing Switzerland's reports and civil society for cooperation in human rights and reporting. Civil society organisations act mainly as 'critical friends' to the Government in these processes, can either be consulted directly by the lead federal unit or submit their own shadow reports to the monitoring bodies and may be included in exchanges within the KIM group.
- There are no standing mechanisms in place nationally to support and follow-up on the implementation of recommendations of international monitoring bodies. The office responsible for drawing up the report is also responsible for the follow-up. It establishes its own operating procedures and carries the coordination with the cantons out in the same way as during the preparation of reports.

7. Comparative Analysis

Henry Lovat

7.1 Governance: allocation of monitoring and reporting responsibilities

With the exception of Croatia, all the states under comparison are nominally federal, albeit with varying degrees of autonomy for sub-federal units. Reflecting this, while responsibilities for human rights – including FoE and FoI – monitoring and reporting are consistently the domain of central government agencies and ministries, there is varying extent and manner in which these functions require the engagement and involvement of sub-federal governments and administrative bodies.

7.1.1 Constitutional settings and substantive responsibilities for human rights, including FoE and FoI

BiH and Belgium are perhaps the most markedly decentralised of these federal states. In the former, the relations between the various levels of government are set out in the GFAP, with central state institutions nominally principally responsible for BiH's international obligations and foreign relations, but with shared responsibility for substantive human rights issues with (most critically) two highly autonomous entities in the FBiH and the RS, alongside the Brčko District. Similarly in Belgium, described as an "unorthodox federal structure" (Van Den Steene 2025: sec. 3.1) the federal government remains principally

responsible for foreign affairs but in effect shares collective responsibility for substantive human rights protections (at least in national terms) with three regions and a further three community entities, reflecting the common obligation on all Belgian state actors to “abide by the obligations flowing from these international human rights obligations”. (Van Den Steene 2025: sec. 3.2)

Matters are somewhat more straightforward in the other two federal states under examination, though again there are important distinctions to be drawn. In Switzerland, for example, foreign affairs is an exclusive competence of the Federal Council. Substantive responsibility for human rights protections, however, is more diffuse, with cantons and communes obligated to ensure compliance with associated obligations within their respective realm of competence. As Protić observes: “all authorities carrying out state duties must respect and are responsible for the protection of human rights.” (Protić 2025: sec. II.B.) Similarly in Austria, while foreign policy is a federal responsibility, human rights obligations are again shared across levels of government, including federal, provincial and municipal authorities. (Richter 2025: II.1) In contrast, Croatia is a unitary state, with substantive responsibility for human rights issues – including compliance with international obligations – resting with the relevant government ministries. (Škrbić 2025: II.1)

Constitutional arrangements aside, there are also important similarities and distinctions amongst the central government and other state-wide public bodies principally involved in human rights – and especially FoE and FoI protection – in each country. In Bosnia, for example, the state Ministry for Human Rights and Refugees has lead responsibility for human rights protection, with the Ministry of Justice principally responsible, alongside that, for freedom of access to information. There is, however, no equivalent to the MHRR in the other states under consideration.

In Belgium and Switzerland, for example, substantive responsibility for human rights issues at state level is shared – and divided – across the federal government, with no specific ministries responsible for FoE or FoI but with responsibilities following their substantive remits. In Austria, the situation seems to be broadly comparable, albeit with media affairs falling under the Federal Minister for of Housing, Arts, Culture, Media and Sport. (Richter 2025: II 2.)

In Croatia there is similarly no single lead office comparable to the MHRR in Bosnia and Herzegovina. In this case though, the Ministry of Justice, Public Administration and Digital Transformation appears to have a lead role (via its Directorate for Human Rights, National Minorities and Ethics) for human rights domestically, with an accompanying Department for Human Rights within the Ministry of Foreign and European Affairs. (Škrbić 2025: II.2.)

In each state, moreover, there are also various government and state/public agencies with related responsibilities. These, again, vary from state to state: in BiH, for example, the three most prominent bodies for present purposes are the state (non-governmental) Human Rights Ombudsman and the Communications Regulatory Agency, each with their own

mandate anchored in law, and the Council of Ministers' Department for European Integration, with its specific EU accession-related responsibilities, including compliance with the EU *acquis*. (Lovat 2025: I.c.)

The landscape of such bodies at state-level is perhaps most similar in Croatia, with the Council for Electronic Media, People's Ombudsperson and state Information Commissioner standing out amongst a range of state and broader public sector oversight and coordinating mechanisms. (Škrbić 2025: II.2) Similar bodies can also be identified in other states, including, for example, the Swiss Federal Office for Communications (Protić 2025: II.B), the Belgian Federal Institute for the Protection and Promotion of Human Rights (FIRM), the Inter-Federal Centre for Equal Opportunities (UNIA), and (at sub-national level) Flemish Institute for Human Rights (VMRI) (Van Den Steene 2025: II.B) and the Communications Authority Austria and the Austrian Ombudsman Board and associated Human Rights Advisory Council (Richter 2025: III.4). These are supplemented, most notably in Austria and Belgium, by dedicated human rights legislative committees including in the former the National Council's Human Rights and Ombudsman Committee, and in the latter (albeit specifically for police oversight) by Committee P of the Federal Parliament (Richter 2025: III.4; Van Den Steene 2025: III.D.2).

7.1.2 Human rights monitoring and reporting responsibilities

Formal arrangements for monitoring and reporting vary widely across the countries surveyed, not only in degrees of formalisation and relative prevalence of *ad hoc* versus standing arrangements, but also in the roles assigned to different government bodies. In similar fashion to substantive human rights protection, however, in each of the states under examination – including unitary Croatia – central government human rights reporting for international (and where relevant domestic) functions necessarily requires the participation of a range of bodies, including where relevant sub-national and non-governmental institutions, in monitoring and reporting. This remains the case substantively, moreover, notwithstanding formal allocations of responsibility for monitoring and reporting within central government ministries and other bodies.

In Bosnia, for example, principal responsibility for monitoring and reporting to international human rights bodies and mechanisms lies with the MHRR. Other central government bodies such as the MoJ, MOFTER and DEI retain distinct roles and responsibilities for issues falling within their mandates (particularly FoI), however, and the ability of all state ministries (including the MHRR) to perform these functions necessarily depends on cooperation with sub-national administrative and government bodies (Lovat 2025: I.c).

Croatia similarly possesses a central body principally responsible for preparing reports for international human rights bodies and mechanisms in the Human Rights Department of the government's Office for Human Rights and Rights of National Minorities. Even here though, reflecting the extent to which human rights issues permeate government, each government

ministry remains responsible for monitoring and reporting on human rights issues within its domain, again underlining the necessity of cross-government cooperation (Škrbić 2025: I.3).

Matters are both more complex, but also perhaps clearer elsewhere. In Switzerland, for example, different (albeit specific) federal departments are responsible for report drafting and coordination. These processes are supported and coordinated by the Federal Council's International Human Rights Policy Group (the "Kerngruppe Internationale Menschenrechtspolitik" – KIM group), which includes both state and cantonal representation, and is chaired by the Peace and Human Rights Division of the Federal Department of Foreign Affairs with support from the International Protection of Human Rights Unit of the Federal Office of Justice as a quasi-secretariat "*point focal*" (Protić 2025: II.C). Different government ministries are similarly responsible for specific monitoring and reporting functions in Austria, albeit under the overall guidance of the Federal Chancellery and with support from dedicated ministry-specific human rights coordinators (Richter, 2025: II.3).

In Belgium, by comparison, while the Ministry of Foreign Affairs plays a coordinating role, monitoring and reporting responsibilities generally seem to be less clearly delineated and more diffuse, with the various elements of reports substantively prepared first by federated entities at sub-national (community/region) level, rather than by state institutions (Van Den Steene, 2025: II.C). Viewed from this lense, Belgium provides perhaps the most marked example of *ad hoc*/deformalised monitoring and reporting, accompanied by extensive substantive decentralisation of these functions to sub-national entities.

7.1.3 Conduct of monitoring and reporting

All of the states surveyed are extensively involved with and participate in a broad range of international oversight mechanisms. As noted in respect of Belgium, moreover, it is not especially uncommon for report submission to be delayed. Similarly, associated recommendations may not always be followed up and implemented. Records are, rather, mixed across all states surveyed.

There are, moreover, similarities in monitoring and reporting conducted for national purposes. Austria, Belgium, Bosnia, and Croatia all benefit from annual ombuds-institution reports, variously from the Austrian Ombudsman Board, the FIRM, the BiH Human Rights Ombudsman, and the Croatia Ombudswoman. Somewhat similarly, although there is no cross-sectoral national ombuds-institution, in March 2025, the newly-established Swiss Human Rights Institution launched an online portal to provide information on human rights in Switzerland, including on "Switzerland's international and European human rights obligations and their implementation" (*Informationsportal der SMRI für Menschenrechte in der Schweiz* 2025).

i. National legal/regulatory basis for monitoring and reporting arrangements, including relevance of international standards

In respect of national legal and regulatory grounds for monitoring and reporting, BiH stands out as possessing arguably the most formalised set of arrangements. Put simply, none of the other states under examination appear to possess an obvious equivalent instrument to the BiH Methodology, providing a standardised approach to the cross-state management of internationally-mandated human rights monitoring and reporting.

That said, however, other jurisdictions do possess other, perhaps in some cases as or more effective means of coordinating and managing monitoring and reporting. In Switzerland, for example, the KIM group, in effect performs a standing forum for coordination and management of human rights monitoring and reporting, chaired by the Federal Department of Foreign Affairs and supported by the Federal Office of Justice. A somewhat similar function is performed by the Interfederal Consultation Platform for Multilateral Coordination (COORMULTI) in Belgium, albeit in the latter case without a specific focus on either human rights or monitoring/reporting in general.

Elsewhere, such standing or standardised arrangements seem to be absent or less established. Croatia – where this is arguably less of an issue, reflecting its unitary character – has recently established a Council for Human Rights bringing together state and civil society representatives: despite this forming part of its mandate, however, it is not clear that this body is particularly closely concerned with international monitoring and reporting processes. In contrast, in Austria, arrangements seem to be more *ad hoc*, even though there may be more-or-less standard, ‘multi-stakeholder’ processes in place to produce state reports (see discussion below).

In similar vein, use of international monitoring and reporting standards, particularly the OHCHR Manual, is most evident in Bosnia – perhaps reflecting the particularly extensive role of international organisations, including UN bodies, in the development of support for BiH governance arrangements. In contrast, and perhaps relatively unsurprisingly, neither the OHCHR Manual, nor other international monitoring and reporting standards beyond those produced by oversight bodies themselves, are obviously utilised elsewhere. Indeed, in Switzerland, “there is no common [at least apparent] effort to encourage the competent offices to use international standards and guides” (Protić 2025: III.C).

That said, this should not be understood as indicating that the OHCHR Manual – or indeed, other comparable instruments – are entirely overlooked. As noted in the Belgian instance, for example, at least in the context of Flemish institutions, the OHCHR Manual appears to be substantively relevant to monitoring and reporting practices, albeit without any formal regulatory basis (Van Den Steene 2025: III.C). Similarly, in Austria, while there is little to suggest that the OHCHR Manual directly informs domestic monitoring and reporting arrangements, state authorities are apparently familiar with this document and associated

standards, and utilise these at least in the context of development cooperation (Richter 2025: III.3).

Last, in Croatia, as elsewhere other than BiH, there is no apparent – at least explicit – reliance on the OHCHR Manual to inform monitoring and reporting arrangements. In this instance, however, and perhaps closer to the experience of BiH in developing a state-wide approach based on but not identical to the OHCHR Manual, the Baseline Data Study developed to assess implementation of the National Roma Inclusion Strategy (Škrbić 2025: III.3) also illustrates the potential value in developing tailored, national sets of standards and (in the present instance) associated monitoring and reporting methods.

ii. Government, public body and NGO/civil society stakeholder involvement in human rights monitoring and reporting, including FoE and FoI

In addition to government ministries and agencies – state and sub-national – FoE and FoI-related monitoring and reporting in each of the states surveyed involves broader constellations of public sector and civil society bodies. Indeed, the similarities across all the states surveyed in terms of the range and types of bodies with legal and private mandates relating to human rights monitoring and reporting generally – and to FoE and FoI in particular – are remarkable.

In Bosnia, for example, the substantive and monitoring/reporting-related responsibilities of the MHRR, MoJ and other state government ministries are complemented by state-level public sector agencies including the Human Rights Ombudsman, the Communications Regulatory Agency, the BiH Personal Data Protection Agency, the Council of Ministers' Directorate for European Integration, the BiH Agency for Statistics, and the Central Election Commission. Entity and Brčko District ministries and agencies similarly have relevant substantive mandates.

BiH is also – perhaps to a unique extent – subject to continuing international oversight and engagement in its governance, principally via the GFAP-mandated Office of the High Representative. In addition, however, BiH is also subject to close supervision from the European Commission, reflecting both the EU's longstanding postwar engagement in BiH as well as the membership ambitions of the latter.

Last, BiH also has a rich civil society landscape of actors involved in FoE- and FoI-related issues, including in monitoring and reporting. These include the Press and Online Media Council of BiH (which retains a statutory reporting function under elections legislation) and the BiH Journalists' Association, as well as a broader range of organisations including the Balkan Research Network of BiH (BIRN), the Centre for Investigative Reporting, four Aarhus Centres, the legal support NGO *Vaša Prava*, Media Centar Sarajevo, and the Bosnian branch of Transparency International.

In similar fashion to Bosnia, Austria features a plethora of state and non-governmental bodies with mandates and activities relevant to protection, promotion, and monitoring and

reporting on FoE and FoI. The Human Rights Committee of the National Council, for example, performs human rights-related legislative review. Other relevant state-level bodies include the Communications Authority Austria and Regulatory Authority for Broadcasting and Telecommunications (with the former, *inter alia*, responsible for supporting media self-regulation), as well as the collective Austrian Ombudsman Board (AOB), supported in turn by an expert Human Rights Advisory Council (HRAC). The role of the latter, in particular, includes making recommendations to the AOB in respect of human rights monitoring standards – though there is little to suggest that FoE and FoI form a particular focus of the work of either the AOB or HRAC. The national ombuds-institution is, moreover supplemented by regional and subject-specific ombudspersons.

As with BiH, moreover, Austria features a range of relevant – often state-supported - civil society organisations. These include the umbrella Austrian League for Human Rights and national self-regulatory Austrian Press Council, as well as a range of more and less closely relevant bodies, including the Austrian advertising Council, Presseclub Concordia, Reporters Without Frontiers, the national branch of Transparency International, and environmental NGOs supporting Austrian compliance with the Aarhus Convention (see generally Richter 2025: III.4).

Similar constellations of government and non-governmental organisations are also in evidence in the other countries surveyed. Belgium, unsurprisingly given its particularly complex governance arrangements, features relevant non-governmental public sector bodies at inter-federal, federal and “federated” levels. These include, perhaps most importantly, the Interfederal Center for Equal Opportunities (UNIA) and – albeit principally as a discussion forum – the national Human Rights Platform, which brings together public sector and civil society organisations involved in human rights monitoring and reporting. Reflecting this, institutions eligible to participate in meetings of this forum might include, for example, the federal FIRM, the Flemish VMRI, the parliamentary Committee, the collective College of the Federal Ombud Institutions (the central federal ombuds-institution), as well as the state Data Protection Agency, the CTRG (responsible for the protection of prisoners’ human rights, including FoE), and the Institute for Equality of Woman and Men. These may be supplemented, moreover, by a range of civil society organisations, including the French-language community-supporting Association de Promotion des Droits Humains et des Minorities, the national branch of Amnesty International, the Flemish region-based Liga voor Mensenrechten, and a range of other organisations, including the local branch of Transparency International (see generally Van Den Steene 2025: III.D).

In Switzerland, the work of the federal government is complemented by standing, thematically focused inter-cantonal conferences functioning *inter alia* as information sharing fora, capable themselves of contributing to FoE and FoI-related state reports. Switzerland also features specialist federal government-appointed specialist commissions, including on racism, migration, media, and women’s issues, as well as the Swiss Human

Rights Institution. Civil society is also in evidence in Switzerland in FoE and FoI-related areas, in some cases including consultation during the preparation of related state human rights reports, most notably in respect of minority and minority language protection (Protić 2025: III.D)

Last, in Croatia, government ministries and the national Ombudswoman and Information Commissioner are complemented by parliamentary committees, with the Committee on Human and National Minority Rights standing out, in particular, given its scrutiny and monitoring activities in respect of government policy, legislative activity, and international human rights compliance (Škrbić 2025: III.4). Despite Croatia’s unitary structure, local and regional human rights bodies also conduct monitoring (and reporting domestically), with civil society organisations closely involved in FoE and FoI issues, including the Croatian Journalists’ Association, Transparency International and others (Škrbić 2025: III.5)

iii. Cross-government management and coordination of monitoring and reporting; civil society engagement

As the above illustrates, each of the states surveyed has a complex landscape of government, broader state and public sector, and civil society actors concerned in different ways with – and with different aspects of – human rights monitoring and reporting. Unsurprisingly, there are also significant variations in the manner in which human rights monitoring and reporting is coordinated and managed across governmental units in different contexts – as well as in the extent of civil society engagement in government-led monitoring and reporting processes.

Of the states surveyed, Bosnia appears to feature the most formalised management and coordination process, at least on paper. As set out in the BiH Methodology, within the context of an overall rolling strategic plan, monitoring and reporting for individual bodies and mechanisms is to be conducted and managed principally via regime-specific working groups, appointed in each instance by the Minister for Human Rights and Refugees, and bringing together “reporting units or administrative sources” from across BiH governance institutions (Council of Ministers of Bosnia and Herzegovina 2016: 10).

It is though, difficult to ascertain how effectively these arrangements work in practice: in particular, the management and coordination processes set out in the BiH Methodology are reliant on the cooperation of BiH’s Entity and District as well as state institutions, and in the absence of any means on the part of the latter to ensure the participation of the former, nor, to the extent that they might participate, to ensure meaningful engagement in data gathering, analysis, and follow-up. Indeed, as noted in the relevant chapter, such participation may not always be forthcoming, at least to the level needed to optimise monitoring and reporting processes and outputs.

In contrast, in the other states examined, management and coordination of human rights monitoring and reporting appear significantly less formalised. Richter, for example, provides

a worked illustration of the process for producing Austria's 2020 UN SDG Voluntary National Review, involving a "broad and transparent multi-stakeholder" approach, which appears to have involved, under Federal government leadership, state, provincial, and local government, civil society and business community. A similar approach seems also to have been used for UPR and Aarhus Convention reporting. This may be an accepted, possibly standardised mode of managing such processes: indeed, OHCHR observes that the Austrian Ministry for Europe, Integration and Foreign Affairs has "established a system of human rights coordinators and a steering group for the universal periodic review, both of which conduct interministerial working sessions and hold thematic dialogue groups with civil society during the compilation of State reports. These structures are enduring and also monitor the implementation of treaty obligations and recommendations subsequent to the completion of reports" (United Nations Office of the High Commissioner for Human Rights 2016b: 38). Neither OHCHR nor Richter's chapter, however, indicate a specific legislative or regulatory basis for such arrangements comparable to the BiH Methodology.

The same appears to be largely true elsewhere: none of the other states surveyed appear to possess a monitoring and reporting methodology defined in regulation. In contrast to BiH, however, all the other states surveyed do possess, to some degree, more or less formalised standing cross-government structures capable of – if not always engaged in – supporting international human rights monitoring and reporting.

This is perhaps most evident in Belgium and Switzerland, where COORMULTI and the KIM group respectively provide a degree of cross-government coordination of these processes, allied with information sharing functions. In the Swiss case, for example, despite the overall monitoring and reporting system being characterised as "*ad hoc*" by OHCHR, the KIM group provides a standing platform for cooperation across Switzerland's federal government bodies as well as with cantonal governments. There is no suggestion that the group itself is especially closely involved in report-drafting processes, which seem rather to be largely the prerogative of lead federal offices, including in respect of broader consultation and cantonal participation/involvement. Nevertheless, the existence of the group as a standing body provides a means of ensuring, at minimum, a standing institutional forum bringing together key government stakeholders, with secretariat support from (in this instance) the Federal Office of Justice.

This arrangement seems to be somewhat similar, moreover, in Belgium. In this case, the principal coordination body appears to be COORMULTI, which brings together the various levels of government – including communities and regions as well as the federal government – on a standing basis, providing both a policy coordination and information sharing functions. In carrying out these functions in respect of human rights, COORMULTI's 'De directie Mensenrechten (M3)' and "Transversale multilaterale thema's en CoorMulti (M0.1)" groups (*Directie-generaal voor Multilaterale Zaken en voor de Mondialisering (DGM)* 2025) are also supplemented by the Human Rights Platform established in 2019, which

brings together Belgium's broader public sector human rights institutions and civil society, albeit with apparently minimal direct or structured cross-engagement between relevant COORMULTI groups and the members of the Human Rights Platform.

Last, while there is little information available on how human rights monitoring and reporting is coordinated across government units in Croatia, the latter has recently established a Council for Human Rights, in this case bringing together government, state agencies, and – perhaps somewhat unusually – civil society authorities (Škrbić 2025: III.5). While formally charged with reviewing state reports and international oversight mechanisms, this does not appear to have formed a significant element of its activity to date. Nevertheless, the establishment of this forum does perhaps suggest a gradual shift towards more structured cross-sectoral collaboration.

As the last suggests, moreover, structured, standing collaboration between government and civil society actors in international monitoring and reporting, including in respect of FoE and Fol, remains rare – and seems to be more the exception than the rule – across all the states surveyed.

This is not to say, however, that there are no institutionalised fora for state/government-civil society cooperation. Such arrangements are apparent to lesser or greater degree in Austria and Croatia: standing arrangements for non-government (including NHRI) input to and participation in state human rights monitoring and reporting, however, are conspicuous by their absence in all states surveyed.

Croatia, for example, features a government Office for Cooperation with NGOs, and in particular there is a cooperation agreement in place between the government and the Croatian Journalists' Association and the Union of Croatian Journalists. The recently-established National Coordination Committee for the Implementation of Measures of the Action Plan for the Development of Culture and Media of Croatia also provides a formalised forum bringing together government and civil society, including addressing issues related to the safety of journalists. The Council for Human Rights, however, would seem to be the forum with perhaps the greatest potential to facilitate civil society participation in monitoring and reporting: as noted by Škrbić, however, this is not currently taking place, with broader concerns around transparency and effectiveness in government engagement with civil society in this and other contexts. (2025: III.6)

Similar concerns have also been voiced in Austria, where there has been an apparent absence of structured, systemic government-civil society engagement and civil society participation in monitoring and reporting, with a particular concern around the extent to which government-civil society relationships might be susceptible to shifting political currents. That said, here too, recent developments suggest that there may be new opportunities for such structured, ongoing engagement, including via regular federal government-convened plenary sessions, as well as recently-published Guiding Principles

for government engagement with civil society in the context of public policy (Richter 2025: III.6)

In contrast to the somewhat (albeit minimally) institutionalised engagement in Austria and Croatia, however, elsewhere government–civil society engagement on human rights monitoring and reporting seems far more *ad hoc*. In both BiH and Belgium, there seems to be little formal, established cooperation between government and civil society organisations – as well as NHRIs – in the context of human rights monitoring and reporting (the EFEx Working Group in the former excepted). In Belgium, for example, while the Human Rights Platform includes a range of public sector bodies, there is little in the way of structured government-civil society engagement on monitoring and reporting, with engagement between Belgian NHRIs and government ministries also remaining largely informal. Similarly in Switzerland, civil society do not appear to participate – at least on a standing basis – in the interdepartmental KIM Group, though as noted by Protić, “it is not inconceivable that they might be included in exchanges” within that forum (2025: III.F)

iv. FoE/FoI report follow-up/implementation

None of the states surveyed appear to feature standing, government-led (or cross-government) arrangements to follow-up on the implementation of human rights oversight mechanism recommendations. In some cases, this is perhaps somewhat surprising: in others though, the *ad hoc* approach to reporting follow-up is broadly consistent with approaches to human rights monitoring and reporting more broadly.

In BiH, for example, the absence of either a standing follow-up mechanism – or clear processes for recommendation follow-up – is perhaps somewhat remarkable, given the otherwise highly-structured arrangements set out in the BiH Methodology. In this case, however, the Methodology does not speak explicitly to follow-up: rather we might expect the implementation of recommendations in respect of one or another reporting regime to be assessed as part of the process of preparing for follow-up reports when required.

The *ad hoc* process is perhaps comparable, in turn, to practices in Switzerland. Here, as with monitoring and reporting, individual federal government offices are principally responsible for follow-up and implementation of recommendations within their respective areas of responsibility: this stands in distinction to the situation in BiH, where the MHRR remains responsible for human rights generally. In similar fashion to BiH, however, despite no suggestion of central government offices acting anything less than diligently, one of the constraints recognised in Protić’s account of follow-up that arguably rings true in respect of BiH also, is that cooperation with the various cantonal authorities can be challenging. Indeed, as Protić notes, the ongoing cycles of monitoring, reporting, and follow-up can give rise to a degree of weariness and reluctance across both central and cantonal administrations (Protić 2025: III.G)

In similar fashion, there is no apparent standing, governmental arrangement for recommendation follow-up in any of the other states surveyed. In these cases, however, there is also some degree of established non-governmental, systematised – or at least somewhat institutionalised – follow-up. In Belgium for example, the country's NHRIs (FIRM and UNIA) and quasi-national human rights institution (VMRI) collectively keep under review implementation of human rights recommendations, supplemented by some degree of internal government tracking, at least within Flemish institutions (Van Den Steene 2025: III.G). Similarly, in Austria, the Austrian Ombudsman Board maintains an online tool enabling monitoring of recommendation implementation (Richter 2025: III.7)

Croatia, despite the absence of systematic, standing cross-government follow-up, also features a degree of both non-governmental and governmental follow up. In respect of the latter, as Škrbić observes (2025: III.7), perhaps the most extensive, methodical monitoring – and associated follow-up – is that undertaken by the national Ombudswoman. At the same time, however, there is also some, albeit limited, structured government engagement in related activity, perhaps most obviously via the interim UPR monitoring led and conducted by the Office for Human Rights and Rights of National Minorities.

7.2 Substantive FoE and Fol issues

Notwithstanding the different legislative and constitutional contexts, there is substantial commonality across the types of FoE and Fol-related concerns emerging from international oversight of the various states surveyed.

Perhaps most clearly apparent, for example, hate speech – as well as the extent to which such conduct is criminalised – emerges as a central FoE-related concern in all states surveyed. In BiH, for example, the CERD and UPR processes exhibit clear concern with this issue, especially where used by politicians, with such concern echoed in turn echoed in multiple European Commission reports (Lovat 2025: III.iii). This issue is similarly reflected elsewhere, including in the UPR recommendations of all states under examination (see variously references in: 'UPR of Austria (3rd Cycle): Thematic list of recommendations' 2021; 'UPR of Belgium (3rd Cycle): Thematic list of recommendations' 2021; Protić 2025: IV.A.1; Škrbić 2025: IV.1.a.), as well as by the Human Rights Committee in respect of Belgium and Switzerland (see references in Human Rights Committee 2019; Protić 2025: IV.A.2). The CERD has similarly highlighted hate speech as a concern in Belgium, Croatia and Switzerland, (see references in: Committee on the Elimination of Racial Discrimination 2021; Protić 2025: IV.A.5.a; Škrbić 2025: IV.1.e.i) while this issues also features prominently in Austria's 2025 national report to the CERD (Committee on the Elimination of Racial Discrimination 2025).

Media regulation and freedom is more narrowly a shared concern, emerging particularly in respect of Bosnia and Croatia (Lovat 2025: III.a.i.; Škrbić 2025: IV.1), albeit also with some concern arising around editorial independence in Austria (Richter 2025: IV.2). (Croatia, in particular, also features a highly-developed set of arrangements for media ownership

transparency) (Škrbić 2025: IV.4). The protection of journalists, however, including, in particular, concerns around (mis)use of defamation laws and SLAPPs, is again more widespread. The former are highlighted, for example, in UPR recommendations for Austria, alongside Bosnia (Lovat 2025: III.a.ii; Richter 2025: V.1.iii), as well as both UPR and Human Rights Committee concern in Croatia. SLAPPs form a similar focus of UPR and Human Rights Committee scrutiny in Croatia (Škrbić 2025: IV.1.a, b).

Last, freedom of information – and government transparency more generally – remains a prominent issue of concern across the countries surveyed, with Aarhus Convention-related reporting and, for EU members, the accompanying Access to Environmental Information Directive (2003/4/EC) providing particularly clear indications of associated challenges and requirements. Austria, for example, has only recently introduced domestic legislation regulating access to information, while personal data protection remains a locus of UPR concern (Richter 2025: IV.1, 2). Switzerland, similarly, retains challenges in implementing Aarhus Convention FoI requirements (Protić 2025: IV.A.4), while national oversight has highlighted FoI-related concerns in Croatia (Škrbić 2025: IV.2).

Nor does this brief overview, moreover, exhaust the range of FoE and FoI-related issues apparent in the various countries under examination. In each of the countries surveyed, further issues may be identified, such as – for example – particular issues relating to protection of national minorities and (especially) minority languages, and in respect of vulnerable populations, including minority and migrant women. Similarly, FoE-related issues also arise in other venues, including in the European Court of Human Rights (Richter 2025: IV.1) and are also likely to emerge and be addressed in different manners dependent on whether the state concerned is also an EU member state, with attendant legal obligations. Nevertheless, as this brief survey has hopefully indicated, there are significant commonalities in terms of the issues arising from international oversight across all the states surveyed in respect of FoE and FoI. Given this, while constitutional and other governance features may vary widely from state to state, these commonalities perhaps illustrate well the scope for lessons to be drawn from and applied across the present sample of states.

7.3 Assessment: Apples and Apples and Apples and Oranges

In addition to the outlines presented of monitoring and reporting practices and substantive FoE-related issues, each of the chapters surveyed in the present volume also provides a snapshot of the key perceived strengths and weaknesses of these in the context of each country. Ahead of drawing any conclusions as to lessons that may be learned from the varying arrangements and practices in each country, it may be helpful to briefly survey some of the key common features of these discussions, to highlight perceived and substantial common threads and concerns – as well as strengths – of (in particular) the various approaches to human rights monitoring and reporting.

Perhaps unsurprisingly, governance issues and, in related fashion, cross-government (and, where relevant, inter-government) coordination features in all the federal states surveyed. The challenges of formalising any standing cross (and inter-) government institutions in such states are perhaps best exemplified by the Belgian example, where asymmetric federalisation and an unclear division of competences appears to be accompanied by an absence of formalised monitoring and reporting arrangements, and a *de facto, ad hoc* approach to managing state human rights monitoring and reporting, albeit with such processes minimally supported by COORMULTI as a standing body, and facilitated by shared understandings and an apparently high degree of mutual confidence across governance actors. This though, comes at the cost of a degree of non-transparency, including in the operation of COORMULTI.

The Swiss case is similarly instructive, with the challenges of inter-government coordination somewhat addressed by the standing KIM Group, as an information-sharing and coordination body, with specialist, advisory support and the ability to facilitate a degree of engagement between government non-government stakeholders including civil society. Cooperation and coordination amongst Swiss cantons is also facilitated by thematic conferences, further facilitating cantonal coordination and engagement with central government. In Bosnia, in contrast, although the state-level Council of Ministers has adopted the BiH Methodology, the implementation of this – and indeed, the ability of the central government to conduct monitoring and reporting – is heavily dependent on the cooperation and engagement of the Entity and the District governments and administrations, but with this function apparently somewhat hampered by the absence of any standing forum bringing together the various governments and agencies to this end.

While the Austrian case is perhaps somewhat dissimilar, featuring a stronger central government relative to the competences of its federal units, both here and in Croatia cross-government coordination and engagement takes place in more or less structured fashion, in Austria (using the exemplar of SDG Voluntary National Reporting) via an editorial group, and in Croatia – albeit perhaps in a manner yet to live up to its full potential – via the Council for Human Rights.

A further, potentially related, issue that may be identified as particularly evident in most of the states surveyed is the relative absence of structured follow-up arrangements in respect of international oversight recommendations. As noted above, even in the state with (nominally) the most regulated approach to monitoring and reporting, follow-up is not reflected in the BiH Methodology. In contrast, however, in the otherwise relatively decentralised Swiss case, the Federal Office of Justice maintains records of international human rights oversight recommendations as *point focal* for the KIM Group, with an accompanying mapping and documentation initiative by the SHRI.

In Austria, Belgium and Croatia, in contrast, to the extent there is cross-sectoral follow-up, this appears to be predominantly in the hands of NHRIs and civil society.

The partial exception to this is arguably the Croatian Office for Human Rights and Rights of National Minorities. While the Department for the Rights of National Minorities specifically monitors implementation of the Framework Convention for the Protection of National Minorities (and coordinates drafting of associated reports) (Škrbić 2025: II.3), more broadly this Office appears to be charged principally with monitoring implementation of the domestic Ombudswoman’s recommendations, rather than with methodically overseeing and coordinating cross-government follow-up in respect of recommendations from international oversight bodies.

All this said, equally perhaps unsurprisingly, it is also evident that it is exceedingly difficult to identify any “one size fits all” elements to human rights monitoring and reporting. As the Belgian case illustrates well, perhaps above all, it is critical that monitoring and reporting arrangements be adapted to the particular circumstances of each state. Just as it is difficult to imagine Belgium’s distinctive constitutional features being replicated elsewhere, so the Belgian state’s collective ability to navigate this constitutional landscape may not be readily replicated in other settings, including in BiH, with its own distinctive constitutional arrangements and context.

A second insight emerging from the survey in respect of strengths and weaknesses is that all the states examined have persistent FoE and FoI-related challenges. To a degree, this is not surprising: freedom of expression is arguably an increasingly salient human rights concern across Europe and further afield. At the same time though, there is a remarkably degree of similarity also in the types of issues arising across these states, including widespread concerns about hate speech and SLAPPs as well as (in some, if not all instances) media independence and the protection of journalists more broadly. Viewed from this lens, while there can be no suggestion that issues around FoE and FoI provide an optimal “case study”, the apparent widespread, common extent of oversight concerns indicated around these issues do suggest that they provide a valuable lens through which to assess the effectiveness of and challenges to effective human rights monitoring and reporting.

7.4 Good practices

7.4.1 Broader background: National Mechanisms for Implementation, Reporting and Follow-up (NMIRFs)

In recent years, OHCHR has led work within the United Nations on what has become known as “National Mechanisms for Implementation, Reporting and Follow-up” (NMIRFs), broadly understood as “government structures mandated to coordinate and prepare reports to, and engage with, international and regional human rights mechanisms, including the UN Treaty Bodies, the Universal Periodic Review (UPR) and Special Procedures... [and to] address the implementation gap by initiating, coordinating and tracking national follow-up and implementation of obligations and recommendations emanating from these mechanisms” (*National Mechanisms for Implementation, Reporting and Follow-up* 2025).

This work remains ongoing (United Nations Office of the High Commissioner for Human Rights 2025). Particularly relevant for present purposes, however, it led in the first instance to the production by OHCHR of two 2016 reports: a *Study of State Engagement with International Human Rights Mechanisms* (United Nations Office of the High Commissioner for Human Rights 2016b) and *Practical Guide to Effective State Engagement with International Human Rights Mechanisms* (United Nations Office of the High Commissioner for Human Rights 2016a). This work may also be reflected in the 2024 production by a combined group of state representatives, representatives of civil society, and other stakeholders at the “Tenth Glion Human Rights Dialogue” (Universal Rights Group 2025) of the “Marrakesh Guidance Framework” (MGF): “a voluntary framework... seek[ing] to contribute to and complement wider efforts to support states, through exchanges of good practice, in establishing and/or strengthening NMIRFs”.

The MGF is, as it is described, a voluntary, non-binding document. Nevertheless, it helpfully sets out a relatively pithy set of good practices for NMIRFs, “founded upon an understanding that it is more efficient for States to establish a single, standing, human rights implementation and reporting mechanism... rather than maintain a web of *ad hoc* government committees, each responsible for either different UN treaties or mechanisms” (Tenth Glion Human Rights Dialogue 2024). Given this, in addition to considering the extent to which the various national experiences encapsulate better – or less so – practices which may be instructive to future human rights monitoring and reporting in BiH, it may also be instructive to consider these in light of the content of the MGF.

The MGF sets out several NMIRF good practices. Several of these may be worth highlighting to provide context for the present discussion. These include (in quoted and paraphrased form, with text in bold emphasised here for reference):

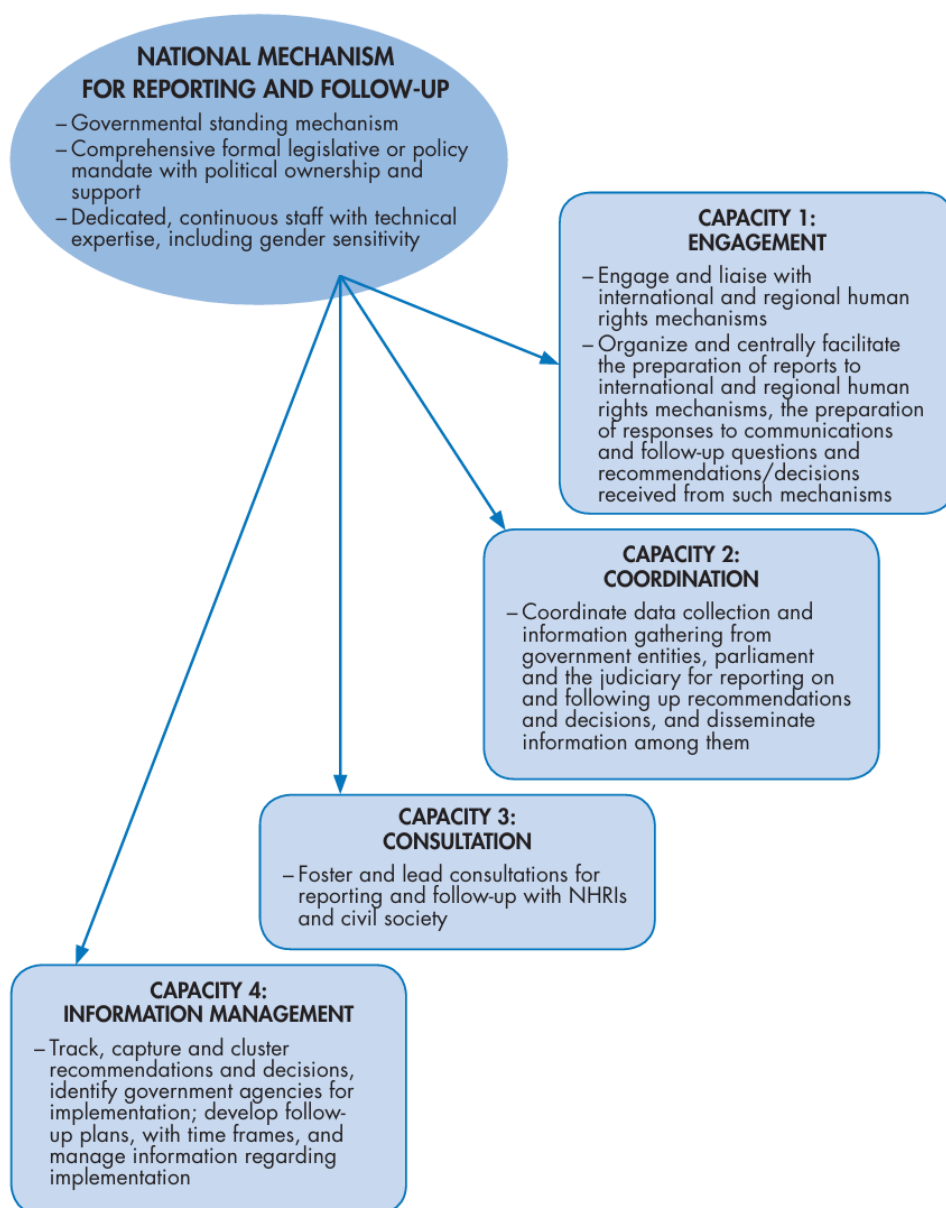
1. “A NMIRF is most effective when it is a permanent or standing structure... [and] when it has a clear legal basis... confer[ring] high-level political legitimacy, visibility, and legal authority.”
2. Being “mandated to coordinate the implementation or and periodic reporting on a State’s international human rights obligations and commitments, across all national implementing actors.”
3. “... the adoption of detailed terms of reference... helps strengthen the mechanism’s effectiveness.”
4. To be chaired “by a lead national ministry with primary responsibility for the national implementation of the State’s international human rights obligations... [with a chair] of sufficient seniority to effectively guide the work of the NMIRF... a NMIRF may ideally benefit from a permanent secretariat.”
5. Composition: “A NMIRF is most effective when it includes the participation of all relevant national and international actors important for the implementation of the

State’s human rights obligations and commitments... A common good practice is to organise representatives of relevant ministries or government departments, and state agencies, in a system of focal points – individual officials with permanent responsibility[ies]...”

6. “A common good practice is to organise the work of a NMIRF into committees and/or subcommittees...”
7. “A common good practice is to input clusters of UN human rights recommendations into national databases... and link those clusters with relevant Sustainable Development Goals (SDGs) and targets...”
8. “NMIRFs around the world are increasingly mobilising digital technology to cluster and manage recommendations, to regularly coordinate implementation measures/actions across government, to track progress, to measure impact... and to streamline periodic reporting... A good practice is to ensure that digital tracking tools are open, public, and participatory...” (Tenth Glion Human Rights Dialogue 2024: 2–6)

While this is a potentially far-reaching set of good practices, the MGF makes clear that “one size does not fit all.” Rather, NMIRFs “should be tailored according to the national context, taking into consideration the availability of resources, and the need to build upon existing national implementation and reporting systems” (Tenth Glion Human Rights Dialogue 2024: 2). Given this, rather than consider the above good practices to constitute anything approximating a “roadmap” for effective human rights monitoring and reporting (and follow-up), it may be useful instead to consider these principally as potential means by which such mechanisms may best develop four sets of capacities identified by OHCHR as: engagement, coordination, consultation, and information management, as set out in the following diagram.

NATIONAL MECHANISMS FOR REPORTING AND FOLLOW-UP AT A GLANCE



(United Nations Office of the High Commissioner for Human Rights 2016a: 29)

Even then, however, it is important to bear in mind, as OHCHR recognises, that notwithstanding that “an effective national mechanism should have [these] four key capacities” (United Nations Office of the High Commissioner for Human Rights 2016b: 2), different states will necessarily aim to develop and strengthen these from widely varying starting positions. Moreover, development of these capacities, and associated good practices, is likely to be both dynamic and iterative, involving periodic assessment and (again, most likely) incremental adaptation and evolution rather than revolutionary steps.

With all this in mind, the closing section of this chapter will go on to consider lessons that may be learned for human rights monitoring and reporting in BiH, principally – if not only – in respect of FoE and Fol, in light of both the preceding chapters and experience in Austria, Belgium, Croatia, and Switzerland, as well as broader international good practices and capacities as identified by OHCHR and in the MGF.

7.5 Human rights monitoring and reporting in BiH and FoE/Fol: good practices

As the preceding discussion indicates, each of the states surveyed – including BiH – possesses a myriad of advantages and challenges. Human rights monitoring and reporting in BiH, moreover, has benefited, and perhaps also been subject to closer scrutiny as well as support from, a multiplicity of outside actors over time, and certainly since applying for EU membership in 2016. More generally, of course, as with the other countries under examination, in considering scope to strengthen associated practices, it is also vital to bear in mind the distinct governance landscape of BiH, including both its constitutional arrangements, as well as monitoring and reporting practices as these have developed over time.

All that said, however, in light of the preceding discussion, including both practices elsewhere as well as OHCHR’s work on NMIRFs and the MGF, a number of avenues may plausibly be identified that may be worth exploring in the context of strengthening human rights monitoring and reporting – including but not limited only to FoE and Fol – in the Bosnian context.

7.5.1 Cross/inter-governmental cooperation and coordination

Perhaps most immediately, it may be instructive to explore scope to establish a standing cross/inter-governmental forum bringing together key state, entity and district ministries and agencies to enhance information sharing and cooperation and coordination in monitoring and reporting – potentially building on the manner in which BiH’s various governments and agencies already work together on EU integration (Council of Ministers of Bosnia and Herzegovina 2016; Directorate for European Integration 2025). Such a body may be established, for example, on the model of the Swiss KIM Group, and charged (as that body is) with “coordinat[ing] human rights policy issues and ensur[ing] the dissemination of information relating to reviews of Switzerland by international human rights bodies” (Human Rights Council 2022: 2).

The Belgian COORMULTI arguably provides a similar comparator body. The mandate of the latter is rather broader than that of the KIM Group – COORMULTI has been described as “a permanent coordination and consultation structure for multilateral issues that manages and coordinates, the multilateral policy on mixed competences and ensures the coherence of Belgian policy” (Kingdom of Belgium, Federal Public Service 2025). Alongside BiH’s existing European integration-focused cross-governmental coordination structures, it may

serve as a potentially useful further exemplar of a standing forum for cross-government information-sharing and coordination in a complex federal setting.

The establishment of such a forum with a mandate to facilitate cross-and inter-government coordination in monitoring and reporting (and follow-up) “across all national implementing actors” would, moreover, be consistent with the MGF, as well as potentially supporting the development of engagement and cooperation capacities, as set out in the OHCHR study. Indeed, such a forum, depending on the extent to which it can benefit from a standing secretariat and/or expert support (again, as the KIM Group) may also be well-placed to support the development of BiH’s human rights monitoring and reporting information management capacity.

7.5.2 Government-civil society/NHRI engagement

In similar vein, a further initiative potentially worth exploring may be to establish, perhaps alongside a standing cross/inter-governmental forum, an accompanying standing mechanism to facilitate government engagement with relevant non-governmental stakeholders, principally BiH’s NHRI – the Human Rights Ombudsman – as well as civil society more broadly. The prototype for such a forum may already exist to some degree in the EFEx Working Group – albeit restricted to FoE and FoI, this group brings together key BiH state and entity/district government institutions together with the NHRI and key civil society partners. Considered in broader perspective, moreover experience in particular in Belgium (with the Human Rights Platform) and in Croatia (with the Council for Human Rights) may be instructive in this regard.

As the differing mandates and compositions of these two fora and their operations to date illustrate, designing and establishing such a mechanism may not be an entirely straightforward endeavour. In particular, not only would it be necessary to consider carefully the mandate and terms of reference of such a body, given the range of human rights-focused civil society activities and engagement in BiH, it may be particularly challenging to curate its optimal membership, to enable effective information sharing, alongside potential cooperation. Given this, it may, in particular, be helpful for an independent, state-supported organisation (such as the Ombudsman) to be closely involved in developing plans for the membership and mandate of such a forum, alongside state and entity/district government bodies. Indeed, given associated challenges, the development of guiding principles for government engagement with civil society – as developed in Austria – may provide a valuable starting point for such an initiative.

Reflecting again, moreover, the MGF’s injunction to foster “the participation of all relevant national and international actors important for the implementation of the State’s human rights obligations and commitments”, as well as OHCHR’s recommendation to develop consultation capacity, developing such an initiative may make a valuable contribution to BiH’s monitoring and reporting function, as well as to substantive associated human rights protection.

7.5.3 Recommendation follow-up / revising the BiH Methodology

In addition to, and potentially alongside the above, a further avenue to strengthen monitoring and reporting in BiH in respect of FoE/FoI and more broadly may be to consider revisiting the BiH Methodology. It may be helpful to consider two manners in which the Methodology might be strengthened.

First, substantively, and drawing on absences elsewhere (save perhaps for the UPR-related work of the Croatian Office for Human Rights and Rights of National Minorities), and in line with the MGF's focus on tracking and managing recommendations and OHCHR's injunction to develop information management capacity, it may be helpful to consider more closely (and explicitly) embedding recommendation follow-up and tracking within the Methodology. This could, in turn, be considered alongside establishing associated IT/digital tools to facilitate such tracking – with, again, as observed in the MGF – scope to “streamline periodic reporting”, as well as to strengthen transparency and stakeholder participation.

Second, moreover, should i. or ii. above be considered for development, it is also likely to be necessary in any event to revisit at least some aspects of the Methodology, to take into account such new structures. Such a process may in turn also present an opportunity to reconsider the manner in which the Methodology currently centres around the establishment and operation of *ad hoc* regime-specific working groups, to better accommodate standing fora such as those considered above, again consistent with the MGF and OHCHR recommendations, as well as potentially mitigating the risk of monitoring and reporting fatigue and enhancing the efficiency of these processes.

In closing this section, it is important to reiterate the importance of ensuring that any proposed or potential innovations in monitoring and reporting are tailored to the distinct governance landscape of BiH, including the challenges of coordination and engagement across both state-entity governments, as well as between government and NHRI/civil society bodies. That said though, the success of the EFEx Working Group in strengthening both inter-government cooperation as well as government-civil society/NHRI engagement arguably suggests that, at least considered incrementally, there may be scope to strengthen human rights monitoring and reporting in BiH along the lines suggested above.

7.5.4 Conclusions: FoE and FoI monitoring and reporting in broader perspective

As this chapter illustrates, there are significant differences between human rights monitoring and reporting practices in the five countries surveyed. At the same time, there are also remarkable similarities across this group, both in the substantive FoE and FoI-related issues they face, as well as in the challenges they have each encountered in effectively managing human rights monitoring and reporting.

The closing section of the preceding discussion has drawn on these similarities and distinct experiences to identify insights that may assist in enhancing monitoring and reporting practices in BiH. As the work of OHCHR and the Glion Human Rights Dialogue illustrates,

however, just as there is scope for these practices to be strengthened in BiH, so experience in Bosnia and Herzegovina may also be instructive for both the other states surveyed here, as well as approaches to human rights monitoring and reporting elsewhere. With this in mind, the following, concluding chapter sets this study in broader context, including considering insights that may be derived from the successes – and challenges – encountered in human rights monitoring and reporting in BiH, including in the context of the EEx project, for such practices elsewhere.

7.6 Conclusion

7.6.1 Scope and limitations

This volume has considered human rights monitoring and reporting arrangements and substantive FoE and Fol issues across Austria, Belgium, Bosnia-Herzegovina, Croatia, and Switzerland, and identified potentially valuable insights from experiences in these other countries that may usefully inform practices in BiH.

As may have been anticipated, even with book-length treatment, it is difficult to avoid a sense that the present study remains incomplete. To a degree, of course, this may simply reflect data inadequacies and the challenges of tracing monitoring and reporting processes that are not always entirely transparent.

At the same time, however, the study must also perhaps necessarily remain incomplete given the inherent difficulty of reducing to a relatively constrained template a wealth of information on each of the states studied. As the various studies illustrate, there remains considerable scope to examine both human rights monitoring and reporting, and substantive FoE and Fol protection, in greater detail in all the states surveyed. Indeed, to this qualification, one might also add that the findings highlighted are also necessarily provisional – practices in all the countries surveyed continue to develop, so at best a study of this nature can only provide a snapshot of a complex, intricate field.

Even with these limitations and qualifications in mind, however, considered in broad perspective there are perhaps two features of the study that bear highlighting, before drawing more particular conclusions.

7.6.2 Lessons learned (and potentially learnable)

The first of these is that despite the differences in forms and practices of governance across the countries surveyed, the substantive FoE and Fol issues highlighted by international oversight mechanisms show a remarkable degree of similarity. International concern is evident across all the states surveyed, in particular, in respect of hate speech, in some cases across multiple international regimes. Equally though, shared concerns may also be traced across various of the states surveyed in respect of the protection of journalists, media regulation and freedom, and Fol.

This is not, to be clear, to suggest that the issues identified are necessarily identical, let alone that they may be susceptible to the same solutions in different contexts. This close degree of similarity does, however, underline that FoE and FoI are, indeed, issues of common concern across several number of European states, highlighting in turn the value of the EEx project, as well as of continued capacity-building work in these fields, both in BiH and elsewhere.

The second feature that may be highlighted is similarly shared across the countries surveyed: put simply, in none of them might monitoring and reporting arrangements reasonably be said to be entirely sufficient. Rather, each has both a relatively specific set of features and accompanying strengths and weaknesses, including – perhaps most importantly – different degrees of transparency and regularisation of monitoring and reporting arrangements. Indeed, perhaps especially in the Belgian case, even where there is little to suggest specific deficiencies in reporting outputs, the complex institutional landscape and accompanying opaque (and apparently largely informal) monitoring and reporting arrangements make it difficult to fully appreciate associated practices – with, in turn, potentially significant implications for the ability of the broader public and civil society to understand how such processes are managed.

Significant differences across countries are, of course, to be expected: monitoring and reporting arrangements and practices reflect the different contexts of the countries under examination, including the different types of federalism evident across Austria, Belgium, Bosnia-Herzegovina, and Switzerland, and Croatia’s evolving unitary governance arrangements.

Even then, however, just as three insights, in particular, have been identified from the other countries surveyed that may valuably inform practices in BiH, so the obverse may also be true.

In particular, albeit possibly as an artifact of its peculiar governance arrangements and particularly close international oversight, monitoring and reporting arrangements in BiH benefit from what has been termed here the “BiH Methodology” – an authoritative, single regulatory point of reference for the conduct of human rights monitoring and reporting. Indeed, even where compliance with associated standards and practices may be difficult to determine, the Methodology stands as a clear normative point of reference for expected conduct, including on the part of both central government and of BiH’s entity and district institutions.

The BiH Methodology appears, however, to have no obvious counterpart in any of the other states surveyed.

It is, in fairness, difficult to ascertain definitively what might be lost in other settings by the absence of such a regulatory basis for monitoring and reporting. It may be, for example, that the Methodology is particularly warranted in BiH in consequence of the relative balance of

prerogatives between, principally, state and entity governments in that state. Equally, as noted above, it is difficult to determine the extent to which the Methodology is followed rather rigorously by state and sub-national institutions in BiH.

This notwithstanding, however, the Methodology serves as a normative guide to expected – or at least appropriate – forms of conduct and associated formal regulation of monitoring and reporting practices across BiH. Accordingly, even though – again, as noted above – the Methodology itself may benefit from further revision to enable standing cross-government and government-civil society engagement and record-keeping/recommendation follow-up, it nevertheless stands as a publicly-accessible, formal guide to monitoring and reporting. As such, it should guide the conduct of state and entity institutions but may also function as a benchmark for non-government actors to hold the former to account, establishing expectations of the conduct of associated activities, and providing an opportunity to civil society and other non-governmental agencies to contribute, even if indirectly, to state human rights monitoring and reporting capacity.

With this in mind, and mindful also of the scope to enhance not just monitoring and reporting in BiH, but also elsewhere, it may be instructive to consider further the extent to which, inter alia, monitoring and reporting in Austria, Belgium, Croatia, and Switzerland may also benefit from the further development of clear regulatory standards and processes for human rights monitoring and reporting, along the lines of – if not identical to – the BiH Methodology.

7.6.3 Beyond EEx

The EEx project is, of course, merely one intervention amongst many international projects that have taken place over the past several decades in BiH, as the international community continues to support governance and associated capacity building in Bosnia-Herzegovina. As the current output illustrates, however, the impact of such activities is not necessarily limited only to BiH. Rather, just as experience elsewhere may valuably inform practices in BiH, and as experience in BiH may serve as an exemplar in some respects for other states, so the comparative survey as a whole may also prove instructive for third countries and institutions beyond the Council of Europe.

Indeed, to the extent that the countries surveyed may learn from – and have insights relevant to – other countries, it may prove valuable for the governments of BiH as well as the four other states examined to consider closer participation in broader associated initiatives, including the Universal Rights Group's Glion Human Rights Dialogue series and OHCHR's work on NMIRFs.

All that said, however, the present volume is also only one output from the broader EEx project. Other activities have included sectoral mapping of substantive FoE and FoI issues in BiH, as well as a pilot study prepared by state and entity (and district) institutions, in collaboration with Bosnia's Human Rights Ombudsman and leading civil society organisations. As such, it is important also to set the present study in this context, as one

element in a broader project aimed at strengthening substantive FoE and FoI protection, as well as monitoring and reporting practices.

As the other outputs from this project illustrate, BiH continues to face significant challenges in respect of FoE and FoI. As the present study shows, however, BiH is also not alone in needing to address the substantive associated issues, many of which are shared across the various states surveyed, including three European Union members. Moreover, just as some of the weaknesses in Bosnian monitoring and reporting arrangements may be valuably informed by practices elsewhere, so the Bosnian experience may similarly prove instructive for other states.

As such, while there doubtless remains considerable scope to more effectively address substantive FoE and FoI rights protection issues in BiH, including via enhancing monitoring and reporting practices, this is also the case elsewhere. Indeed, given continuing international support for strengthening governance and rights protection, especially in the context of EU accession, and notwithstanding the political challenges facing state and entity institutions, the prospects as well as the potential benefits of further strengthening FoE and FoI protections as well as associated monitoring and reporting practices in BiH should not be underestimated.

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