

European Union 2023

Executive summary

National human rights institutions (NHRIs), as independent, state-mandated bodies with a broad human rights mandate, play a key role as pillars for the respect of fundamental rights, democracy and rule of law. The extent to which a state has in place an NHRI able to independently and effectively carry out its mandate in line with the UN Paris Principles is regarded by international and regional actors – in particular by the European Commission in its annual rule of law reports – as indicative of the state’s respect for rule of law and checks and balances more broadly.

Within the European Network of National Human Rights Institutions (ENNHRI) – a network connecting all NHRIs across the EU and the Council of Europe region – European NHRIs continue their strategic engagement in regional rule of law mechanisms through joint rule of law reporting, with a view to feeding international and regional policy processes aimed at monitoring, promoting and protecting the rule of law, fundamental rights and democracy across Europe. This year’s more targeted annual reporting focuses on certain rule of law areas, as well as on the implementation of regional actors’ – including the European Commission’s – recommendations on rule of law, to further facilitate more impacts at regional and national level and advance the rule of law, democracy and fundamental rights in the European Union. This year again, all NHRIs from the EU have contributed to ENNHRI’s joint reporting on the rule of law.

Key findings

ENNHRI’s members from EU Member States report on persisting challenges affecting the European rule of law and human rights environment, namely:

- follow-up by State authorities to the European Commission’s country specific rule of law recommendations is not consistent and in quite some cases NHRIs reported that state authorities did not follow-up the recommendations. Overall, ENNHRI members from European Union Member States thus underline the **need to strengthen the effective implementation of recommendations issued by the European Commission**;
- No significant progress has been made in the EU countries without an NHRI established in line with UN Paris Principles, despite the European Commission’s recommendations, with the exception of the Czech Republic. Furthermore, **numerous issues negatively impact on the enabling space for NHRIs across the EU to carry out their mandates effectively and independently**, including: challenges in

due consultation of NHRIs by national authorities in relevant legislative and policy-making processes; an unsatisfactory level of follow-up to NHRIs' recommendations; undue limitations in access to information; lack of adequate resources to carry out NHRIs' mandates effectively; lack of transparent and objective criteria for the appointment and dismissal of heads of institutions; as well as, in some cases, harassment and obstruction of work of the NHRIs.

- **Worsening conditions in which human rights defenders (HRDs) and civil society organisations (CSOs) act.** CSOs and HRDs continue to be in a number of Member States the object of attacks and harassment, including legal harassment and Strategic Lawsuits Against Public Participation (SLAPPs), particularly targeting those working on sexual and reproductive rights, LGBTI+ rights, rights of migrants and asylum seekers and environmental protection. ENNHRI members in a number of EU countries raise particular concerns about laws restricting civic space and CSOs' activities (namely impacting freedom of association and assembly) as well as laws criminalising HRDs' activities, in particular in the area of migration. ENNHRI's members reporting also reveals the insufficient CSOs' access to and involvement in law and policy making by state authorities, as well as obstacles in access to funding.
- **Unsatisfactory level of the effective and timely implementation of European Courts' judgments**, which is impacted by the financial, legal, structural and organizational obstacles identified across EU Member States. This is also perpetuated sometimes by the lack of procedural framework for the effective fulfilment of the state's obligation to implement the European Courts' judgments at national level.
- **The significant yet relatively unknown impact of the use of Artificial Intelligence (AI) on the rule of law, democracy and fundamental rights.** This is exacerbated by the lack of national laws regulating the use of AI, lack of transparency of the use of AI by state authorities, including when carrying out secret surveillance, as well as the risks of discrimination and negative impact on vulnerable groups, in particular when AI is used for automated administrative decision making. ENNHRI members also flag the general insufficient public awareness regarding the use of AI and its impacts on rule of law, democracy and human rights.

ENNHRI's key recommendations

On the basis of the findings of NHRIs across EU Member States, ENNHRI formulates following key recommendations to the European Commission, as well as other relevant regional and international actors, and Member States:

1. Take concrete steps to advance the implementation by state authorities of the European Commission's recommendations on the rule of law, timely and in cooperation with NHRIs;
2. Firmly support the establishment and enabling space for independent and effective NHRIs in full compliance with the Paris Principles;
3. Support, protect and empower human rights defenders and civil society space which is fundamental for rule of law;
4. Prioritise and take firm steps to support the implementation of European Courts' judgments, in consultation with NHRIs and civil society;
5. Ensure a human rights based approach to the use of Artificial Intelligence (AI) and pay particular attention to its impact on the rule of law, democracy and fundamental rights, through institutionalised cooperation with NHRIs;
6. Address other persisting challenges for the rule of law, including structural human rights issues while acknowledging that the rule of law and fundamental rights are mutually reinforcing.

These key recommendations are each developed further in the next section.

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ENNHRI's key recommendations

1. Take steps to advance the implementation by state authorities of the European Commission's recommendations on the rule of law, timely and in cooperation with NHRIs.

In order to further advance the implementation by state authorities of the European Commission's recommendations on the rule of law, ENNHRI suggests the Commission to:

- Make its recommendations more concrete and actionable, and develop a timeline for implementation by state authorities as well as a dedicated mechanism to monitor the implementation process;
- Include consistently implementation of recommendations in country-specific rule of law dialogues, at national and Council level;
- Consider lack of implementation of recommendations as evidence for triggering enforcement actions, such as infringement proceedings and the rule of law conditionality regulation.

Moreover, ENNHRI suggests relevant EU and other regional actors as well as EU

Member States to:

- Include and consult, on a consistent basis, NHRIs in country-specific rule of law dialogues, at national level (in particular in parliamentary debates) and at Council level; including to help determine the most relevant topics in the current domestic context to be addressed, and to help ensure all relevant domestic counterparts (including from civil society) will be included in the dialogues;
- Continue and further strengthen support to NHRIs and ENNHRI to build capacity to address rule of law issues across the EU.

2. Firmly support the establishment and enabling space for independent and effective NHRIs

To support the establishment, independence and effectiveness of NHRIs in the EU Member States, ENNHRI recommends the Commission:

- Report on the extent of follow-up to last year's recommendations on NHRIs, and strengthen the recommendations when they have not been adequately followed-up by state authorities;
- Continue to call for the establishment of NHRIs in full compliance with the Paris Principles in EU Member States where they do not exist yet;
- In line with [Council of Europe Committee of Ministers Recommendation 2021/1 on NHRIs](#), include the recognition of key challenges faced by NHRIs across EU Member States more consistently across its report and recommendations, and call on Member States to address those, including:
 - ensuring transparent, merit-based and pluralistic selection and appointment of heads of NHRIs as well as transparent and objective dismissal procedures;
 - ensuring adequate resources for NHRIs to carry out the full breadth of their mandate independently and effectively, ensuring independent budget allocation, and allocating sufficient additional resources when NHRIs are being given additional mandates;
 - ensuring timely and reasoned responses and effective follow-up by state authorities to NHRI recommendations;
- Consider adopting a dedicated Commission Recommendation on the establishment of an NHRI in each EU Member State, as well as EU standards that should be met to ensure independent, effective and pluralistic NHRIs in EU Member States;

Furthermore, ENNHRI:

- Calls on the EU Member States without an NHRI (especially Italy, Malta and Romania) to urgently advance on the establishment of an NHRI in compliance with the Paris Principles, and to make use of ENNHRI's

- technical advice in doing so;
- Encourages the Czech government to swiftly advance with the adoption of legislative amendments, in consultation with the Czech Public Defender, to enable it to function as NHRI in compliance with the Paris Principles;
 - Encourages all relevant state authorities, as well as relevant international actors such as the European Commission, to support the implementation of the SCA recommendations, in consultation with NHRIs.

3. Support, protect and empower human rights defenders and civil society space

Taking into account the 2023 Council Conclusions on civic space, the Commission 2022 report on the Charter of Fundamental Rights, and FRA's annual reports on civic space, ENNHRI recommends the EU to:

- Enhance and expand its monitoring and reporting of challenges affecting civic space, civil society organisations and rights defenders within its annual rule of law report;
- Develop a policy framework (eg.: European Civil Society Strategy) to enable, safeguard and protect civic space at national and at EU level.
- Support and concretely advance on the creation of an 'EU HRD protection mechanism', to swiftly detect and act in response to attacks against HRDs, including in cases of reprisals against HRDs for their work on the implementation of the EU fundamental values/ acquis;
- counter effectively the abuse of laws and legal harassment, in particular Strategic Lawsuits Against Public Participation (SLAPPs) in EU Member States by adopting the EU anti-SLAPP Directive with a broad scope and strong safeguards to counter SLAPPs effectively, as put forward in the European Commission's proposal.

Moreover, ENNHRI recommends Member States ensure and the Commission support:

- effective national HRD protection laws and mechanisms, including helplines and legal assistance, taking into account international standards. While doing so, Member States should consult with their NHRI, which can be allocated a specific mandate as HRD protection mechanism or can support such mechanism, provided it is independent and is allocated adequate resources;
- on the basis of impact assessments and broad consultation, revise the laws and practices resulting in undue restrictions on the work of civil society organisations and human rights defenders, in particular regarding rules on registration and dissolution of civil society organisations, reporting & transparency obligations, and criminalization

- of activities;
- an enabling, flexible and accessible financing framework for all civil society organisations and human rights defenders, eliminating any undue obstacles to access to funding, including from foreign sources;
- the guarantee to the right to freedom of assembly and association as well as freedom of expression, as a crucial element of a functioning rule of law framework and fundamental for civic space and HRDs;
- the full and effective transposition of the EU Whistleblower Directive;
- increased cooperation with civil society actors in law and policy making processes at both national and EU level, including by securing timely, inclusive and meaningful consultations, and participation of persons in a vulnerable situation and their representative associations.
- adoption of national laws to counter SLAPPs in all domestic cases as well as abuse of laws in criminal procedural law, and revise national laws on defamation to safeguard freedom of expression, in line with the Commission's Recommendation on SLAPPs and in consultations with journalists, civil society and NHRIs;
- implementation of the Commission's Recommendation on SLAPPs, including by carrying out awareness-raising, trainings, providing support (also financial support) to victims of SLAPPs and developing ethical standards for legal professionals.

4. Prioritise and take firm steps to support the implementation of European Courts' judgments, in consultation with NHRIs and civil society

Building on the initial Commission findings on implementation of European Courts' judgments in its last annual report on the rule of law, ENNHRI recommends the Commission:

- Continue reporting on the implementation of European Court judgments in each EU Member State and to consider further highlighting its relevance such as through including in country-specific recommendations;
- Follow-up on implementation of European Court judgments with Member States, including through national dialogues, while initiating infringement proceedings in case of persistent non-implementation of the CJEU judgments relating to systemic issues which violate EU law, including fundamental rights issues;
- when lack of implementation of a CJEU ruling is connected to pre-existing infringement proceedings, follow-up through enforcement measures such as blocking of EU funds;
- Reinforce the pivotal importance of the implementation of European Courts' judgments for a vibrant society, and raise awareness on this of the public as well as state authorities and other relevant actors,

adapted to the domestic context.

ENNHRI recommends Member States to:

- Make available judgments and decisions issued by the European Courts in an open and accessible manner, as well as steps taken by the state to implement those judgments (such as national action plans);
- Ensure efficient institutional and procedural frameworks for the effective fulfilment of States' obligation to implement the judgments of the European Courts at national level, including stakeholders such as NHRIs and civil society;
- implement the European Courts' judgments pending (in particular Grand Chamber/ leading judgments), including by tackling financial, legal, structural and organizational obstacles which impact the effective and timely implementation.

In light of the recognised potential and roles of NHRIs to advance the implementation of European Courts' judgments, ENNHRI recommends the EU and Council of Europe, as well as EU Member States to:

- support the development of procedures of the CJEU and the ECtHR to strengthen meaningful participation of NHRIs;
- engage and consult with NHRIs to advance implementation of European Courts' judgments;
- provide sufficient resources and capacity building opportunities for NHRIs on implementation of European Courts' judgments, including through ENNHRI.

5. Ensure a human rights based approach to the use of Artificial Intelligence (AI) and pay particular attention to its impact on the rule of law, democracy and fundamental rights, in cooperation with NHRIs

Considering the rapid development and application of AI by state authorities and the significant yet still relatively unknown impacts this has on rule of law, as well as fundamental rights and democracy, ENNHRI recommends

The Commission, as well as other European and international actors:

- To address emerging challenges concerning fundamental rights and rule of law, including in particular the use of AI and its impacts on the rule of law, fundamental rights and democracy, with due attention to the collective and societal harm caused by AI systems, in relevant monitoring and reporting, including the annual report on the rule of law;
- Ensure a human rights based approach is integrated in the EU Artificial Intelligence Act, the Council of Europe Convention on Artificial

Intelligence, Human Rights, Democracy and the Rule of Law, as well in the relevant standardization processes and in the development of impact assessments.

- Ensure a human rights based approach is integrated in the oversight mechanisms and ensure necessary safeguards to guarantee the right to effective redress for all individual, collective or societal harm caused by AI systems. For example, not only natural and legal persons directly affected by AI may file complaints, but also by public interest groups and consumer organisations.

Member States with support from the Commission and other regional actors:

- To raise awareness of state authorities and the general public as well as other relevant stakeholders on the use of AI and its impacts on rule of law, as well as on fundamental rights and democracy, including by facilitating public debates;
- To ensure transparency of the use of AI by state authorities and its impacts on rule of law, democracy and fundamental rights, including by establishing independent domestic oversight, publicly accessible registers and by ensuring independent impact assessments in advance and during the use of AI;
- ensure multistakeholder consultations, in particular consult with NHRIs and other relevant stakeholders, including independent bodies such as data protection authorities, in the development of laws and policies on AI to ensure the safeguarding of rule of law, democracy and fundamental rights as well as adoption of a human rights based approach;
- support provision of additional powers, resources (financial, technical and staffing) as well as capacity-building of NHRIs to enable them to further develop their capacity on safeguarding rule of law, democracy and fundamental rights in relation to AI.

6. Address other persisting challenges for the rule of law, including structural human rights issues while acknowledging that the rule of law and fundamental rights are mutually reinforcing

In view of the intrinsic interconnection between the rule of law and fundamental rights, ENNHRI recommends the Commission to further recognise and consider systemic fundamental rights issues in its actions to address the rule of law, including its annual rule of law reporting.

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Introduction

About ENNHRI and NHRIs

The [European Network of National Human Rights Institutions \(ENNHRI\)](#) brings together over 40 [National Human Rights Institutions \(NHRIs\)](#) across wider Europe, including 29 ENNHRI members in 25 EU Member States. It provides support for the establishment and strengthening of NHRIs, a platform for collaboration, solidarity, and a common voice for NHRIs at the European level to enhance the promotion and protection of human rights, democracy and the rule of law in the region.

NHRIs are state-mandated bodies, independent of government, with a broad constitutional or legal mandate to protect and promote fundamental rights at the national level. NHRIs act as bridge-builder between the state and civil society. NHRIs cooperate with a variety of civil society actors, and bring an accurate overview of the human rights situation, with recommendations, to governments, parliament and other state bodies. They are established and function with reference to the [UN Paris Principles](#) which require NHRIs to carry out their work independently and promote respect for fundamental rights, democracy and rule of law.

NHRIs are unique in that their independence, pluralism, accountability and effectiveness is periodically assessed and subject to international accreditation, carried out by the UN Sub-Committee on Accreditation (SCA) of the Global Alliance of NHRIs (GANHRI) with reference to UN Paris Principles. This [accreditation](#) reinforces NHRIs as key interlocutors on the ground for rights holders, civil society organisations, state actors, and international bodies.

NHRIs as a rule of law indicator and indispensable part of checks and balances in each state

NHRIs are a key pillar for the respect of human rights, democracy and rule of law and the establishment and functioning of NHRIs has become accepted as an indicator for a healthy rule of law in European countries. The vital role NHRIs play in human rights and rule of law has been recognised by a wide range of actors at the level of the EU, Council of Europe, and United Nations, among others. At the EU level, the crucial role of NHRIs is reaffirmed in the European Commission's [annual rule of law reports](#), [the EU Strategy to Strengthen the application of the Charter of Fundamental Rights in the EU](#) as well as the Council conclusions on [strengthening the application of the Charter](#), and on the [role of civic space in protecting and promoting fundamental rights](#).

Recently, in its [2022 Rule of Law Report](#) the European Commission emphasized that NHRIs are an indispensable element in the system of checks and balances

in a healthy democracy and that restrictions to their operating space can present a threat to the rule of law. More specifically, the European Commission in its first-ever country specific [recommendations](#) encourages Member States to establish NHRIs in line with UN Paris Principles in countries where NHRIs are not yet created (in Czechia, Italy, Malta, Romania) and to strengthen the enabling environment for the functioning of NHRIs ((in Croatia, Lithuania, Poland, Slovenia). Such initial recognition by the Commission opens the door for further acknowledgment of the cross-regional challenges NHRIs face in the EU and how these can be addressed, such as through a dedicated Recommendation from the Commission fleshing out the EU standards for ensuring the establishment and strengthening of independent and effective NHRIs to advance the implementation of the EU acquis.

Rule of law reporting by NHRIs - updated methodology

Besides being themselves an indicator of the state of rule of law, independent and effective NHRIs are reliable sources of information on the rule of law situation at the national level. Given the close interconnection and mutually reinforcing relationship between the rule of law, democracy and human rights, NHRIs are in a key position to report and participate in rule of law monitoring initiatives in a consistent manner as an integral part of their mandate to promote and protect human rights.

Building on their monitoring functions, their cooperation with state and non-state actors and their role as interlocutors between the state and general public, NHRIs have great potential in raising awareness, mobilising support and maximising impacts of international and regional actors' efforts at the national level. At the same time, NHRIs' engagement in rule of law monitoring mechanisms is seen by NHRIs themselves as an opportunity to further promote and enhance the impact of their work and recommendations, by contributing to a more comprehensive and informed assessment of existing challenges at national and regional level and helping policy makers, at both national, regional and international level, identify the most appropriate responses and interventions.

Based on this understanding, ENNHRI has supported and advanced European NHRIs' engagement in EU and regional rule of law mechanisms, based on a common methodology and coordinated approach. Such engagement led to the publication since 2020 of annual regional ENNHRI Reports on the State of the Rule of Law in the [European Union](#) and [wider Europe](#), compiling European NHRIs' country submissions and an overview of trends reflecting NHRIs' perspectives on the state of the rule of law across the region.

ENNHRI's annual Rule of Law Reports published to date and the follow-up engagement of ENNHRI and NHRIs successfully fed into key policy processes, in

particular at EU-level. ENNHRI's common reporting mainly has served for ensuring timely ENNHRI response to annual consultations by relevant counterparts (UN Secretary-General report on NHRI reprisals, [EU rule of law monitoring cycle](#), [EU annual report on implementation of the Charter](#), Enlargement Package, Eastern Partnership), and has also been the basis for submissions to some specific thematic initiatives when they emerged ([EU SLAPP initiative](#) (2021), [EU Freedom of the Media Act](#) (2022), [Defence of Democracy Package](#) (2023)). In addition, ENNHRI's reporting has been used by members for their own follow-up with actors at national level, as deemed relevant by them.

Under the new ENNHRI Strategic Plan 2022-2025, more effective promotion and protection of human rights, rule of law and democracy is prioritised. To achieve this goal, ENNHRI members held the discussions on how to further develop ENNHRI's rule of law work and its impact on regional and national level to meet the strategic objectives and effectively contribute to safeguarding the rule of law and human rights in Europe. On the basis of those discussions, the updated approach to ENNHRI's joint work on rule of law has been agreed for more focused reporting and further impact-oriented actions in this area.

The updated methodology envisages an annual targeted rule of law reporting, focused more on impacts from reporting and only on certain rule of law areas, while further emphasising the interlinkage between human rights and rule of law. Therefore, ENNHRI's 2023 annual rule of law reporting covers more in-depth the following topics:

- NHRIs and their enabling space;
- implementation of regional actors and NHRI recommendations on the rule of law (from previous year) and actions undertaken by NHRI to facilitate implementation;
- structural human rights issues affecting the rule of law through reporting on implementation of European Courts' judgments (with possible reasons for lack of implementation/ focus on cases under enhanced supervision by the CoE's Committee of Ministers);
- deepened analysis on one key priority area of rule of law, which in 2023 is civil society space and human rights defenders;
- Artificial Intelligence, which remains a thematic priority for ENNHRI in 2023, and which contributes to ENNHRI's and NHRIs' actions concerning this topic, including through regional engagement (concerning the EU Artificial Intelligence Act and the Council of Europe Convention on Artificial Intelligence, Human Rights Democracy and Rule of Law), and NHRI capacity-building.
- other rule of law issues of specific relevance in members' national context.

From 2023 onwards, ENNHRI's rule of law reporting will have a thematic focus

annually, with a broader report to be developed every 4 years in the beginning of the new ENNHRI's strategic plan. In 2023, ENNHRI's report ensures more in-depth analysis on the area of civil society space and the enabling environment for civil society actors and human rights defenders with a view to feed into policy developments as means to advance progress on the ground, such as:

- Ongoing civil society and European Parliament's proposals on an EU strategy in support of civil society, and for stronger HRD protection mechanisms in Europe;
- The upcoming EU Defence of Democracy [Package](#);
- The adoption of the EU [Directive](#) on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (SLAPPs);
- The implementation of the [EU Guidelines on Human Rights Defenders](#), which constitute the policy framework and provide the operational means for protecting human rights activists in third countries; and
- Follow-up to the European Commission's 2022 [report](#) on the application of the Charter of Fundamental Rights in the EU;
- Council of Europe's review of the implementation of [Recommendation 2018\(11\)](#) on the protection and promotion of civic space, including recommendations on NHRIs' contribution to civic space.

More targeted ENNHRI annual rule of law reporting supports effective advocacy and meaningful engagement with regional stakeholders and other relevant rule of law actors to achieve positive change for rule of law, human rights and democracy across the region. Therefore, on the basis of ENNHRI's rule of law reporting, ENNHRI continues to further engage with regional policy and standard-setting initiatives relevant to the rule of law. Moreover, ENNHRI's annual rule of law reporting contributes to developing capacity building activities for NHRIs to support their efforts and impacts to secure the rule of law in each European country.

Notably, again in 2023, all NHRIs from EU Member States have contributed to ENNHRI's joint reporting. For those Member States where ENNHRI has no member, the ENNHRI secretariat provided information on the progress concerning the establishment of an NHRI.

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Implementation of recommendations on rule of law (from previous year) and actions undertaken by NHRIs to facilitate implementation

Towards greater State authority follow-up to European Commission recommendations on rule of law

ENNHRI key recommendations:

In order to further advance the implementation by state authorities of the European Commission's recommendations on the rule of law, ENNHRI suggests the Commission to:

- Make its recommendations more concrete and actionable, including an envisaged timeline for implementation by state authorities;
- Support state authorities to set-up a dedicated mechanism to monitor and follow-up state authorities' implementation of rule of law recommendations;
- Include consistently implementation of recommendations in country-specific rule of law dialogues, at national and Council level;
- Consider lack of implementation of recommendations as evidence for triggering enforcement actions, such as infringement proceedings and the rule of law conditionality regulation.

ENNHRI welcomes the significant improvement through the inclusion of country-specific recommendation in the Commission's rule of law reporting. This significantly advances the actionability, and potential impacts from the Commission's monitoring and reporting exercise at domestic level. In line with NHRIs' monitoring of the follow-up by Member States, some concrete actions have been monitored by NHRIs on the side of State authorities. However, follow-up by State authorities appears not consistent across recommendations and in quite some cases NHRIs reported that state authorities did not follow-up recommendations. Overall, ENNHRI members from European Union Member States thus underline the need to strengthen the effective implementation of recommendations issued by the European Commission, as particularly reported also by ENNHRI members from Belgium, Estonia, Lithuania Poland, Slovakia and Slovenia.

In relation to the area of **judiciary independence and access to justice**, numerous EU NHRIs flag the ongoing judicial reforms at national level in follow-up to regional actors' recommendations, including those of the European Commission, such is the case for Bulgaria, Cyprus, Denmark, Greece, Poland, Romania and Spain. ENNHRI members from Belgium and Germany highlight the provision of additional resources to enhance the capacities of the judiciary.

However, some NHRIs also report on the lack of specific follow-up actions on the part of state authorities to implement relevant recommendations regarding justice systems, such as in Slovakia, while the NHRI in Poland flags the delay of the judicial reform due to referral of the reform to the Constitutional Court and

persisting gaps in the judicial framework impacting judicial independence.

The Commission's recommendations to safeguard **media freedom** in the European Union led to legislative amendments in Luxembourg to ensure better protection of journalists and new regulations regarding freedom of expression in Greece. In Croatia, a governmental working group was established to develop a legislative proposal to counter Strategic Lawsuits Against Public Participation (SLAPPs) targeting journalists and to carry out trainings on this topic to legal professionals. On the other hand, in Germany, the NHRI reported that the plans to create a legal basis for right to information for journalists at federal level were not taken forward despite the recommendations.

Recommendations in the area of **anticorruption** led to some legislative reforms, as noted by NHRIs from Greece, Estonia, the Netherlands and Spain. For example in Estonia, an anticorruption network consisting of state authorities was established and a public registry of meetings with lobbyists, while the Netherlands adopted a code of conduct for ministers.

As regards the Commission's recommendations on healthy **checks and balances, and particularly on NHRIs**, limited follow-up is reported. Some EU NHRIs, namely from Estonia and Greece, reported the insufficient steps to enhance public access to information, as recommended by the Commission.

In relation to NHRIs, ENNHRI's member from the Czech Republic notes positively the ongoing legislative works on the amendment of the Act on the Public Defender to ensure the institutional framework's compliance with UN Paris Principles, following the European Commission's country specific recommendation issued in its 2022 Rule of Law Report. Also in Croatia, some follow-up to the recommendations of the Commission on the NHRI has been reported, at the end of 2021 a multisectoral advisory body (composed of public administration representatives and civil society) was set up and in practice it, among other tasks, was used to discuss how to advance implementation of the NHRI's recommendations.

On the other hand, ENNHRI's members in other EU Member States, such as from Lithuania and Romania, report **a lack of any state actions to ensure implementation of the EC recommendations on NHRIs**. In Romania, no progress has been made to establish the NHRI, while in Lithuania the NHRI is still facing a lack of adequate resources to carry out its mandate.

As will be further developed in the dedicated section on NHRIs below, ENNHRI recommends the Commission to further develop its recommendations in relation to NHRIs, including by **more consistently addressing key issues NHRIs are facing across EU Member States**, such as the lack of adequate resources or lack of follow-up by state authorities of NHRI recommendations. In particular, the Commission should continue to urge the final four EU Member States which do not yet have an NHRI to advance in doing so, and should speak

up in support of NHRIs which face obstruction and intimidation in the context of carrying out their work. Moreover, ENNHRI encourages the Commission to further highlight in its annual communication and the relevant country specific chapters the key role that the NHRIs play in monitoring and evaluating the state of the rule of law in Member States.

A ENNHRI welcomes the significant improvement through the inclusion of country-specific recommendation in the Commission's rule of law reporting. This significantly advances the actionability, and potential impacts from the Commission's monitoring and reporting exercise at domestic level. In line with NHRIs' monitoring of the follow-up by Member States, some concrete actions have been monitored by NHRIs on the side of State authorities. However, follow-up by State authorities appears not consistent across recommendations and in quite some cases NHRIs reported that state authorities did not follow-up recommendations. Overall, ENNHRI members from European Union Member States thus underline the need to strengthen the effective implementation of recommendations issued by the European Commission, as particularly reported also by ENNHRI members from Belgium, Estonia, Lithuania Poland, Slovakia and Slovenia.

In relation to the area of judiciary independence and access to justice, numerous EU NHRIs flag the ongoing judicial reforms at national level in follow-up to regional actors' recommendations, including those of the European Commission, such is the case for Bulgaria, Cyprus, Denmark, Greece, Poland, Romania and Spain. ENNHRI members from Belgium and Germany highlight the provision of additional resources to enhance the capacities of the judiciary.

However, some NHRIs also report on the lack of specific follow-up actions on the part of state authorities to implement relevant recommendations regarding justice systems, such as in Slovakia, while the NHRI in Poland flags the delay of the judicial reform due to referral of the reform to the Constitutional Court and persisting gaps in the judicial framework impacting judicial independence.

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was established and a public registry of meetings with lobbyists, while the Netherlands adopted a code of conduct for ministers.

As regards the Commission's recommendations on healthy checks and balances, and particularly on NHRIs, limited follow-up is reported. Some EU NHRIs, namely from Estonia and Greece, reported the insufficient steps to enhance public access to information, as recommended by the Commission.

In relation to NHRIs, ENNHRI's member from the Czech Republic notes positively the ongoing legislative works on the amendment of the Act on the Public Defender to ensure the institutional framework's compliance with UN Paris Principles, following the European Commission's country specific recommendation issued in its 2022 Rule of Law Report. Also in Croatia, some follow-up to the recommendations of the Commission on the NHRI has been reported, at the end of 2021 a multisectoral advisory body (composed of public administration representatives and civil society) was set up and in practice it, among other tasks, was used to discuss how to advance implementation of the NHRI's recommendations.

On the other hand, ENNHRI's members in other EU Member States, such as from Lithuania and Romania, report a lack of any state actions to ensure implementation of the EC recommendations on NHRIs. In Romania, no progress has been made to establish the NHRI, while in Lithuania the NHRI is still facing a lack of adequate resources to carry out its mandate.

As will be further developed in the dedicated section on NHRIs below, ENNHRI recommends the Commission to further develop its recommendations in relation to NHRIs, including by more consistently addressing key issues NHRIs are facing across EU Member States, such as the lack of adequate resources or lack of follow-up by state authorities of NHRI recommendations. In particular, the Commission should continue to urge the final four EU Member States which do not yet have an NHRI to advance in doing so, and should speak up in support of NHRIs which face obstruction and intimidation in the context of carrying out their work. Moreover, ENNHRI encourages the Commission to further highlight in its annual communication and the relevant country specific chapters the key role that the NHRIs play in monitoring and evaluating the state of the rule of law in Member States.

A dedicated EU-wide Recommendation from the Commission requiring an NHRI in each EU Member State and spelling out the EU standards that should be met to ensure independent, effective and pluralistic NHRIs in EU Member States would be particularly relevant to prevent any weakening of existing NHRIs in EU Member States, especially in a wider context of continued deterioration of the rule of law and shrinking civic space.

One way **to further advance implementation of its recommendations** is for the Commission to make its recommendations more concrete and

actionable, including an envisaged timeline for implementation by state authorities. In parallel, the Commission could recommend and support state authorities to set-up dedicated mechanisms to follow-up implementation of rule of law recommendations, and ensure monitoring and follow-up of steps taken by state authorities. Furthermore, it is key that the recommendations developed by the Commission in its rule of law reporting and related follow-up by state authorities are consistently included in country-specific rule of law dialogues, at national and Council level. When the monitoring and reporting of the Commission reveals systemic issues and violations, it is of key importance that the Commission makes use of such information to launch infringement proceedings against EU Member States would be particularly relevant to prevent any weakening of existing NHRIs in EU Member States, especially in a wider context of continued deterioration of the rule of law and shrinking civic space.

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NHRI's follow-up actions supporting implementation of the Commission's recommendations

ENNHRI key recommendations:

In order to further support NHRIs to advance domestic implementation of the European Commission's recommendations on the rule of law, ENNHRI suggests relevant EU, other regional actors and EU Member States:

- Include, on a consistent basis, NHRIs in country-specific rule of law dialogues, at national level (in particular in parliamentary debates) and at Council level;
- Consult NHRIs in advance of national rule of law dialogues, to help determine the most relevant topics in the current domestic context to be addressed, and to help ensure all relevant domestic counterparts (including from civil society) will be included in the dialogues;
- Continue and further strengthen support to NHRIs and ENNHRI to build

capacity to address rule of law issues across the EU.

ENNHRI welcomes the enhanced inclusion of NHRIs in the Commission's national rule of law dialogues, and the Commission's outreach with all NHRIs across EU Member States in this context. In line with the Paris Principles, NHRIs' engagement with the Commission, including in the context of the Commission's annual rule of law reporting, fits within their overall mandate and role to engage with international counterparts and to monitor and report on the implementation of international obligations. It is worth noting that greater engagement of NHRIs in the preparation of the Commission's annual rule of law report positively impacts the awareness or perception of the NHRIs by state authorities and general public as one of the key actors in monitoring and reporting on the rule of law at national level. EU NHRIs thus report on a range of activities they have undertaken to advance implementation of the Commission's annual rule of law report and recommendations within the context of their own work.

Such NHRI actions include issuing relevant **opinions and recommendations** on rule of law challenges, as reported by Belgium, Croatia, Cyprus, Estonia, Greece, Finland, Ireland, Luxembourg, the Netherlands, and Poland. EU NHRIs also addressed **public statements in the media**, as reported by the members in Estonia, Latvia, Luxembourg and Poland. At the same time, NHRIs from Cyprus, Luxembourg, Poland and Slovakia held **meetings with state authorities and/or with EU Institutions** to raise awareness regarding the recommendations on the rule of law.

Several efforts were made by ENNHRI members to **advocate for changes in the legal framework** which respond to some of the Commission's recommendations, as for example in the Czech Republic where the consultations on a draft law on the NHRI were launched in 2022, or in Croatia where the NHRI - being a part of the working group - contributes to developing a legislative proposal to counter SLAPPs.

NHRI members in Latvia and the Netherlands each developed **close cooperation and joint advocacy with CSOs** to support the implementation of the Commission's recommendations. NHRIs also issued **studies and reports, as well as participated in public hearings**, as indicated by ENNHRI members in Belgium, Cyprus, Finland, and Lithuania.

In order for the Commission and EU Member States to further support NHRIs' follow-up of its report and recommendations, some suggestions are set out below.

Notably, while NHRIs have been invited to roundtables organised by the Commission (and EU FRA) on the rule of law, it would be relevant to also include NHRIs **in national parliamentary debates** on the implementation of the Commission rule of law reports. Notably, such a role for NHRIs at such

parliamentary debates would mirror and interlink with the formal role and mandate NHRIs have to, at least annually, report to national parliaments and make recommendations. The inclusion of the independent voice of NHRIs at parliamentary debates on the rule of law can be conducive to leverage implementation of the Commission's recommendations at national level. The Croatian NHRI, for example, includes a dedicated chapter on the rule of law in its annual report it submits and presents at the Croatian parliament.

Furthermore, NHRIs should also be included in the **rule of law dialogues at the Council**. Such approach would run in line with the independent participation rights of NHRIs (at least those with A-status accreditation) to intervene in intergovernmental procedures, such as the EU Human Rights Dialogues or the execution of judgments by the Committee of Ministers of the Council of Europe, or the Universal Periodic Review at the United Nations

European Union 2023

Independence, effectiveness, resilience and establishment of NHRIs

ENNHRI key recommendations:

Building on the initial Commission recommendations on NHRIs in its last annual report, ENNHRI recommends the Commission:

- Report on the extent of follow-up to last year's recommendations on NHRIs, and strengthen the recommendations when they have not been adequately followed-up by state authorities;
- Include the recognition of key challenges faced by NHRIs across EU Member States[1], and to call on Member States to address those, including:
- ensuring transparent, merit-based and pluralistic selection and appointment by heads of NHRIs and independent and transparent and objective dismissal procedures;
- ensuring adequate resources to carry out the full breath of their mandate independently and effectively;
- ensuring timely and reasoned responses to NHRI recommendations, and developing processes to facilitate effective follow-up by state authorities of NHRI recommendations;
- Consider adopting a dedicated Commission Recommendation spelling out the requirement to establish an NHRI in each EU Member State, as well as EU standards that should be met to ensure independent, effective and pluralistic NHRIs in EU Member States.

ENNHRI welcomes the inclusion of initial recommendations on NHRIs from the European Commission in its 2022 rule of law report. Such recommendations were included in respect of all EU Member States where no NHRI is established yet (Czech Republic, Italy, Malta, Romania), as well as in relation to some EU Member States to address challenges that NHRIs face in relation to their enabling environment, including in Croatia, Lithuania, Poland, and -somewhat implicitly- Slovenia.

As reported above, the Commission recommendations have been followed up in a few Member States, notably the Czech Republic and Croatia. At the same time, NHRIs in other countries have reported a lack of follow-up by their authorities, while in the Czech Republic and Croatia the follow-up is only partially meeting the Commission's recommendations. Thus, ENNHRI recommends the European Commission report on the extent of follow-up to last year's recommendations on NHRIs, and strengthen the recommendations when they have not been followed-up by state authorities.

Moreover, as reported in more detail in the sections below, the initial recommendations on ensuring an enabling environment for NHRIs made to a few EU Member States in the European Commission's 2022 Rule of Law Report reflect issues which affect significantly more NHRIs across EU Member States ¹. Thus, ENNHRI encourages the Commission to consider a more consistent integration of recommendations on NHRIs in EU Member States, and to actively engage with NHRIs and ENNHRI in follow-up. In particular, ENNHRI would welcome recommendations and engagement in relation to:

- selection and appointment of heads of NHRIs and their dismissal procedures;
- ensuring adequate resources for NHRIs to carry out the full breadth of their mandate independently and effectively;
- ensuring timely and reasoned responses to NHRI recommendations, and to develop processes to facilitate effective follow-up by state authorities of NHRI recommendations.

Furthermore, in a context of deterioration of the rule of law across the EU, ENNHRI also encourages the Commission to develop an EU-wide Recommendation spelling out the need for an NHRI in each EU member State and outlining EU standards that should be met to ensure independent, effective and pluralistic NHRIs in EU Member States. Taking into account the particularities of the EU context, including NHRIs' role in the implementation of the EU fundamental values and the Charter, the Commission could develop EU standards on NHRIs, building on and complementing other international standards such as the UN Paris Principles and the Council of Europe CM Recommendation 2021/1 on NHRIs.

Such a Recommendation from the European Commission would be key to

preventing the weakening of existing NHRIs in EU Member States, and to ensure they will continue to be key actors to advance EU fundamental rights and values domestically, including the rule of law.

Developments concerning NHRI establishment and accreditation

ENNHRI key recommendations:

In line with the commitments in the European Commission Action Plan on the implementation of the Charter of Fundamental Rights and the Council Conclusions on fundamental rights (2021) and civic space (2023), ENNHRI:

- Calls on the EU Member States without an NHRI (especially Italy, Malta and Romania) to urgently advance on the establishment of an NHRI in compliance with the Paris Principles, and to make use of ENNHRI's technical advice in doing so;
- Encourages the Czech government to swiftly advance with the adoption of legislative amendments, in consultation with the Czech Public Defender, to enable it to function as NHRI in compliance with the Paris Principles;
- Requests the European Commission to continue to call for the establishment of NHRIs in full compliance with the Paris Principles in EU Member States where they do not exist yet, and to seek consultation with ENNHRI as relevant.

Since ENNHRI's last rule of law report, **three NHRIs from EU Member States were reviewed by the Sub-Committee on Accreditation (SCA)**, namely those from Belgium, Cyprus, and Poland.

The accreditation status of the Cypriot NHRI was upgraded from B to A-status in October 2022. In March 2023, the Polish NHRI was reaccredited with A-status. The SCA also accredited the Belgian Federal Institute for Human Rights (FIRM-IFDH) for the first time, with a B-status. As a result, Belgium currently has two institutions accredited as NHRIs being partially compliant with the UN Paris Principles (UNIA and FIRM-IFDH). This means that as of March 2023, in the European Union there are currently 19 states with an A-status accredited NHRI, 3 states with a B-status accredited NHRI, and four states where no internationally accredited NHRI exists.

Two other NHRIs in EU Member States will be reviewed by the SCA in October 2023, namely from Germany and Greece. The reaccreditation of the Lithuanian NHRI was initially scheduled for October 2023 but it will likely be postponed to March 2024. In April 2023, the Swedish Institute for Human Rights has also requested the SCA for a first-time accreditation as an NHRI, which may be scheduled for October 2024. On the accreditation of the Swedish

Institute, the Swedish Equality Body has indicated it will give up its B-status accreditation.

There have been no substantial developments in EU Member States without an accredited NHRI, with the exception of the Czech Republic.

In Czechia, the government, in consultation with the Czech Public Defender, is taking concrete steps in relation to possible legislative amendments that have the potential to further align the mandate of the Czech Public Defender to that of a fully-fledged NHRI and pave the way for its future accreditation. However, in the other EU countries concerned (Italy, Malta and Romania) there have not been significant and concrete steps towards paving the way for establishing an NHRI or strengthening the mandate of existing institutions to bring them closer to that of an NHRI.

Regarding the situation in Italy, ENNHRI is informed that there are several legislative proposals for discussion at the level of the Chamber of Deputies. However, this has been the situation for many years and there is no clear indication as to real prospects of a legislative proposal being close to adoption. In Malta, a revised Bill on the Human Rights and Equality Commission was presented to the Maltese Parliament in 2019, and ENNHRI is unaware of considerable progress on this legislative proposal since then. In Romania, there has been no change in the legislative framework of the Romanian Institute for Human Rights. Such a revision in the future could lead to stronger compliance of its institutional framework with the UN Paris Principles and facilitate the Institute's accreditation.

Follow-up to SCA Recommendations and related developments

ENNHRI key recommendation:

ENNHRI encourages all relevant state authorities, as well as relevant international actors such as the European Commission, to support the implementation of the SCA recommendations, in consultation with NHRIs. With a view to deepening the information available in relation to NHRIs' enabling environment in-country, this year's NHRI reporting provides further information on their follow-up to SCA recommendations as well as on related developments. While the information varies from country to country, most NHRIs from EU countries have taken concrete steps to implement the SCA recommendations and to further strengthen their institutional framework.

The NHRI reports point to the **need for inputs by other actors to achieve full implementation of some SCA recommendations**. For example, some recommendations require actions from the state, for which international support could be beneficial. ENNHRI has a key role to play in this regard, but other regional actors such as the European Commission and other EU

institutions could liaise with NHRIs to further understand their needs.

It is, in this context, worth flagging that the implementation of recommendations from the SCA lie often in the hands of the national parliament or government. While NHRIs are encouraged to advocate for these actors to take steps towards realising the SCA recommendations, for instance through a legislative reform or allocation of additional resources, **regional actors such as EU institutions, could further encourage national authorities to implement relevant SCA recommendations.** It is important that regional actors engage and discuss with NHRIs on the best avenues to support them in the implementation of the SCA recommendations.

Regulatory Framework

ENNHRI key recommendation:

In line with [Council of Europe Committee of Ministers Recommendation 2021/1 on NHRIs](#), ENNHRI recommends Member States to ensure and the European Union, including the Commission, to support:

- strong NHRI regulatory frameworks, preferably at constitutional level (Latvia, Luxembourg) and the strengthening of NHRIs' mandates to enable them to promote and protect all human rights in their country (Belgium, Slovakia, Lithuania)
- transparent, merit-based and pluralistic selection and appointment of heads of NHRIs (Luxemburg, Sweden), and an independent and objective dismissal process (Poland).

A number of ENNHRI members from EU member States report **changes in the national regulatory frameworks** in which they operate. For instance, some NHRIs were granted **new competences**. In Germany, the German NHRI started acting as a National Rapporteur Mechanism on Gender-Based Violence and a National Rapporteur Mechanism on Trafficking in Human Beings. The NHRIs in Ireland and Latvia were given new mandates to carry out the role of National Preventative Mechanisms. The Austrian NHRI appointed interdisciplinary expert commissions which are entitled to regularly visit and inspect places of detention under Optional Protocol to the Convention Against Torture. Following the transposition of the EU directive on whistleblowers, the NHRI in Croatia was granted a mandate to receive complaints from people reporting violations of EU law in the context of whistleblowers' protection.

In addition, ENNHRI members from Ireland, Hungary and Sweden started carrying out the roles of as an Independent Monitoring Mechanism for the United Nations Convention on the Rights of Persons with Disabilities (CRPD). Meanwhile, the Greek NHRI was appointed as a member with voting rights in the Monitoring Committee on EU Migration Funds 2021-2027.

Some EU NHRIs also report on **legislative reforms concerning their institutions other than additional mandates**. Namely, the Finnish NHRI underlines the changes introduced to further clarify the scope of tasks of some national human rights bodies, including the Finnish NHRI. The Greek NHRI points out the legislative amendment on the composition and term of its Board, while the Cypriot NHRI highlights the regulation that clarifies the term of the head of institution, to maximum two terms (6 years), the formalization of the selection and appointment procedure of the Commissioner (including a public call for expression of interest for the post of the Commissioner), and the establishment of the Advisory Committee of Human Rights. Moreover, the NHRIs from Estonia, Greece and Latvia point out that some measures to ensure more budgetary independence of the NHRI have been introduced.

Despite some examples of positive changes, ENNHRI members from Belgium, Latvia, Lithuania, Luxembourg, the Netherlands, Slovakia and Sweden stress the **need to further strengthen their regulatory frameworks**. For example, NHRIs from Latvia and Luxembourg stress the need to **introduce a constitutional basis** for their functioning, while other ENNHRI members advocate for **strengthening and increasing the scope of their mandates** (Belgium, Slovakia, Lithuania, and the Netherlands).

In particular, NHRIs from Lithuania and Sweden point to the need to **improve the procedure of appointment of the head of institutions** by, for instance, ensuring transparent requirements established by law and civil society participation, while the NHRI from Poland flags **vaguely specified grounds for the dismissal** of the head of the institution in the law. The NHRI from Poland also points out several gaps in its regulatory framework – namely the fact that it is unclear who heads the NHRI after the end of term of the head of institution (and lack of appointment of the successor).

Furthermore, some EU NHRIs also underline the need to **introduce legal provisions to improve state authorities' follow-up to NHRI's recommendations**, such is the case in Luxembourg, Slovakia, and Sweden. Lastly, NHRIs from Slovakia and Slovenia emphasize that it is vital to introduce by law regulations ensuring **budgetary independence of the NHRI**.

Enabling and safe space for NHRIs

ENNHRI key recommendations:

In line with [Council of Europe Committee of Ministers Recommendation 2021/1 on NHRIs](#), ENNHRI recommends that Member States provide and the Commission support:

- Timely and reasoned response(s) to NHRI recommendations, and processes to facilitate effective follow-up by state authorities of NHRI

- recommendations (Belgium, Cyprus, Czech Republic, Finland, Luxembourg, Netherlands, Romania, Poland and Slovakia);
- Adequate resources for NHRIs to carry out the full breath of their mandate independently and effectively (France, Germany, Greece, Latvia, Lithuania, Netherlands and Slovakia), ensuring independent budget allocation (Estonia and Slovenia), and allocating sufficient additional resources when NHRIs are being allocated additional mandates (Belgium and France);
 - NHRIs' timely and adequate access to information (Croatia and Luxembourg), and to policy-makers and legislators, including timely and adequate consultations on the human rights implications of draft legislation and policies (Czech Republic, Denmark, Germany, Greece, France, Luxembourg, Poland, Slovakia and Sweden),
 - addressing without delay any undue challenges and threats to NHRIs while carrying out their mandate, including harassment and obstruction of their work (Slovakia, Sweden, Poland).

A number of EU NHRIs reported that their state authorities have a generally **good awareness of the NHRI's mandate, independence and its role** (for instance in Bulgaria, Cyprus, Estonia, Finland, Germany, Latvia, Portugal and Spain). Moreover, the Luxembourgish NHRI acknowledges the greater awareness on the NHRI's role by some state authorities as well as good cooperation between human rights actors. Furthermore, some ENNHRI members highlight their ongoing **good cooperation with state authorities**, for instance by being invited to comment on draft legislation as in Latvia and the Netherlands, having regular meetings with relevant authorities such as in the Netherlands, and a high level of implementation of NHRIs' recommendations by state authorities, such as in Latvia. It is also worth noting that some EU NHRIs – namely from Croatia, Cyprus, Greece, Luxembourg and Slovakia – report on **improvement of the cooperation with state authorities**. Thus, NHRIs from Croatia, Greece, Luxembourg and Slovakia confirm being invited by the government to discuss the follow-up to their recommendations. Moreover, the NHRI from Cyprus notes the higher implementation rate of its recommendations.

Unfortunately, despite some positives examples of how some states try to enhance enabling space for NHRIs, this year's rule of law reporting reveals **persisting challenges that impact on NHRIs' functioning, effectiveness and enabling space**.

Numerous EU NHRIs report on **limited access to legislative and policy-making processes and difficulties in cooperating with national authorities**, which is the case in particular in Greece, Luxembourg, Slovakia and Sweden, where ENNHRI members are not being systematically invited by state authorities to comment on draft laws and policies. ENNHRI members from the Czech Republic, Denmark, Germany, Poland, Slovakia and Sweden also flag

the problem of **too little time envisaged by state authorities for public consultations on draft legislation** which hinders the work of NHRIs and their ability to provide recommendations in a timely, effective and impactful manner.

Moreover, similarly to last year, the problem of **state authorities' limited follow-up to NHRIs' recommendations** persists across EU Member states, as particularly flagged by ENNHRI members from Belgium, Croatia, Czech Republic, Finland, Luxembourg, Netherlands, Romania, Poland and Slovakia. For instance, the NHRIs from Latvia, Luxembourg and Slovakia point out that state authorities are not legally obliged to carry out follow-up actions to NHRI's recommendations. The ENNHRI Member from the Czech Republic alerts that its annual reports were not taken into consideration or timely discussed by the Parliament for several years. It is noted that this institution is not yet accredited as an NHRI, for which the UN Paris Principles require Parliamentary debate on its annual report. As such, further alignment of the Czech Public Defender's legislation with international standards, and a future accreditation as an NHRI, could lead to improvements in this regard.

Furthermore, the NHRIs from Croatia and Luxembourg describe **limitations in their access to information**. For instance, the Luxembourgish NHRI raises concerns over lack of access to positions of the government in relation to EU regulatory initiatives such as the EU's Corporate Sustainability Due Diligence Directive, while the NHRI from Croatia still does not have access to all data on the treatment of irregular migrants, including the access to the information system of the Ministry of Interior. In the context of the Croatian NHRI's work on the treatment of irregular migrants, the Ministry of the Interior continues to deny the NHRI direct access to data in their information system. This is in spite of some positive steps regarding access to information during the Croatian NHRI's announced and unannounced visits to police stations.

Importantly, this year's reporting confirms that some NHRIs in the European Union may also be subjected to **threats**. Most far reaching, ENNHRI member from Sweden reports on a proposal from a political party to close the institution while this proposal has not been rebutted by ruling parties, thus posing a threat to the very existence of this newly established institution.

Moreover, some EU NHRIs also reveal that they face **harassment and obstruction while carrying out their mandate**. This was the case in Slovakia, where the Slovak NHRI's staff members were the target of online harassment because of the NHRI's work on women and LGBTQ+ rights. Moreover, the NHRI from Poland reports on cases of obstruction by state authorities of its work carried out at the Polish-Belarusian border and during inspection in a prison in the capacity of National Preventive Mechanism.

Lastly, the **problems of inadequate budget and insufficient human**

resources for NHRIs are also widely raised by ENNHRI members from EU Member States. Even though, in some EU countries the NHRIs were given some additional resources (such is the case of NHRIs in Cyprus, Czech Republic, Estonia, Germany, Greece, Latvia, Luxembourg, Poland, Slovakia, Spain), in many cases, – as flagged in particular by ENNHRI members from Czech Republic, Luxembourg and Poland - such a budget increase did not meet the NHRI's reasonable needs, including due to the impact of the high inflation rate in EU countries. The NHRIs from Croatia, France, Greece, Latvia, Lithuania, Netherlands and Slovakia firmly advocate for adequate budget increases to secure the effectiveness of the institutions. In addition, the NHRIs from Estonia and Slovenia call for ensuring the structural independence of the NHRIs' budgets. Notably, some EU ENNHRI members raise the problem of a **lack of additional resources provided to carry out additional, specific mandates**, such is the case Belgium and France, while in Croatia there is a lack of political will to appoint an additional Deputy who would support fulfilment of the institution's additional mandates.

European Union 2023

Human rights defenders and civil society space

ENNHRI key recommendations:

Taking into account the 2023 Council Conclusions on civic space, the Commission 2022 report on the Charter of Fundamental Rights, and FRA's annual reports on civic space, ENNHRI recommends that the Commission:

- Enhance and expand its monitoring and reporting of challenges affecting civic space, CSOs and rights defenders within its annual rule of law report;
- Take account of the findings from the rule of law reporting on civic space and rights defenders while developing a policy framework (eg.: European Civil Society Strategy) to enable, safeguard and protect civic space at national and at EU level.
- Support and concretely advance on the creation of an 'EU HRD protection mechanism', to swiftly detect and act in response to attacks against HRDs, including in cases of reprisals against HRDs for their work on the implementation of the EU fundamental values/ acquis.

The identification of civic space and human rights defenders by NHRIs as a key area to prioritise in addressing the rule of law in the EU, runs in parallel with the current EU policy momentum to advance the protection of civic space and

rights defenders in the EU. While NHRIs are human rights defenders themselves, they also have a mandate and role in promoting and protecting other human rights defenders. Notably, recent [Council Conclusions](#) (7388/23) recognise that civil society organisations and human rights defenders are ‘an indispensable element in the system of checks and balances in a healthy democracy’ and that ‘unjustified restrictions to their operating space can present a threat to the rule of law.’ In particular, the Council Conclusions also invite the Commission to ‘protect CSOs and human rights defenders by continued efforts to foster and protect democracy, the rule of law, and fundamental rights across all relevant policy areas.’

In such a wider political context, the relevance for the Commission to deepen and expand its monitoring and reporting on civic space and rights defenders within its rule of law annual reports, and to ensure integration of the findings in relevant ongoing policy initiatives across the Commission, only becomes more important. This is even more so, given the continuous overall trend of further deteriorating civic space across the EU -as reflected also in NHRIs’ reports- and the need to systemically address those challenges at EU and Member State level.

Undue challenges and threats to civic space and HRDs

ENNHRI key recommendations:

ENNHRI recommends Member States develop and the Commission support:

- effective national HRD protection laws and mechanisms, including helplines and legal assistance, while taking into account international standards and guidance in this respect (including from the UN, OSCE ODIHR, and [International Service for Human Rights](#)). While doing so, Member States should consult with their NHRI, which can be allocated a specific mandate as HRD protection mechanism or can support such mechanism, provided it is independent and is allocated adequate resources;
- on the basis of impact assessments and broad consultation, revise the laws and practices resulting in undue restrictions on the work of civil society organisations and human rights defenders, in particular regarding rules on registration and dissolution of civil society organisations, reporting & transparency obligations, and criminalization of activities;
- an enabling, flexible and accessible financing framework for all civil society organisations and human rights defenders, eliminating any undue obstacles to access to funding, including from foreign sources;
- the guarantee to the right to freedom of assembly and association as well as freedom of expression, as a crucial element of a functioning rule

- of law framework and fundamental for civic space and HRDs;
- the full and effective transposition of the EU Whistleblower Directive.

Only some positive findings are reported this year by NHRIs in relation to civic space and HRDs. For instance, NHRIs flag the adoption of **national plans, programmes and strategies** relevant to supporting a vibrant civic space. For example in Estonia and in Denmark, where focus is dedicated on combatting hate crimes and raising awareness on this topic by the police. In Finland, updated **guidelines** of the Finnish Foreign Service **for supporting human rights defenders** (applicable to third country HRDs) were adopted.

EU NHRIs report that HRDs and civil society organisations continue to be a **target of increasing attacks, hate speech, smears and threats** in many EU countries. These attacks particularly target HRDs and civil society organisations working **on sexual and reproductive rights, LGBTI+ rights, rights of migrants and asylum seekers or environmental protection**, as reported by numerous ENNHRI members, namely from Belgium, Bulgaria, Croatia, Estonia, Finland, France, Germany, Greece, Latvia, Lithuania, Netherlands, Romania, Poland and Slovakia.

Several NHRIs also mention in particular the use of **hate speech** in social media against CSOs and HRDs, as reported by the NHRI from Bulgaria, Estonia, France, Finland and Slovakia. In France, hate speech was used by the police and far-right supporters against the sister of a victim, murdered by the police. The NHRI in Belgium reports that organisations and institutions working on human rights topics are often victims of threats and harassment.

This year, EU NHRIs underline the rising number of **attacks on climate activists**. NHRIs from Germany and France report on the criminalisation of actions of climate defenders. For example, in Germany some federal governments have executed preventive detention of climate activists. The German NHRI urged state authorities to exercise great caution when considering preventative detention. It was also worried that the activists have been called terrorists. In France, the NHRI reports on numerous worrying developments, such as the prosecution and imprisonment of climate protesters while designating them as eco-terrorists, SLAPPs from companies against environmental defenders, as well as ongoing financial cuts to environmental CSOs. In Croatia, environmental defenders also are victims of SLAPPs. NHRIs in Lithuania and in Slovakia report attacks on HRDs and CSOs **working on women and reproductive rights**. In Lithuania, HRDs working on rights of marginalised groups sometimes face discrimination themselves.

Moreover, EU NHRIs report **attacks and threats to HRDs and CSOs working in the area of migration**. The NHRI in Poland reports the lack of actions to support migrants at the Polish-Belarusian border, illegal pushbacks and restricted access to provide aid by HRDs and CSOs, as well as lack of

access to border for journalists. The NHRI from Croatia also alerts about a denial of access of CSOs providing legal aid to migrants living in reception centres. Also, the NHRI from France reports the state's disruption of CSOs' and HRDs' humanitarian work, for example in Calais. Additionally, the NHRI from Greece reports the criminalization of the search and rescue operations at sea by private vessels. In some countries, providing support to migrants is obstructed by state authorities and even criminalised and prosecuted, as is reported by NHRIs in Latvia and Lithuania.

Moreover, EU ENNHRI members raise concerns over **laws violating freedom of association**, as reported in France, Germany, Greece and Poland. This relates to, for instance, introducing restrictive rules to register CSOs, **limited access to funding**, lack of tax privileges, and vague and disproportionate legal provisions on dissolution of associations. Especially, ENNHRI members raise concerns over restrictions in access to funding by CSOs, such as in Croatia – where state funding available for CSOs was reduced, in France – where the arbitrary and vague legal provisions may lead to subsidies' cuts for CSOs, and in Slovakia, where most of the funding is project-based, leading to a **lack of stability of the functioning of the CSOs**.

Similarly, ENNHRI members report **violations of the right to assembly**, as reported in Belgium, France, Ireland, Netherlands and Romania. For example, the NHRI from Poland reported on disproportionate police intervention against peaceful protesters. Meanwhile, in Belgium and the Netherlands, restrictive provisions on an obligation to ask for authorization of a protest and possible administrative sanctions raises concerns due to lack of proportionality. In Ireland three bills are in legislative process to enable the use of technologies by police authorities without an effective oversight complaint mechanism, which might restrict rights to freedom of assembly and freedom of expression.

Furthermore, some ENNHRI members note the **inadequate transposition of the EU Whistle-Blowers Directive**. For example, ENNHRI's member from Romania flags that ineffective transposition hinders the investigation of complaints, while the Luxembourgish NHRI raises concerns over a delay in implementation of the Directive by state authorities.

EU NHRIs also point to legislative gaps related to protection of civic space and human rights defenders. They report a **lack of human rights defenders protection mechanism**, as for instance underlined, in particular, by the NHRIs in Croatia and Finland. Moreover, EU NHRIs note with regret a **lack of legislation which would sufficiently address fundamental rights challenges and safeguard civic space**, including for minorities, women, and environmental defenders, as reported by ENNHRI members in Croatia, Ireland and Romania.

As developed in [ENNHRI's resource on how NHRIs can defend HRDs](#), and as

illustrated further below through this year's NHRI rule of law reports, NHRIs play an important role in the promotion and protection of civic space and HRDs. In view of the many attacks and threats to HRDs in the EU, ENNHRI will build on its activities to support NHRIs in their protection of HRDs. Notably, and as is the case beyond the EU², NHRIs can also be mandated explicitly as HRD protection mechanisms, if they are independent and have adequate resources and capacities.

Access to and involvement of civil society actors in law and policy making

ENNHRI key recommendations:

Taking into account the 2023 [Council Conclusions](#) on civic space, the Commission 2022 report on the Charter of Fundamental Rights and FRA's annual reports on civic space, ENNHRI recommends Member States and the Commission to:

Increase cooperation with civil society actors in law and policy making processes at both national and EU level, including by securing timely, inclusive and meaningful consultations, and participation of persons in a vulnerable situation and their representative associations.

Reporting by ENNHRI members from EU member States confirms **serious shortcomings in access to and involvement in law and policy making for civil society organisations**. ENNHRI members in Cyprus, Denmark, Estonia, Greece, Lithuania, Luxembourg, Poland, Romania, Slovakia and Slovenia expose several gaps affecting consultation frameworks and practices. These include **lack of public consultations, underrepresentation of vulnerable groups in such consultations, consultations conducted in a very short time or by using accelerated procedures, as well as limited accessibility of public consultations and public information**. For example, ENNHRI members from Estonia, Ireland and Romania, report the need to strengthen consultation with vulnerable groups, and better access to public information, especially for HRD and CSOs working on certain issues. The insufficient engagement of CSOs and HRDs in law and policy making is also affected by a lack of human rights impact assessment that should be carried out by state authorities when drafting laws, as flagged by NHRIs in Estonia.

At the same time only some ENNHRI members from EU member States **confirm good access and involvement of civil society actors** in law and policy making at national level, namely in Greece, and in the Netherlands. The NHRIs from Germany and Latvia highlight an improvement in their legislation to ensure more inclusiveness of civil society actors in the policy-making processes. Legislative changes and proposals regarding access to information and documents were introduced to promote civic space and

cooperation in Belgium and Slovakia.

Abuse of laws to intimidate civil society actors, including strategic litigation against public participation (SLAPPs)

ENNHRI key recommendations:

Taking into account the ongoing legislative initiative of the Commission on an anti-SLAPP Directive, ENNHRI recommends the Council of the European Union to:

- counter effectively the abuse of laws and legal harassment, in particular Strategic Lawsuits Against Public Participation (SLAPPs) in EU Member States by adopting the EU anti-SLAPP Directive with a broad scope and strong safeguards to counter SLAPPs effectively, as put forward in the European Commission's [proposal](#),

ENNHRI recommends the Member states to:

- adopt national laws to counter SLAPPs in all domestic cases as well as abuse of laws in criminal procedural law, and revise national laws on defamation to safeguard freedom of expression, in line with the Commission's Recommendation on SLAPPs and in consultations with journalists, civil society and NHRIs;
- take firm steps to implement the Commission's Recommendation on SLAPPs, including by carrying out awareness-raising, trainings, providing support (also financial support) to victims of SLAPPs and developing ethical standards for legal professionals.

ENNHRI members from EU member States confirm that **CSOs, HRDs and journalists are facing threats from abuse of law, in particular Strategic Lawsuits Against Public Participation (SLAPPs)**. This is in particular the case for Belgium, Bulgaria, Croatia, Greece, Estonia, the Netherlands, Poland, Romania, and Slovakia. For example, in Belgium, Bulgaria, Croatia, Estonia and the Netherlands, CSOs, HRDs and journalists are threatened with SLAPPs for expressing critical opinions. In Poland, CSOs and HRDs working on LGBT and women rights are reported to often face SLAPPs. In Greece, the NHRI expresses concerns regarding an **increase in criminal cases against people providing services to migrant and refugees at the borders**.

A lack of state authorities' actions and legislative measures to combat SLAPPs is also outlined by several EU NHRIs, namely from Greece, Luxembourg, Netherlands and Slovakia. However, the NHRI from Lithuania welcomes the recent amendments to the Code of Civil Procedure which allows the dismissal of a case in which the abuse of procedural rights (and harm

towards defendant's activities) is identified.

Also on a positive note, the NHRI from Germany notes that state authorities gave more attention to this systemic issue because of the EC recommendations on SLAPPs, and consulted stakeholders for input on the European Commission's anti-SLAPP recommendations. Similarly, in Slovakia, a focus on protection of journalists was included in upcoming governmental strategy, while in Croatia there are ongoing legislative works on the new act to introduce an early detection and dismissal mechanism for SLAPPs.

It is worth noting that EU NHRIs undertake actions to support victims of SLAPPs. In line with the Commission's Recommendation on SLAPPs, ENNHRI members from Germany, Romania and Slovakia conduct **more advocacy regarding the need to ensure effective protection of journalists**. Moreover, ENNHRI members from Belgium and Romania are **focal points on SLAPPs**, while the NHRI from Poland provides an example of the CSOs establishing a joint working group to counter SLAPPs and support victims of abusive lawsuits. In Romania, the institution plans to organise awareness-raising campaigns regarding SLAPPs and trainings for journalists, as requested by the state authorities.

In order to further build the awareness and capacity of NHRIs in tackling SLAPPs, ENNHRI will include this in capacity-building of NHRIs at its 2023 NHRI Academy, taking place in June.

NHRI role in promoting and protecting civil society space and human rights defenders

In line with the UN Paris Principles, NHRIs are pluralistic institutions, reflective of the various strands of civil society in a country, and function as bridge-builders between the state and civil society, including through close cooperation with CSOs in carrying out their daily work.

This role of NHRIs is also reflected in their 2023 reporting. Many EU NHRIs report on their **regular cooperation with CSOs on thematic areas** in the past year, including in Croatia, Cyprus, Estonia, France, Ireland, Luxembourg, Poland, Slovakia, Slovenia and Spain. EU NHRIs also report on **advocacy** work to support the protection and promotion of civil society space over the past year, namely in Bulgaria, Croatia, Finland, Luxembourg and Slovakia. The NHRIs from Belgium, Croatia, Cyprus, Estonia, Poland have echoed issues flagged by CSOs in their **recommendations and opinions** to state authorities. EU NHRIs have also conducted **systematic monitoring on civic space and HRDs**, for example for the purposes of dedicated reports, studies and data collection, namely in Belgium, France, Greece, Latvia, Slovakia and Slovenia.

Some EU NHRIs also report on their provision of **legal assistance** to CSOs and

HRDs over the past year. In particular, this relates to victims of SLAPPs as reported by ENNHRI members from Estonia and in Romania. On the other hand, some NHRIs also carry out more practical assistance – NHRIs from France and Germany, for example, support the protection programs for settlement of foreign HRDs. The NHRI from Ireland established a granting scheme for CSOs focusing on the rights of migrant women, persons with disabilities, the Traveller community, and access to accommodation.

Further examples of successful cooperation between NHRIs, CSOs, and HRDs over the past year are also illustrated by **joint meetings and roundtables** with state authorities and CSOs, as reported by NHRIs from Estonia, France, Latvia, Luxembourg, the Netherlands, and Slovenia, as well as **trainings** conducted by NHRIs from France and Latvia to CSOs and HRDs. EU NHRIs have also been involved in promotion of work by CSOs and HRDs, such as by **awarding prizes**, as reported by NHRIs from France and Latvia.

European Union 2023

Implementation of European Courts' judgments

ENNHRI key recommendations:

Building on the initial Commission findings on implementation of European Courts' judgments in its last annual report on the rule of law, ENNHRI recommends the Commission:

- Continue reporting on the implementation of European Court judgments in each EU Member State and to consider further highlighting its relevance such as through including in country-specific recommendations;
- Follow-up on implementation of European Court judgments with Member States, including through national dialogues, while initiating infringement proceedings in case of persistent non-implementation of the CJEU's judgments relating to systemic issues which violate EU law, including fundamental rights issues;
- when lack of implementation of a CJEU ruling is connected to pre-existing infringement proceedings, follow-up through enforcement measures such as blocking of EU funds.

As recognised by the European Commission in its 2022 rule of law report, the track record of implementation of European Court judgments is an important indicator for the functioning of the rule of law in a country. The reasons behind

this are two-fold: because the subject-matter of the judgments include rulings concerning the independence and impartiality of the judiciary and the right to fair trial as well as other structural human rights issues affecting society; and because the implementation of judgments is inherently a rule of law issue, which is fundamental to a system of checks and balances.³ Thus, this year EU NHRIs' rule of law reports include consistent attention for implementation of regional judgments, and include an assessment by NHRIs on the reasons behind the challenges in implementation of European Court judgments in their country.

Implementation of European Courts' Judgments by EU Member States

ENNHRI key recommendations:

ENNHRI recommends the European Commission, and other international actors, to:

- Reinforce the pivotal importance of the implementation of European Courts' judgments for a vibrant society, and raise awareness on this of the public as well as state authorities and other relevant actors, adapted to the domestic context;

ENNHRI recommends Member States to:

- Make available judgments and decisions issued by the European Courts in an open and accessible manner, as well as steps taken by the state to implement those judgments (such as national action plans);
- Ensure efficient institutional and procedural frameworks for the effective fulfilment of States' obligation to implement the judgments of the European Courts at national level, including stakeholders such as NHRIs and civil society
- Implement the European Courts' judgments pending (in particular Grand Chamber/ leading judgments), including by tackling financial, legal, structural and organizational obstacles which impact the effective and timely implementation.

In their national submissions, ENNHRI members from EU Member States provided country-specific information on the implementation of judgments of European Courts. The majority of ENNHRI members reflected on the process of implementation of judgments issued against states by the European Court of Human Rights (ECtHR), while some NHRIs also included observations on the issues with the implementation of the judgments of the Court of Justice of the European Union (CJEU), namely in infringement cases against states that failed to implement EU law. Reporting by EU NHRIs identifies common problems preventing the effective and timely implementation of European Courts'

judgments, which are valid for both the ECtHR and CJEU judgments.

Numerous EU ENNHRI members, such as from Belgium, Bulgaria, Finland, France, Latvia, Lithuania, Poland and Slovakia raise concerns over the **lack of satisfactory level of implementation of European Courts' decisions**. For instance, the NHRIs from Lithuania and Slovakia report a lack of any progress on addressing the non-execution of judgments by state authorities, while the NHRI from Bulgaria and Finland regret that there are judgments pending implementation for many years.

EU NHRIs provide information on the reasons for some delays in the implementation of the European Courts' judgments, which can help address the roadblocks and advance the implementation of European Court judgments in the future.

ENNHRI members flag that **financial reasons** are indicated by authorities as preventing the timely implementation of European Courts' judgments, as reported by ENNHRI members from Belgium, Finland and Poland. More fundamentally, several ENNHRI members report that **political reasons** prevent the implementation of judgments, as reported by NHRIs from Finland, Germany, Lithuania, Poland and Spain. This particularly relates to politically sensitive topics which may raise wide public discussions. For example, NHRI from Lithuania reports that judgments in the area of migration are often not implemented. As reported by the NHRI in Finland, lack of implementation may relate also to the fact that for state authorities the implementation of European Courts' judgments is not prioritised by the government. The most challenging national contexts are countries that call into question that EU law has primacy and that the European Convention on Human Rights takes precedence over national law. Germany and Poland are two examples.

NHRIs report further that there is often a lack of will of state authorities to engage in more structural changes that are needed to implement European Court judgments such as the adoption or amendment of laws, as for example flagged by the NHRI in Lithuania. Other **structural barriers** are also referred to as reasons for non-implementation by several ENNHRI members. For example, the NHRIs in Lithuania and Poland report a **lack of procedural framework** for the effective fulfilment of the state's obligation to implement the European Courts' judgments. Other structural problems identified by NHRIs are the need to carry out complex structural changes that would concern modifying national judicial practice, or would require comprehensive structural reforms to the justice system, police and prison systems, as identified by ENNHRI members from Belgium, Greece, France, Lithuania, the Netherlands and Slovakia. EU NHRIs provide more detailed information on the European Courts' pending judgments against each EU state in their country reports.

Despite the above obstacles, ENNHRI members from EU Member States report on some actions taken by state authorities to facilitate the execution of European Courts' judgments. This includes **sharing the overview of judgments issued by the European Courts** as well as action plans on the implementation of judgments on the implementation process on governmental websites and with relevant stakeholders, including NHRIs, as reported by NHRIs from Croatia, Cyprus, Estonia and Germany. In Croatia, Poland and Slovenia **a governmental consultative and advisory body** is functioning to support implementation of European Courts' judgments.

NHRIs' actions to support the implementation of European Courts' judgments

ENNHRI key recommendations:

1. In light of the recognised potential and roles of NHRIs to advance the implementation of European Courts' judgments, ENNHRI recommends the EU and Council of Europe, as well as EU Member States to:
 - support the development of procedures of the CJEU and the ECtHR to strengthen meaningful participation of NHRIs;
 - engage and consult with NHRIs to advance implementation of European Courts' judgments;
 - provide sufficient resources and capacity building opportunities for NHRIs on implementation of European Courts' judgments, including through ENNHRI.

NHRIs are recognised stakeholders for ensuring the effective implementation of the ECHR and the EU acquis (including the Charter of Fundamental Rights), and in this context engage on implementation of European Courts' judgments. Importantly, NHRIs engage on implementation of judgments at domestic and European level, and engagement on each level is conceived as complementary for the implementation of European Courts' judgments.⁴ Such efforts can work as a continuous cycle through which outcomes of domestic activities on implementation can be used as input for international engagement efforts. *Vice versa*, outcomes of international engagement can influence and strengthen efforts on the national level.

In the context of the execution of the judgments of the European Court of Human Rights, NHRIs have a right to provide an independent and objective report on the state of play regarding the execution of the ECtHR judgments through issuing **rule 9 submissions to the Committee of Ministers**. In this sense, EU ENNHRI members refer to such rule 9 interventions in their annual rule of law reports, including ENNHRI members from Belgium, France, Greece, Ireland, Poland and Slovenia. As ENNHRI advocates in the context of the upcoming Council of Europe Summit, there is leeway to further strengthen

meaningful participation of NHRIs in the context of implementation of ECtHR judgments and thereby further building on their potential to advance implementation.⁵

At domestic level, NHRIs engage on implementation of European Courts' judgments in many ways, including through their engagement with the executive, parliament, civil society and the wider public.⁶ Importantly, through their broad promotion and protection mandate, NHRIs can advise state authorities on how to advance on implementation, but can also play a role in creating further awareness and understanding on why implementation of European Courts' judgments is important in the domestic context. These roles NHRIs carry out at domestic level on implementation of European Courts' judgements is also reflected in their rule of law reports.

EU NHRIs refer to judgments of the European Courts in their **reports and recommendations** throughout their work, as flagged by ENNHRI members from Belgium, Croatia, Cyprus, Estonia, France, Greece, Latvia, Poland, Slovenia and Spain. The Slovenian NHRI also reports on its systemic monitoring of the progress on the implementation of European Courts' judgments. ENNHRI members from Belgium, the Netherlands and Slovenia highlight their outstanding recommendations urging state authorities to implement the pending judgments. Some NHRIs are also involved in **national mechanisms established by state authorities to advance implementation** of European Courts' judgments. A good example can be found in Slovenia⁷, and the Polish NHRI and the Croatian NHRI report taking part in the governmental consultative body created to facilitate the implementation process. Other examples referred to by ENNHRI members in their rule of law report refer to **awareness-raising of the general public** on the importance of the judgments of European Courts, as flagged by NHRIs from Greece, Poland and Spain.

In view of the fundamental importance to further advance implementation of European Courts' judgments, including for upholding the rule of law in the EU, ENNHRI envisages further investment in supporting NHRIs' capacity in doing so.

European Union 2023

Artificial intelligence rule of law, democracy and fundamental rights

Addressing the impact of AI on rule of law,

democracy and fundamental rights

ENNHRI key recommendations:

Considering the rapid development and application of AI by state authorities and the significant yet still relatively unknown impacts this has on rule of law, as well as fundamental rights and democracy, ENNHRI recommends:

The Commission, as well as other European and international actors:

- To include attention for emerging challenges in the area of fundamental rights and rule of law, including in particular the use of AI and its impacts on the rule of law, fundamental rights and democracy, with due attention to the collective and societal harm caused by AI systems, in relevant monitoring and reporting, including the annual report on the rule of law;
- Ensure a human rights based approach is integrated in the EU Artificial Intelligence Act and the Council of Europe Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law, as well as in the relevant standardization processes and in the development of impact assessments.
- Ensure a human rights based approach is integrated in the oversight mechanisms to prevent societal and collective harm by AI systems. Such mechanisms should ensure that not only natural and legal persons directly affected by AI may file complaints, but also by public interest groups and consumer organisations.
- Ensure a human rights based approach is integrated in the oversight mechanisms and ensure necessary safeguards to guarantee the right to effective redress for all individual, collective or societal harm caused by AI systems. For example, not only natural and legal persons directly affected by AI may file complaints, but also by public interest groups and consumer organisations.

Member States with support from the Commission and other regional actors:

- To raise awareness of state authorities and the general public as well as other relevant stakeholders on the use of AI and its impacts on rule of law, as well as on fundamental rights and democracy, including by facilitating public debates;
- To ensure transparency of the use of AI by state authorities and its impacts on rule of law, democracy and fundamental rights, including by establishing independent domestic oversight, publicly accessible registers and by ensuring impacts assessments in advance and during the use of AI;

The development and use of AI by state authorities is rapidly expanding, while

the knowledge and awareness on the challenges and opportunities related to AI and its implications for rule of law, democracy and human rights is limited. Accordingly, ENNHRI members decided to include particular attention for AI across ENNHRI's work, including its annual reporting.

ENNHRI members' reports confirm that the implication of the use of AI and its impact on rule of law, democracy and human rights is in **many cases still unknown**, as emphasized by members in Cyprus, Denmark, Greece, Latvia, Luxembourg, Poland, Portugal, Romania and Spain. This stems from a variety of factors, including the novelty of this field, limited research and lack of expertise on the impact of AI on human rights, democracy and the rule of law.

As one of the key underlying challenges, EU NHRIs refer to the **lack of laws regulating the use of AI**, as well as gaps in existing legislation. This concern is voiced by numerous NHRIs, including ENNHRI members from Belgium, Estonia, France, Latvia and Poland. ENNHRI members from Belgium, for example, report a lack of explicit legal basis for the use of facial recognition technologies by the police, while the NHRIs from Estonia and Poland underline **gaps in the legal basis for algorithm-based, automatic administrative decisions**, given without authorization, while not taking into account individual circumstances, and without a clear legal basis. Furthermore, some ENNHRI's members from the European Union indicate that the **lack of adoption of national legislation concerning the use of AI**, such as in Estonia, is impacted by ongoing regional legislative initiatives that will come to fruition in the future, including the EU Artificial Intelligence Act (AIA) and the CoE's Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law.

On the other hand, some NHRIs report on policies and measures taken by their governments in the area of AI. In Germany, Greece and Portugal, governments developed a national strategy for Artificial Intelligence. The Greek Government expanded the competence of the National Bioethics Commission to include also Technoethics (this Commission appoints a member to the Greek NHRI).

Notwithstanding the gaps in regulation and limited policies and measures developed to ensure rule of law, democracy and fundamental rights are safeguarded, AI is increasingly used by authorities, and affects also key rule of law issues such as access to justice. ENNHRI Members of Belgium, Denmark, Estonia and Poland, refer to the common area of concern about the **persistent lack of transparency of the use of AI**. In Poland, for example, the automatized system of selecting judges to adjudicate in specific court cases lacks transparency regarding the method used for such selection. In Belgium, a more general lack of obligation for state authorities to disclose the use of artificial intelligence is flagged, thereby causing important concerns from an overall accountability perspective.

ENNHRI members from Belgium, Denmark, Germany, Greece, the Netherlands, Poland, Portugal and Spain, warn how the use of AI, if unregulated, **especially impacts vulnerable groups and may lead to discrimination**. In particular, this is a case when state authorities use the AI as a basis for administrative decision-making. Key examples of this worrying trend might be observed in the uses of AI by tax authorities, as in Belgium and the Netherlands. In Belgium, ENNHRI members emphasized how an increasing number of public policies are reportedly implemented by using AI, which, for instance, leads to decision-making on social benefits on the basis of untransparent criteria. At the same time, in the Netherlands the use of AI in the decision making by tax authorities was found to be racially biased. Also, the NHRI from Denmark points out risks of discrimination when public authorities use automated profiling of citizens as the basis of an administrative decision.

ENNHRI members from Denmark, France, Ireland, Poland and Spain voice particular concern in relation to the **ongoing use of AI to carry out secret surveillance by state authorities and/or secret services against citizens**, with detrimental impact on the respect of human rights. In this regard, draft and existing bills concerning the use of AI for surveillance purposes may negatively impact **freedom of expression and freedom of assembly** in France and Ireland, as an ongoing draft bill foresees provisions without adequate scrutiny for the use of facial recognition technology. The NHRIs from Germany and Spain also warn about broad competences of state authorities to use spyware without sufficient oversight mechanisms, while the NHRIs from Greece and Poland alert about possible violations of the **right to privacy** in such context.

Notably, EU NHRIs also report concerns about the **insufficient public awareness initiatives regarding the use of AI**, as emphasized by NHRIs from Denmark, Estonia, Poland, Portugal and Slovenia. Moreover, EU NHRIs also flag the **need to ensure strengthened cooperation between state actors and their guidance on the use of AI**. More specifically, in Denmark, the NHRI emphasized the need for the guidance on human rights based approach in the use of AI in profiling model and decisions. In Poland, the NHRI underlines the need for institutional cooperation between personal data protection authorities and other state authorities. In this respect, it is also noteworthy that the current draft EU AIA, for example, foresees in the establishment of national supervisory authorities, whose competences and expertise shall include an in-depth understanding of artificial intelligence technologies, data, as well as fundamental rights.⁸

NHRI's actions to address challenges regarding the use of artificial intelligence

ENNHRI key recommendations:

In order to build on the potential of NHRIs to support rule of law, democracy and fundamental rights in the context of AI, ENNHRI recommends Member States, the Commission, as well as other regional actors:

- ensure multistakeholder consultations, in particular consult with NHRIs and other relevant stakeholders, including independent bodies such as data protection authorities, in the development of laws and policies on AI to ensure the safeguarding of rule of law, democracy and fundamental rights;
- support provision of additional powers, resources (financial, technical, and staffing) as well as capacity-building of NHRIs to enable them to further develop their capacity on safeguarding rule of law, democracy and fundamental rights in relation to AI.

As the increasingly widespread use AI systems can impact upon the enjoyment and protection of rule of law, democracy and fundamental rights, the role of NHRIs is increasingly important, particularly given their broad human rights mandate and mutually reinforcing functions. The design and deployment of AI systems can affect the full range of human rights. To this end, the wide-mandate of NHRIs is useful to address the impact of AI upon the fundamental rights of individuals, as well as its larger societal and collective impacts, including for rule of law and democracy.

From the reporting, it appears that numerous EU NHRIs undertake **activities to address challenges regarding the use of artificial intelligence** already. A significant number of ENNHRI members have made **recommendations to state authorities on the use of AI and its human rights and rule of law implications**, as in the case of Belgium, Croatia, Denmark, Estonia, France, Greece, Portugal and Slovenia. The NHRIs from Croatia and France call for **increased transparency by public administrations** to improve the implementation of oversight procedures in the use of AI.

ENNHRI members also reported **providing opinions on draft laws on AI**, both at the national and regional level, as emphasized by Belgium, France, Latvia and Slovenia. While in Belgium the ENNHRI member provided feedback on national legislative initiatives, in France, Latvia and Slovenia the NHRIs provided opinions either through consultations on the EU Artificial Intelligence Act, or on the CoE regional convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law. Notably, ENNHRI is also playing a role in this context, including through developing a [common position](#) of European NHRIs on the draft Council of Europe AI Convention, as well as through participating as Observer to the CoE negotiations.

In Denmark, Greece, Latvia and Netherlands, NHRIs also emphasise the **drafting of dedicated reports** looking at the impact of

Artificial Intelligence on human rights, as well as participating in **dialogues with state authorities** on human rights impacts, as reported specifically by Denmark, Greece and Poland. Artificial intelligence has been one of the key priorities included in the **NHRI's annual action plans** of ENNHRI members from both Romania and the Netherlands.

In order to address insufficient public awareness on the AI and its impact on rule of law, democracy and fundamental rights, ENNHRI members from Belgium, Estonia, Greece, Latvia, Netherlands and Poland have prioritised **awareness-raising activities**, either through seminars and targeted discussions (in Estonia, Greece, and Poland), or through trainings, as flagged by the Belgian member (Unia).

Given the novelty of this field, ENNHRI is investing further in facilitating peer exchange amongst its members on AI, as well as in capacity-building activities. ENNHRI will be building on [ENNHRI's 2022 NHRI Academy](#), bringing together staff from across European NHRIs, around the topic of AI.

European Union 2023

Other challenges to the rule of law and human rights

ENNHRI key recommendation:

In view of the intrinsic interconnection between the rule of law and fundamental rights, ENNHRI recommends the Commission to:

- further recognise and consider systemic human rights issues in its actions to address the rule of law, including its annual rule of law reporting.

While ENNHRI's joint reporting on the rule of law focused on specific issues of concern addressed above (such as NHRI independence and effectiveness, civic space and HRDs, the use of AI), ENNHRI members still reported on other key rule of law and fundamental rights challenges, of particular importance within their domestic context. In their country reports, ENNHRI members provide examples of specific threats to media freedom, access to justice and independence of judiciary, check and balances, among others. Below, a general overview of reported challenges regarding other rule of law areas and human right issues impacting rule of law compliance is presented.

ENNHRI members point at a number of **human rights issues which**

negatively impact on the rule of law environment in their respective EU Member States.

Several ENNHRI members flag the threats to **media freedom, including insufficient transparency of the media market and limits to freedom of expression**, as emphasized by ENNHRI members from Denmark, Finland, Germany, Latvia, Poland and Romania. For example, in the Finnish context, the NHRI reports issues such as lower media freedom score, risks of media concentration, lack of media regulation and risks of commercial pressure on media outlets. **Harassment, hate speech and threats to journalists** have been emphasized by NHRIs in Latvia, Finland, Germany and Slovakia. In Germany, media and journalists were harassed during demonstrations, while in Finland the NHRI reports on charges pressed against journalists for revealing confidential information. Moreover, in Denmark, freedom of expression and right to privacy were hampered by the actions of tech giants and their platforms.

ENNHRI members also report about **threats to the system of checks and balances**. In some countries, and in particular in Estonia, France, Latvia, Luxembourg and Romania, NHRIs stress the need to **improve the quality of legislative processes**, for instance, impacted by the unproportionate use of accelerated legislative procedures as in France, and insufficient implementation of legislation in practice as in Romania. ENNHRI members from Germany and Lithuania also flag the importance of strengthening the independence of equality bodies, which is of particular relevance in the context of the [EC's legislative proposals on Equality Bodies](#).

Numerous EU NHRIs emphasized challenges in their national contexts regarding **access to justice**. More specifically, issues were raised over **length of proceedings** and concerns over the **respect for a fair trial**, as highlighted by the NHRI from the Netherlands. In Germany and Ireland, the NHRI emphasized the need to improve effective **access to justice by vulnerable groups**, such as children. Furthermore, EU NHRIs point out the **need for legislative reforms improving justice systems**. As flagged by the NHRIs from Cyprus and Greece, legislation and measures to tackle long delays in court proceedings is needed. The NHRI from Luxembourg, at its turn, highlights the need for an effective witness protection program.

Lastly, ENNHRI members also emphasized serious concerns with regard to the **protection of LGBTIQ+ individuals**, as reported by NHRIs from Latvia, Lithuania and Slovakia. While the former report the need to ensure the economic and social protection and support of the same-sex partners' families, the latter has raised concerns over discriminatory practices against the LGBTIQ+ community in Lithuania. In Latvia, furthermore, the NHRI also highlights the need to implement the Council of Europe Convention on preventing and combating **violence against women** (Istanbul convention). As

developed further in the cross-regional overview in relation to civic space, other key human rights challenges are flagged by NHRIs in relation to the rights of **asylum and migrants**, as well as in relation to **hate speech and discrimination**, and ensuring human rights in the context of **climate change**. Worryingly, HRDs, including NHRIs, which stand up to address such key human rights challenges face undue obstacles and challenges when addressing such key human rights issues.

References

This list of references covers the whole country report.

¹ Baseline study on the implementation of the [Council of Europe Committee of Ministers Recommendation on the development of effective, pluralis t and independent NHRIs](#) forthcoming 31 May 2023.

²See for example: International Service For human Rights (ISHR), ‘The Potential of NHRIs to Serve as Protection Mechanisms for Human Rights Defenders, [here](#).

³See further: EIN and DRI, ‘Justice Delayed and Justice Denied. Non-Implementation of European Courts’ Judgments and the Rule of Law’, April 2022, [here](#).

⁴ENNHRI [Guidance for NHRIs on ECtHR Judgment Implementation](#).

⁵[ENNHRI Submission to Council of Europe High-Level Reflection Group - July 2022](#).

⁶See further: [Guidance for NHRIs on ECtHR Judgment Implementation](#).

⁷As reported during ENNHRI’s webinar on Implementation of ECtHR judgments (2021) by the Human Rights Ombudsman of the Republic of Slovenia: [How has Slovenia managed to cut down the number of non-implemented judgments by setting up a strong structure at the domestic level?](#) .

⁸ See: [Proposal](#) for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts, 2021/0106(COD), of 25 November 2022.