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2023 Rule of Law Report Country Chapter on the rule of law situation in Malta

Accompanying the document

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

2023 Rule of Law Report

The rule of law situation in the European Union

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ABSTRACT

The level of perceived judicial independence in Malta remains high. However, no steps have been taken to involve the judiciary in the procedure for appointment of the Chief Justice. Certain types of prosecution continue to be transferred to the office of the Attorney General, a Strategic and Operational Plan for the prosecution service has been launched, and a new disciplinary regime for prosecutors has been established. Regarding the quality of the justice system, new judges have been appointed, but the overall level of resources, including the number of clerical staff, raises concerns. A steering committee was established and has initiated work to enhance the digitalisation of the justice system. Work on draft legislation regulating the lawyers' profession is ongoing. The efficiency of justice has further deteriorated, with initial steps being taken to improve the situation.

The National Anti-Fraud and Corruption Strategy was updated on time, and its implementation will be monitored on an ad hoc bilateral basis. Prosecution was launched by the Attorney General office in relation to some cases, but challenges related to high-level corruption cases, including the lack of a robust track record of final judgments remain. The capacity of the Permanent Commission against Corruption to reach tangible results remains low. New resources and initiatives were deployed to increase the integrity in the public service. The Office of the Commissioner for Standards in Public Life is continuing the series of reviews of ethics rules for high-ranking officials. Some concerns were raised regarding the modified procedure for the appointment of the Commissioner for Standards in Public Life, the transparency of the results of audits, and the funding of political parties. New info-tools on whistleblowers procedures are available. The investor citizenship scheme continues to raise concerns.

While the media reform process launched following the publication of the report of the Daphne Caruana Galizia public inquiry is still ongoing, no measures have been adopted to improve the working environment of journalists. The Committee of Experts set up for this purpose was granted additional time to carry out wider consultations. The review of the Freedom of Information Act remains pending and media houses and citizens continue to face obstacles when requesting access to information held by public authorities. No steps have been taken to enhance the independent governance and editorial independence of public service media. The absence of a legal framework to ensure transparency in state advertising remain an issue of concern. While there have been no developments with regard to the legislative framework establishing the Broadcasting Authority, a Constitutional Court judgement has clarified the authority's role.

A new Ombudsperson was appointed while the establishment of a human rights institution remains pending. The Constitutional Convention announced in 2019, which is to contribute to addressing concerns regarding the appointment of constitutional bodies and the role of Parliament, remains on hold without a clear calendar. The lack of a formalised process for public participation continues to raise concerns. The Commissioner for Voluntary Organisations continued his efforts to enhance the civil society space.

RECOMMENDATIONS

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

- No progress on addressing the need for involvement of the judiciary in the procedure for appointment of the Chief Justice, taking into account European standards on judicial appointments and the opinion of the Venice Commission.
- Some progress on strengthening efforts to improve the efficiency of justice, particularly to reduce the length of proceedings.
- Some progress on addressing challenges related to the length of investigations of high-level corruption cases; and no progress on establishing a robust track record of final judgments.
- Some progress on advancing with the introduction of legislative and other safeguards to improve the working environment of journalists and no further progress on access to official documents, taking into account European standards on the protection of journalists.
- No progress on strengthening the rules and mechanisms to enhance the independent governance and editorial independence of public service media taking into account European standards on public service media.
- No progress on re-launching efforts to establish a National Human Rights Institution taking into account the UN Paris Principles.

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

- Take steps to address the need for involvement of the judiciary in the procedure for appointment of the Chief Justice, taking into account European standards on judicial appointments and the opinion of the Venice Commission.
- Further strengthen efforts to improve the efficiency of justice, particularly to reduce the length of proceedings.
- Step up measures to address challenges related to the length of investigations of high-level corruption cases, including by establishing a robust track record of final judgments.
- Adopt legislative and other safeguards to improve the working environment of journalists, including on access to official documents, taking into account European standards on the protection of journalists and on access to official documents.
- Strengthen the rules and mechanisms to enhance the independent governance and editorial independence of public service media taking into account European standards on public service media.
- Take measures to establish a National Human Rights Institution taking into account the UN Paris Principles.
- Introduce a framework for public participation in the legislative process.

I. JUSTICE SYSTEM

The Maltese justice system is influenced by both the continental and the common law traditions. Courts are divided into Superior and Inferior Courts. Superior Courts are composed of judges and include the Civil Court, the Criminal Court, the Court of Appeal, the Court of Criminal Appeal and the Constitutional Court. Inferior Courts are composed of magistrates and include the Court of Magistrates (Malta) and the Court of Magistrates (Gozo). The judiciary is headed by the Chief Justice who also presides over the Constitutional Court. A Commission for the Administration of Justice supervises the workings of all the superior and inferior courts. A number of specialised tribunals exist, adjudicating in specific areas. A fully separate Prosecution Service was set up in 2019. Malta participates in the European Public Prosecutor's Office (EPPO). The Bar Association (Chamber of Advocates) is an independent and self-regulated professional body of lawyers.

Independence

The level of perceived judicial independence in Malta continues to be high both among the general public and companies. Overall, 66% of the general population and 65% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2023¹. According to data in the 2023 EU Justice Scoreboard, the perceived judicial independence among the general public has slightly decreased in comparison with 2022 (67%), inverting a previous increasing trend until 2021. The figure remains higher than in 2016 (44%). The perceived judicial independence among companies has slightly decreased in comparison with 2022 (68%), as well as with 2016 (68%).

There has been no progress to involve the judiciary in the procedure for appointment of the Chief Justice. The 2022 Rule of Law Report recommended to Malta to "address the need for involvement of the judiciary in the procedure for appointment of the Chief Justice, taking into account European standards on judicial appointments and the opinion of the Venice Commission"². Following the constitutional changes made in 2020, the Chief Justice is appointed by a two-thirds majority in Parliament³. According to the authorities, no further legislative changes are planned, and this provision has, to date, not yet been used⁴. As indicated in previous Rule of Law Reports⁵, the fact that there is no involvement of the judiciary in the appointment of the Chief Justice requires further attention, in particular in view of the many roles played by the Chief Justice in the justice system⁶ and the fact that the law allows the

¹ Figures 49 and 51, 2023 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

² 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 2.

³ Article 96(3) of the Constitution of Malta.

⁴ Input from Malta for the 2023 Rule of Law Report, p. 4.

⁵ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 3; 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, pp. 3-4.

⁶ The Chief Justice is President of the Constitutional Court and President of the Court of Appeal (presiding in both appeal panels), and performs important responsibilities in the administration of the justice system such as chairing the Judicial Appointments Committee, and is a member of the Commission for the Administration of Justice responsible for judicial discipline. As regards the standards applicable to court presidents, see Consultative Council of European Judges (CCJE), Opinion n° 19 (2016), the Role of Court Presidents, para. 53. The current Chief Justice, who was already a senior judge, was appointed in April 2020 in accordance with the procedure based on a two-third majority in Parliament (before it became a legal obligation).

appointment to the office of a person who is not already a judge⁷. According to European standards, where there are legal provisions prescribing that the legislative power takes decisions on the selection of judges, the opinion of an independent and competent authority drawn in substantial part from the judiciary should be followed in practice by the relevant appointing authority⁸. Moreover, no steps have been taken to introduce an anti-deadlock mechanism for the appointment of the Chief Justice, as recommended by the Venice Commission⁹. This has also been considered an issue by some stakeholders¹⁰. No steps have been taken to change the system of appointment of the Chief Justice, therefore there has been no progress in the implementation of the recommendation made in the 2022 Rule of Law Report.

The transfer of certain types of prosecutions to the Office of the Attorney General continues, and a Strategic and Operational Plan has been launched. The transfer of certain types of prosecutions¹¹ from the police to the Attorney General continues, according to its timeline¹². On 1 October 2022, the third phase of the transition period was carried out and the Office of the Attorney General is now empowered to prosecute additional offences before inferior courts¹³. Recruitments of new prosecutors and clerical staff continued¹⁴, and on 16 December 2022 the Office of the Attorney General and the trade union representing the legal staff signed a collective agreement revising the remuneration packages and conditions of employment within the Attorney General's Office¹⁵. On 15 February 2023, the Office of the Attorney General launched a Strategic and Operational Plan¹⁶, a five-year strategy including specific milestones related to, among others, training and education of prosecutors and other matters related to conditions of employment and human resources. The appointment of the

⁷ The appointment, role and functions of the Chief Justice are determined primarily by the Constitution and by the Code of Organisation and Civil Procedure. In practice, the person occupying the position of the Chief Justice in Malta has always been a seasoned lawyer or judge.

⁸ Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 47. Under EU law, the involvement of a body such as the Council for the Judiciary in judicial appointment procedures may contribute to making that process more objective by circumscribing the executive's discretion as regards such appointments, provided that such council is sufficiently independent. Judgment of the Court of Justice of 20 April 20, *Repubblika*, C-896/19, EU:C:2021:311; judgment of the Court of Justice of 2 March 2021, *A.B. et al.*, C-824/18, EU:C:2021:153, paras. 124-127 and the case-law cited.

⁹ Venice Commission, CDL-AD(2020)019-e, Opinion of 8 October 2020 on Malta - Opinion on ten Acts and bills implementing legislative proposals subject of Opinion CDL-AD(2020)006, para. 43; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 3.

¹⁰ Contribution from the Aditus Foundation and the Daphne Caruana Galizia Foundation for the 2023 Rule of Law Report, p. 11; information provided by the Chief Justice in the context of the country visit to Malta.

¹¹ Those relate to non-summary cases, which are cases punishable with a penalty exceeding 2 years of imprisonment.

¹² 2021 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 4; 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 5.

¹³ Input from Malta for the 2023 Rule of Law Report, p. 12. In particular, the Office of the Attorney General is now also empowered to take the decision to prosecute the following offences: a) forgery of Government, judicial or official acts; b) forgery of acts by public officer; c) crimes related to sex trafficking; d) female genital mutilation, enforced sterilisation and forced marriage; e) causing explosion likely to endanger life or property; f) illicit importation of radioactive waste; and g) attempts or conspiracy to commit or complicity in the previously mentioned offences.

¹⁴ During 2022, 14 new lawyers were recruited. Information provided by the Attorney General in the context of the country visit to Malta.

¹⁵ Input from Malta for the 2023 Rule of Law Report, p. 9.

¹⁶ The plan was prepared with technical assistance provided by the European Commission and the World Bank.

Attorney General still remains predominantly under the power of the Prime Minister, which has been raised as an issue already in the 2020 Rule of Law Report¹⁷.

A new disciplinary regime for prosecutors has been established. The collective agreement signed on 16 December 2022 between the Office of the Attorney General and the trade union representing its legal staff includes a disciplinary regime for prosecutors¹⁸. The regime establishes different levels of disciplinary offences as well as the procedure to be followed. Minor offences¹⁹ are heard by the Head Corporative Services, a specific department of the Office of the Attorney General. Serious offences²⁰ are adjudicated upon by a disciplinary board. This board will be specific for each case. It will be composed of three members: one chosen by the trade union, one chosen by the Office of the Attorney General, and a chairperson chosen by agreement of the two other members. Decisions of the disciplinary board can be appealed before an Appeal Board, with a mandate of three years and a similar composition to the disciplinary board²¹. Sanctions for serious offences include suspension, demotion, and dismissal of prosecutors. According to the Office of the Attorney General, decisions of the Appeal Board would be challengeable before the courts²². According to European standards, an appeal to a court should be available for disciplinary sanctions taken by disciplinary committees against prosecutors²³. The collective agreement provides that proceedings are confidential, whereas according to European standards the disciplinary proceedings should in principle be held in public²⁴.

The appointment regime for members of specialised tribunals continues to raise concerns. As reflected in the 2022 Rule of Law Report²⁵, the Government has committed in its Recovery and Resilience Plan to carry out a review of the independence of the specialised tribunals in communication with the Venice Commission²⁶, and the corresponding legislative changes are to enter into force by 31 March 2026. Stakeholders have continued voicing criticism regarding

¹⁷ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 5; Venice Commission, CDL-AD(2010)040, Independence of the Judicial System, Part II: The Prosecution Service, para. 34-35.

¹⁸ Collective agreement between the Office of the Attorney General and the trade union, Section 4; input from Malta for the 2023 Rule of Law Report, p. 11.

¹⁹ Minor offences include late attendance, unjustified absence and idling at the Office.

²⁰ Serious offences include breach of codes of ethics, negligence in the performance of the duties or defective work.

²¹ The Appeal Board will also be composed of three members: one chosen by the trade union, one chosen by the office of the Attorney General, and a chairperson chosen by agreement of the two other members.

²² Information provided by the Association of judges and magistrates of Malta in the context of the country visit to Malta.

²³ Venice Commission CDL-AD(2010)040-e, para. 52.

²⁴ Judgment of the European Court of Human Rights of 21 June 2016, Ramos Nunes de Carvalho E Sá v. Portugal, 55391/13.

²⁵ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, pp. 5-6.

²⁶ On a proposal from the Commission, the Council adopted the Council Implementing Decision of 5 October 2021 on the approval of the assessment of the recovery and resilience plan for Malta, under which the Milestone no. 6.3 states: ‘An independent contractor shall be engaged through public procurement procedures, in order to assess the independence of the specialised tribunals at national level. This assessment shall be carried out in communication with the Council of Europe’s Venice Commission.’ The report shall include (p. 60 of the Annex) (i) an assessment of the guarantees of independence for appointments of members to said specialised tribunals, (ii) an assessment of the guarantees which provide for the tribunals’ decisions to be fully reviewed by the ordinary courts of appeal, and (iii) concrete and precise policy recommendations. Milestone no. 6.4 states: ‘Legislative changes shall undertake remedial action based on the findings/recommendations made by the independent review on the independence of the specialised tribunals’.

the system of appointment of members of these specialised tribunals²⁷, as members are often appointed through a procedure involving only the executive power, as also illustrated by a recent case of the European Court of Human Rights²⁸. Moreover, decisions of those tribunals are at times only subject to judicial review on points of law, but not on points of fact.

Quality

Although the number of judges has been increased, the level of resources, including the limited number of clerical staff, remains a concern. The number of judges per person in Malta continues to be among the lowest in the EU²⁹, which could also affect the efficiency of the justice system. Following calls for appointment of judges in 2022 and 2023, there has been an increase of four members of the judiciary³⁰. New members of the judiciary have complained about a lack of basic resources and skilled support staff for the implementation of their tasks³¹. In July 2022, the Court Services Agency signed a collective agreement on working conditions for support staff³² and launched a procedure to recruit court clerks, court messengers and deputy registrars in January 2023³³. However, according to stakeholders, the number of applications received was low and challenges remain to find staff with the necessary level of skills to perform their duties³⁴. Moreover, shortcomings regarding the limited availability of office and courtroom space persist³⁵. According to the 2023 EU Justice Scoreboard, women are underrepresented in the top judicial positions³⁶, while the number of female judges approximately constitute half of the total judiciary.

A steering committee has been set up to establish targets – in line with the Digital Justice Strategy – to address gaps in the digitalisation of justice. Following the adoption of the Digital Justice Strategy, a steering committee was set up in 2022³⁷, with the task of operationalising the Strategy and establishing specific targets. Several working groups have been created within the committee, involving stakeholders who are currently reviewing legislation in order to facilitate the transition to a digital justice system. One of the first tasks for the steering committee is a mapping of changes needed to render the justice system more adapted to the Digital Strategy³⁸. To this effect, a tender has been published requesting process mapping across several justice entities. The tender is currently in evaluation stage and it is envisaged that implementation starts by the end of the year³⁹. Moreover, the Government has

²⁷ Contribution from the Aditus Foundation and the Daphne Caruana Galizia Foundation for the 2023 Rule of Law Report, p. 12.

²⁸ Judgment of the European Court of Human Rights of 20 December 2022, S.H. v. MALTA, 37241/21.

²⁹ Figure 35, 2023 EU Justice Scoreboard.

³⁰ Input from Malta for the 2023 Rule of Law Report, p. 5.

³¹ Information provided by the Association of judges and magistrates of Malta and the Chief Justice in the context of the country visit to Malta.

³² Government of Malta 2022, Minister for Justice Jonathan Attard presides over the signing of a collective agreement for Court Services Agency's employees.

³³ Input from Malta for the 2023 Rule of Law Report, p. 17.

³⁴ Information provided by the Association of judges and magistrates of Malta and the Chamber of Advocates in the context of the country visit to Malta.

³⁵ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 7.

³⁶ Figure 36, 2023 EU Justice Scoreboard.

³⁷ Input from Malta for the 2023 Rule of Law Report, p. 6.

³⁸ Information provided by the Association of judges and magistrates of Malta in the context of the country visit to Malta.

³⁹ Information provided by the Government in the context of the country visit to Malta.

launched a number of projects and tenders⁴⁰, including acquisition of hardware, in line with the investments foreseen in the Recovery and Resilience Plan⁴¹. Likewise, the Legal Aid Agency is introducing its own case management system⁴². These actions will contribute to addressing important gaps in the digitalisation of justice as identified in the 2023 EU Justice Scoreboard and indicated by stakeholders⁴³. In particular, Malta is still falling behind in areas such as use of digital technology by courts and prosecution service⁴⁴, online filing, and availability of electronic tools for courts and prosecution services to communicate with court users and other bodies⁴⁵. The current efforts at creating the necessary digital infrastructure in the Maltese justice sector with the eventual interoperability between systems could eventually address current digital shortcomings.

A legislative initiative regulating the activities of lawyers is under preparation. A working group has been set up for the preparation of a Lawyers Act. The working group includes the relevant governmental services and members of the Chamber of Advocates⁴⁶. The need for legislation regulating lawyers' activities has been a long-standing request from the legal profession⁴⁷.

Efficiency

The efficiency of the justice system has further deteriorated and raises concerns. Most efficiency indicators, as shown in the 2023 EU Justice Scoreboard, have worsened. For instance, the estimated time needed to resolve administrative cases at first instance is 1356 days, the longest within the EU⁴⁸. Furthermore, the clearance rate has further deteriorated and is now at 89.2%, showing that fewer cases are resolved than come in⁴⁹ even though there was an increase of resolved cases of 20% that was still offset by an increase of 22% in incoming cases⁵⁰. This is a particular concern for civil and commercial cases, where the rate is 78.1%⁵¹. The number of incoming cases has increased⁵². Limited progress is registered regarding the estimated time needed to resolve litigious civil and commercial cases at first instance, which decreased from 550 to 529 days⁵³. Stakeholders have raised concerns in relation to the

⁴⁰ Input from Malta for the 2023 Rule of Law Report, p. 6.

⁴¹ On a proposal from the Commission, the Council adopted the Council Implementing Decision of 5 October 2021 on the approval of the assessment of the recovery and resilience plan for Malta, under which the Milestone 6.40 states: 'Launch and availability to users of the developed IT tools and systems'. The investment shall consist of two parts (p. 65 of the Annex): (a) mapping and redesign of processes towards end-to-end digital processes, project management, legal and overall consultancy and cost-benefit analysis support - this covers the horizontal requirements to support the investment including supporting software as well as outsourcing services to guarantee that adequate resources, skills and expertise are ensured; and (b) a number of digital solutions for the justice system.

⁴² Information provided by the Government in the context of the country visit to Malta.

⁴³ Contribution from the Aditus Foundation and the Daphne Caruana Galizia Foundation for the 2023 Rule of Law Report, p. 11.

⁴⁴ Figure 42, 2023 EU Justice Scoreboard.

⁴⁵ Figures 43 and 44, 2023 EU Justice Scoreboard.

⁴⁶ Information provided by the Chamber of Advocates in the context of the country visit to Malta.

⁴⁷ Ibid.

⁴⁸ Figure 9, 2023 EU Justice Scoreboard.

⁴⁹ Figure 12, 2023 EU Justice Scoreboard.

⁵⁰ Information provided by the Government in the context of the country visit to Malta.

⁵¹ Figure 11, 2023 EU Justice Scoreboard.

⁵² Figure 3, 2023 EU Justice Scoreboard.

⁵³ Figure 6, 2023 EU Justice Scoreboard.

efficiency of justice, including as regards specific cases such as criminal cases of domestic violence⁵⁴.

Some progress has been made to improve the efficiency of the justice system. The 2022 Rule of Law Report recommended to Malta to “strengthen efforts to improve the efficiency of justice, particularly to reduce the length of proceedings”⁵⁵. Recent legal changes in relation to the handling of appeal cases⁵⁶ started to have positive effects in relation to the length of proceedings⁵⁷. As stated in the 2022 Rule of Law Report⁵⁸, the Government announced the preparation of a draft law aimed at reforming legal provisions related to the compilation of evidence procedure. While such a reform could contribute to reducing the length of proceedings in criminal cases, the preparation of this draft law is delayed. The Government established a working group to review the procedures of the Family Courts in their civil and criminal jurisdictions⁵⁹, which could contribute to increasing the efficiency of justice in family law cases. The above-mentioned measures could have a positive impact on the efficiency of justice in the short term. However, comprehensive actions to address concerns regarding the efficiency of justice in all jurisdictions remain to be implemented. Therefore, there has been some progress in the implementation of the recommendation made in the 2022 Rule of Law Report.

II. ANTI-CORRUPTION FRAMEWORK

The institutional anti-corruption framework comprises several authorities. The Permanent Commission Against Corruption (PCAC) is responsible for corruption prevention and for carrying out administrative investigations into corrupt practices. The Commissioner for Standards in Public Life monitors the ethics of ministers, parliamentary secretaries, and members of Parliament. Investigation and prosecution of economic crime, including corruption offences and money laundering, fall under the competence of the Police (the Financial Crimes Investigation Department) and the Attorney General, respectively. The latter continues to take over the prosecution of all offences carrying a conviction of more than 2 years imprisonment, including corruption. Other bodies involved in the fight against corruption are the Ombudsperson office⁶⁰, the Financial Intelligence Analysis Unit (FIAU) and the Internal Audit and Investigations Department (IAID)⁶¹. The latter conducts internal audits and investigations within all governmental departments and agencies. The Public Service Commission (PSC) is responsible for the discipline of civil servants. Malta is not a signatory party to the OECD Anti-Bribery Convention⁶².

⁵⁴ Contribution from the Aditus Foundation and the Daphne Caruana Galizia Foundation for the 2023 Rule of Law Report, p. 20; Contribution from Repubblika for the 2023 Rule of Law Report, p. 15. According to information provided by the Government, steps such as the appointment of an additional magistrate to deal with domestic violence cases have been taken, aimed to increase the efficiency of dealing with such cases.

⁵⁵ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 2.

⁵⁶ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 8.

⁵⁷ Input from Malta for the 2023 Rule of Law Report, p. 7; Information provided by the Association of judges and magistrates of Malta and the Chief Justice in the context of the country visit to Malta.

⁵⁸ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 8.

⁵⁹ Input from Malta for the 2023 Rule of Law Report, p. 17, and information provided by the Government.

⁶⁰ As per Part 2 of Act XLII of 2020 introduced two amendments to the Ombudsman Act.

⁶¹ It conducts internal audits and investigations within all governmental departments and agencies.

⁶² OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Ratification Status.

The perception among experts and business executives is that the level of corruption in the public sector remains relatively high⁶³. In the 2022 Corruption Perceptions Index by Transparency International, Malta scores 51/100 and ranks 23 in the European Union and 54 globally. This perception has been relatively stable⁶⁴ over the past five years. The 2023 Special Eurobarometer on Corruption shows that 92% of respondents consider corruption widespread in their country (EU average 70%) and 63% of respondents feel personally affected by corruption in their daily lives (EU average 24%)⁶⁵. As regards businesses, 76% of companies consider that corruption is widespread (EU average 65%) and 56% consider that corruption is a problem when doing business (EU average 35%)⁶⁶. Furthermore, 15% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 32%)⁶⁷, while 33% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 30%)⁶⁸.

The recommendations focused on anti-corruption that were issued following the public inquiry into the assassination of journalist Daphne Caruana Galizia⁶⁹ remain to be implemented⁷⁰. The public inquiry's recommendations included the adoption of legislative measures to improve the asset declaration mechanism aimed at avoiding and detecting unexplained wealth; the strengthening of the codes of ethics for public officials to further prevent improper conduct of public officials in the execution of their duties; and actions to improve the protection of whistleblowers.

The National Anti-Fraud and Corruption Strategy was updated on time, and its implementation will be monitored on an ad hoc bilateral basis. Last year, the Action Plan of the National Anti-Fraud and Corruption Strategy (NAFCS)⁷¹ was updated⁷², and the Co-ordinating Committee⁷³ for NAFCS identified several corruption risks⁷⁴ through a national

⁶³ Transparency International (2023), Corruption Perceptions Index 2022. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50)".

⁶⁴ The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last five years.

⁶⁵ Special Eurobarometer 534 on Corruption (2023). The Eurobarometer data on citizens' corruption perception and experience is updated every year. The previous data set is the Special Eurobarometer 523 (2022).

⁶⁶ Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023). The Eurobarometer data on business attitudes towards corruption as is updated every year. The previous data set is the Flash Eurobarometer 507 (2022).

⁶⁷ Special Eurobarometer 534 on Corruption (2023).

⁶⁸ Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023).

⁶⁹ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 15.

⁷⁰ Written contribution from the Ministry of Justice in the context of the country visit in Malta.

⁷¹ The Anti-Fraud Policy and Strategy

⁷² Following the tabling of the National Anti-Fraud and Corruption Strategy (NAFCS) in parliament in May 2021. Input from Malta for the 2023 Rule of Law Report.

⁷³ The Co-ordinating Committee responsible to monitor the implementation of the NAFCS was established in terms of Article 23 of the Internal Audit and Financial Investigations Act (as per Cap 461 of the Laws of Malta). See National Risk Assessment (NRA), page 4. The NRA is foreseen under the recovery and resilience plan for Malta, at the Milestone no. 6.11.

⁷⁴ Notably corruption in public procurement, unlawful use of information and use of resources, misappropriation of funds, conflict of interest and other types of fraud.

fraud and corruption-risk assessment, which was published in December 2022⁷⁵. The Coordinating Committee for NAFCS agreed that ad hoc bilateral meetings will be held between the IAID and the respective national authorities⁷⁶ in order to monitor the mitigating actions against the identified risks⁷⁷.

Prosecution was launched by the Attorney General office to some cases, showing some progress addressing challenges related to high-level corruption cases, while there was no progress on establishing a robust track record of final judgments. The 2022 Rule of Law Report recommended to Malta to “address challenges related to the length of investigations of high-level corruption cases, including by establishing a robust track record of final judgments”⁷⁸. In 2022, the Financial Crime Investigation Department (FCID) of the Police investigated 33 cases, including some against former high-level officials⁷⁹. Last year, around 19 officers (including the Deputy Commissioner, the superintendent and senior investigators) resigned or retired from FCID⁸⁰, while others were seconded to different departments⁸¹. The transfer of prosecutorial powers to prosecute cases of corruption initiated in 2020 from the police force to the Attorney General office continues⁸², with some initiatives taken to improve the capacity of the Attorney General office⁸³. In 2022, the Attorney General Office concluded 13 cases on financial crimes (with decision not to prosecute⁸⁴) while 71 cases remain pending before the courts⁸⁵. In February 2023, multi-million public contracts in the health sector were

⁷⁵ National Risk Assessment, p. 7. Input from Malta for the 2023 Rule of Law Report, p. 25. Note: the NRA aims to: maintain an effective risk-based regime to combat fraud and corruption; prioritise and allocate public sector resources efficiently; help National Authorities to assess the adequacy of their controls and strengthen them where necessary; increase awareness among the general public; and update the present Action Plan which is an integral part of the NAFCS. The NRA was published in December 2022 and is part of the RRP of Malta, as per the Annex to the Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Malta, pp. 69-70.

⁷⁶ Input from Malta for the 2023 Rule of Law Report.

⁷⁷ Input from Malta for the 2023 Rule of Law Report, p. 34.

⁷⁸ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 2.

⁷⁹ Euronews (2022), John Dalli: Former EU Commissioner pleads not guilty to bribery charges.

⁸⁰ In 2021, FCID had personnel of 107 officers. 2022 Rule of Law Report, p. 10. See also Time of Malta (2023), Two assistant police chiefs retire amid concerns on increasing workload; Newsbook (2022), Superintendent Frank Anthony Tabone quits role; Time of Malta (2022), Financial crimes chief Alexandra Mamo resigns.

⁸¹ Borg (2022), Police’s financial crime department has lost a fifth of its officers in less than a year.

⁸² The transfer of prosecutorial power over serious crimes (i.e. crimes carrying a sanction of two years imprisonment and above, including corruption) was initiated in October 2020, and should be completed by October 2024, as per the Recovery and resilience plan for Malta, Milestone no. 6.8. For further information on the actions taken by the Attorney General’s office, see above. Information received from the Attorney General office in the context of the country visit to Malta.

⁸³ In 2022, the Attorney General office hired 14 lawyers (12 of which were assigned to the prosecution), updated the internal standards operating procedures, followed by reorganisation of the office. In February 2023, the Attorney General office launched a 5-year Strategic and Operational Plan to improve internal procedures and specialization of personnel – see section 1 above.

⁸⁴ For different reasons: statutory time limitation; case referred to the EPPO; or because there was no sufficient evidence to request a trial. In 2022, there were 11 convictions for financial crimes. Information received from the Attorney General office in the context of the country visit to Malta.

⁸⁵ 18 cases on money laundering, and 53 “mixed cases”, i.e. on money laundering and predicate offence (mostly computer misuse and corruption). Written contribution from Attorney General office in the context of the country visit in Malta.

declared null by a civil court⁸⁶ due to fraudulent acts vitiating the procurement procedure⁸⁷. A magisterial inquiry was initiated into this case⁸⁸. In 2022, the length of investigations remains problematic⁸⁹ (mainly due to the lack of human resources⁹⁰, including in investigative magistrates⁹¹, and insufficient training⁹²), and there is no progress on delivering final judgements on high-level cases of corruption⁹³. Civil society associations perceive a regression of the anti-corruption frameworks in Malta compared to previous years⁹⁴. So far, there has been some progress on addressing challenges related to the length of investigations of high-level corruption cases, and no progress on establishing a robust track record of final judgments, so overall some progress on the implementation of the recommendation made in the 2022 Rule of Law Report.

The capacity of the Permanent Commission against Corruption to achieve tangible results remains low. In 2022, the PCAC received two new cases, and closed three previously pending cases (for lack of evidence), while in 2023 one case was closed, and two remain pending for further examination⁹⁵. The PCAC has never challenged a decision by the Attorney General not to prosecute a case of corruption⁹⁶, and it has no case-management system in place

⁸⁶ Civil court, first hall, 24 February 2023, ECLI:MT:CIVP:2023:137268. Businesses' attitudes towards corruption in the EU shows that 31% of companies in Malta (EU average 26%) think that corruption has prevented them from winning a public tender or a public procurement contract in practice in the last three years, see Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023). This is 5 percentage points above the EU average.

⁸⁷ Times of Malta (2023), As it happened: Court annuls 'fraudulent' hospitals deal in dramatic judgment.

⁸⁸ Input from Malta for the 2023 Rule of Law Report. According to Article 4 (Nature of criminal action) of the Maltese criminal code: (2) A criminal action is prosecuted *ex officio* in all cases where the complaint of the private party is not requisite to set the action in motion or where the law does not expressly leave the prosecution of the action to a private party.

⁸⁹ Also due to the expiry of the statute of limitations on corruption. Input from the Repubblica for the 2023 Rule of Law Report, p. 19. Police investigations are known to have taken up to five years. 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 10. The expiry of the statute of limitations on corruption (Input from the Repubblica for the 2023 Rule of Law Report, p. 19).

⁹⁰ The limited personnel to adjudicate corruption cases is a serious concern according to the Chief Justice. Newsbook (2022), Chief Justice says delays and lack of resources scarring justice system.

⁹¹ There is a severe lack of resources of qualified magistrates, to work on criminal cases, including those on corruption. On average, each judge is assigned 200 new cases per year, which add to the cases received in previous years. Investigation magistrates often appoint private experts (including foreign experienced professionals), which can take a considerable time to produce expert opinion. Investigations are pending until the prosecutor decides to close the investigations or bring the case to Court. 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 11.

⁹² The FCID faces a challenge in retaining trained officers, which may be hired for higher salaries by private companies or other public bodies. Information received from the Police in the context of the country visit to Malta.

⁹³ No information on final judgements on high-level cases of corruption is available. Statistics on judgments concerning corruption cases are complicated by the fact that judgments are published (online at eCourts) with no indication on the type of crime.

⁹⁴ Information received from the Daphne Caruana Galizia Foundation, the Repubblica and Aditus Foundation in the context of the country visit to Malta.

⁹⁵ Closed cases continue to be sent to the Minister of Justice for information, and to the Attorney General office. No cases of whistleblowing were received in 2022. Information received from the PCAC in the context of the country visit to Malta.

⁹⁶ Information received from the PCAC in the context of the country visit to Malta. In case the Attorney General decides not to prosecute, the PCAC (in addition to the Ombudsperson office, the Commissioner for Standards of Public Life and the Auditor General) may challenge that decision, as per Act No. XLI of 2020 [former Bill No. 154]. In line with the RRP, a milestone on this subject is foreseen to be implemented by the end of 2024.

yet⁹⁷. The mandate of two PCAC Commissioners (out of three) expired on 25 January 2023⁹⁸, and they have been re-appointed⁹⁹. For the current year, there is no immediate plan to hire specialised full-time staff or procure technical tools in order to accelerate the detection and examination of cases¹⁰⁰. In 2022, the Permanent Commission against Corruption had limited resources and has not shown tangible results in its work. Therefore, the serious challenges concerning the detection and inquiry of corruption cases remain unresolved¹⁰¹. In line with the Malta's RRP, a budgetary and human resources plan drawn up by the PCAC, as well as a number of operational reforms, are expected to be implemented by the end of 2024¹⁰².

Several initiatives aimed at increasing the integrity in the public service have been launched and additional resources allocated. In 2022, the Public Service Commission, increased its personnel and budget¹⁰³, and adopted a new case-management system to improve its performance¹⁰⁴. In 2022, the Commission issued disciplinary sanctions¹⁰⁵ and delivered specific integrity training to civil servants¹⁰⁶. The Institute for Public services is developing an online training on public integrity¹⁰⁷. Last year, the Government started drafting guidelines aimed at promoting integrity in the public sector¹⁰⁸. The Police recruits go through a 6-month

The review shall assess the effects of Act XLI of 2020 and whether an appeal against non-prosecution by the Attorney General or the Police should also be made possible. 2022 Rule of Law Reports, Country Chapter on the rule of law situation in Malta, p. 11. According to the PCAC, it had no ground to challenge a decision by the Attorney General not to prosecute a case of corruption, due to the fact, that the cases which the PCAC sent to the Attorney General did not reveal any corrupt practice. Information received from the PCAC in the context of the country visit to Malta.

⁹⁷ Information received from the PCAC in the context of the country visit to Malta. In line with the Malta's RRP (milestone 6.17) A digital registry shall be created to collect information on corruption cases, actions/procedures in order to enhance the efficiency of the PCAC's operations and to support the work of other public authorities on matters falling within the PCAC's remit, with deadline the last quarter of 2024. Annex to the Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Malta.

⁹⁸ By law, the Chiefs of public institutions whose mandate expired must remain in office until a new Chief is appointed (except in case of resignation before the term of office expires). 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 12. The mandate of the third Commissioner of the PCAC ends in September 2024. Information received from the PCAC in the context of the country visit to Malta.

⁹⁹ Input from Malta for the 2023 Rule of Law Report.

¹⁰⁰ The PCAC remains staffed with three part-time Commissioners, supported by one administrative officer. Information received from the PCAC in the context of the country visit to Malta.

¹⁰¹ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 10.

¹⁰² Annex to the Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Malta, pp. 69-70. 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 10.

¹⁰³ 4 officers were hired to focus on compliance, with the plan to 3 additional officers in the course of 2023. Information received from the Public Service Commission in the context of the country visit to Malta.

¹⁰⁴ In 2022, the Commission assessed 70 selection processes for public administrators, while no such checks were performed in the previous years. Written contribution received by the Public Service Commission in the context of the country visit to Malta.

¹⁰⁵ The disciplinary sanctions were: 28 temporary suspensions, three dismissals, five forfeiture of salaries, and a number of other minor reprimands. Approximately 80 integrity cases were resolved internally by public entities. Written contribution received by the Public Service Commission in the context of the country visit to Malta.

¹⁰⁶ Information received from the Public Service Commission in the context of the country visit to Malta.

¹⁰⁷ Input from Malta for the 2023 Rule of Law Report, p. 34.

¹⁰⁸ In light of the strategy for the public service launched in 2021, an Integrity Training and Assessment Programme is expected to become mandatory for all high-rank positions (such as officers appointed through

training¹⁰⁹, which includes ethics amongst other subjects¹¹⁰. In 2022, the Police Evaluation Board¹¹¹ treated 98 demands for outside activities (compared to 323 in 2021¹¹²). In 2022, 17 anonymous complaints were filed against police officers, with none concerning corruption¹¹³. The Professional Standards Office (with a staff of 11 officials) treated 467 cases (compared to 440 in 2021¹¹⁴), and the Police Disciplinary Appeals Board issued 156 decisions¹¹⁵.

Ethics rules for high-ranking officials are under review, and concerns were raised on the modified procedure to appoint the Commissioner for Standards in Public Life. Following a decision to lower the required appointing majority¹¹⁶, in March 2023 the Parliament appointed the new Commissioner. According to the Government, this new procedure is aimed to establish an anti-deadlock mechanism in case that the required majority in Parliament is not obtained. However, the decision to change the appointing procedure does not reflect international standards promoting the inclusion of parliamentary minorities in the appointment of chief figures responsible for public integrity¹¹⁷. In the second half of 2022, two inquiries were carried out by the office of the Commissioner¹¹⁸, and media indicate allegations of post-mandate conflict of interests for former high-executives and members of the Parliament¹¹⁹. The concerns previously raised by both the Venice Commission and the Group of States against Corruption (GRECO) on the number and duration of positions for persons of trust, as well as on the effective control on the ethics of persons of trust, remain unaddressed¹²⁰. The verification launched by the Commissioner's office into asset declarations of members of

Senior Advisory Appointments Committee, and leadership candidates, including officials at Director Generals levels). Input from Malta for the 2023 Rule of Law Report, pp. 34-35.

¹⁰⁹ The police in Malta counts 2 300 officers, with an annual budget of 90 million EUR (87% of which is spent on salaries). In 2022, there were 56 new recruitments, including 26 part-time officers. Information received from the Police in the context of the country visit to Malta.

¹¹⁰ For the Police, a theory-in-service training, including classes on financial crime, was delivered between September and December 2022, to 152 officers. Input from Malta for the 2023 Rule of Law Report, p. 36.

¹¹¹ Appointed by the Police Commissioner.

¹¹² 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 11.

¹¹³ Written contribution from the Police in the context of the country visit in Malta.

¹¹⁴ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 11.

¹¹⁵ Input from Malta for the 2023 Rule of Law Report, p. 24.

¹¹⁶ The simple majority, instead of two-thirds, was introduced, through an 'anti-deadlock rule', approved at the end of 2022, Times of Malta.

¹¹⁷ *Mutatis mutandis*, the principle 4 of the UNODC Jakarta Statement on Principles for Anti-Corruption Agencies of 2012 indicates that 'Anti-Corruption Agencies' heads shall be appointed through a process that ensures his or her apolitical stance, impartiality, neutrality, integrity and competence'. The UNODC Colombo commentary further clarifies that 'Good practice also suggests that the anti-corruption agency head should be recommended and/or endorsed by both the ruling and opposition parties. The involvement of the opposition in selecting the head of an anti-corruption agency reinforces its objectivity and impartiality, as the agency will not exercise bias in favour of the ruling majority.' Additionally, as per Venice Commission, 'Parameters On The Relationship Between The Parliamentary Majority And The Opposition In A Democracy: A Checklist', 'appointments to certain top positions outside the Government or to independent collegial bodies and agencies need to be depoliticised. Therefore, the procedure of selection, nomination and appointment should be, to the maximum extent possible, based on a cross-party consensus. At least, mechanisms should be in place which would reduce the dominance of the parliamentary majority within such collective bodies or limit the relevance of the affiliation of the office-holders with the governing party or a coalition'.

¹¹⁸ Case reports by the Commissioner for Standards in Public Life.

¹¹⁹ Times of Malta (2022), Watch: Joseph Muscat on major developer's payroll soon after resignation; Times of Malta (2022), Former PN MP Kristy Debono gets government appointment.

¹²⁰ GRECO (2022), Fifth Evaluation Round – Compliance Report, pp. 5-7. 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, pp. 12-13.

Parliament remains pending¹²¹. The Commissioner for Standards in Public Life office continues to publish online its annual activity reports¹²². In 2022, four reviews were published¹²³ (with a series of recommendations) concerning 1) the Standards in Public Life Act¹²⁴, 2) the Office of the Commissioner for Standards in Public Life¹²⁵, 3) the Lobbying Framework¹²⁶, and 4) the Codes of Ethics for Ministers, Parliamentary Secretaries¹²⁷ and Members of the House of Representatives¹²⁸. The Government is awaiting the publication of a fifth review (on asset and interest declarations, expected in the course of 2023), to initiate actions for the implementation of all the relevant recommendations¹²⁹.

Some concerns exist regarding the transparency of the results of audits, notably as regards the funding of political parties. In 2022, the National Audit Office (NAO) completed 63 audits (compared to 58 in 2021), with no detection of corruption¹³⁰. The IAID conducts internal audits and investigations within all governmental departments and agencies¹³¹. The IAID is composed of 24 full-time employees, with a budget of around EUR 2.5 million for 2023¹³². The information concerning the number, type and results of the operations carried out

¹²¹ Due to the general election of March 2022, the Commissioner's office did not receive the declarations of assets of both Members of Parliament and Ministers for the year 2021. Similarly, the Commissioner's office did not receive income tax statements from Parliamentarians for the year 2020.

¹²² Case reports by the Commissioner for Standards in Public Life.

¹²³ Under the project 'Improving the integrity and transparency framework in Malta', implemented by the OECD. 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 13.

¹²⁴ The recommendations include: prohibit secondary employment; clearer definition of 'persons of trust'; appointments based on merit; improve Commissioner's power to investigate; add the role of the Commissioner in the Constitution; improve Commissioner's appointment procedure; revise the timeframes for complaints; allow for anonymous complaints, and enable the Commissioner to grant whistleblower protection; include lay members in the Committee for Standards. OECD (2022), Review of the Standards in Public Life Act: Recommendations for strengthening the integrity framework for elected and appointed officials.

¹²⁵ The recommendations include: strengthening accessibility for complainants; use merit-based recruitment; ensure appropriate resources. OECD (2022), Organisational Review of the office of the Commissioner for Standards in Public Life of Malta: Recommendations for strengthening the institutional and procedural set-up.

¹²⁶ The recommendations pointed at the adoption of a lobbying regulation, with a strong definition of lobbyist, registers for recording information, a code of conduct, whose implementation would be tasked to the Commissioner for Standards in Public Life. OECD (2022), Review of the Lobbying Framework in Malta: Recommendations for improving transparency and integrity in lobbying.

¹²⁷ The recommendations pointed at ensuring relevant definitions were added in the new Code of conduct, for incompatibilities, gifts, benefits, hospitality, and sanctions. OECD (2022), Review of the Codes of Ethics for Ministers, Parliamentary Secretaries and Members of the House of Representatives: Recommendations for improving the Codes.

¹²⁸ The recommendations pointed at establishing incompatibilities. OECD (2022), Review of the Codes of Ethics for Ministers, Parliamentary Secretaries and Members of the House of Representatives: Recommendations for improving the Codes.

¹²⁹ Written contribution from the Ministry of Justice in the context of the country visit in Malta.

¹³⁰ Among the 63 audits, 36 were compliance audits, 6 performance audits and 15 follow up audits. Written contribution received by the NAO in the context of the country visit to Malta.

¹³¹ The director of IAID also holds the chair of the Coordinating Committee responsible to monitor the implementation of the National Anti-Fraud and Corruption Strategy (NAFCS). As per article 23 of Chapter 461 of the Laws of Malta, Internal Audit and Financial Investigations Act.

¹³² Written contribution from the Internal Audit and Investigations Department in the context of the country visit in Malta.

by the Internal Audit and Investigations Department are not public¹³³. The audit reports post-2019 on the funds of political parties (including statement of accounts and donation reports) remain unpublished on the website of the Electoral Commission¹³⁴. There are indications of major political parties possibly bypassing rules of party funding¹³⁵. There is no information available on the results of the investigation into the misuse of public funds by a political party that was launched in early 2022 by the Commissioner for Standards in Public Life's office¹³⁶. Media indicate the use of direct awarding of public contracts beyond the legal threshold (of EUR 135 000¹³⁷) benefitting current or former Government executives¹³⁸.

New info-tools on the functioning of whistleblowing procedures are available. Data gathering in view of the creation of a database on whistleblowing, in line with the Malta's Recovery and Resilience Plan, is ongoing¹³⁹. In 2022, an info-line and a webpage were launched by the Government, in order to provide information on whistleblowing procedures¹⁴⁰. Since 2013 whistleblower protection status has been granted only once, and there is no obligation for authorities to follow-up and examine anonymous disclosures¹⁴¹. The police force has incorporated a reporting mechanism in its Malta Police Transformation Strategy of 2020-2025¹⁴². The number or type of whistleblowing reports on corruption received or investigated by the police is not available¹⁴³.

Malta's investor citizenship scheme continues to raise serious concerns. The European Commission has frequently raised its serious concerns about the incompatibility with EU law of investor citizenship schemes in light of EU citizenship and the principle of sincere

¹³³ As per article 22 (2) of the Internal Audit and Financial Investigations (IAFI) Act (Chapter 461 of the Laws of Malta). Written contribution from the Internal Audit and Investigations Department in the context of the country visit in Malta.

¹³⁴ Electoral Commission of Malta webpage. 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 13.

¹³⁵ The Shift News (2022), Electoral Commission lacks political will, resources to regulate campaign financing – OSCE; OSCE/ODIHR (2022), Early Parliamentary Elections of 26 March 2022.

¹³⁶ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 13. Information on the competence and activity reports of the Commissioner for Standards in Public Life (“the Commissioner”) is available at the official webpage <https://standardscommissioner.com/the-role-of-the-commissioner/>.

¹³⁷ Direct orders should in no case be used for public contracts above EUR 135.000. See the Directorate Policy Development and Programme Implementation Procurement Policy, Note #32, Direct Orders below the local threshold, issued on 19 June 2017.

¹³⁸ Times of Malta (2022), Medical supplier in hospitals probe tops government ‘direct orders’ list; Lovin Malta (2022), Maltese Ministers refuse to provide list of direct orders in parliamentary questions; Times of Malta (2022), Over EUR 12 million in contracts for transport authority advisors since 2018.

¹³⁹ Recovery and resilience plan for Malta, Milestone no. 6.14.

¹⁴⁰ The info-line and the website are purely informative, and do not represent a channel for whistleblowers to submit reports on corruption. Information received from the Ministry of Justice in the context of the country visit to Malta.

¹⁴¹ This is not a requirement under the Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law. Input from the Daphne Caruana Galizia Foundation, and Aditus Foundation for the 2023 Rule of Law Report, p. 27. Input from the Repubblica for the 2023 Rule of Law Report, p. 18.

¹⁴² Malta Police Transformation Strategy 2020-2025, September 2020, p.25.

¹⁴³ This is not a requirement under the Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law. Input from the Daphne Caruana Galizia Foundation, and Aditus Foundation for the 2023 Rule of Law Report, p. 27.

cooperation. As noted in the 2021 and 2022 Rule of Law Reports¹⁴⁴, the Commission considers that Malta should repeal its investor citizenship ('golden passport') scheme¹⁴⁵. In September 2022, the European Commission decided to refer Malta to the Court of Justice of the European Union for its investor citizenship scheme. The referral took place in March 2023 and the procedure is still ongoing¹⁴⁶. Such schemes also present inherent risks of corruption¹⁴⁷.

III. MEDIA PLURALISM AND MEDIA FREEDOM

Freedom of expression is enshrined in the Constitution of Malta¹⁴⁸, as well as in the European Convention Act. The Media and Defamation Act of 14 May 2018 regulates defamation and the protection of journalistic sources. The Constitution sets out the composition, appointment and removal procedures and independence of the Broadcasting Authority and lays down its basic functions¹⁴⁹. The Freedom of Information Act establishes the legal framework for access to information held by public authorities¹⁵⁰.

While the ongoing media reform process means that there has been some progress to improve the working environment of journalists, no measures have been adopted. The 2022 Rule of Law Report recommended to Malta to “advance with the introduction of legislative and other safeguards to improve the working environment of journalists, taking into account European standards on the protection of journalists”¹⁵¹. The media reform process launched by the Government following the publication of the report of the Daphne Caruana Galizia public inquiry is still ongoing. The Committee of Experts on Media¹⁵², established in January 2022¹⁵³, was given two tasks, namely: (1) to analyse the journalism and media sector in the light of the conclusions of the public inquiry and, separately, (2) to examine draft legislation prepared by the Government which would amend the Media and Defamation Act, the Criminal Code, the Code of Organisation and Criminal Procedure and the Constitution¹⁵⁴. In June 2022, the Committee of Experts concluded its work on the second part of its remit and handed its report on the matter to the Government¹⁵⁵. Concerns were raised by international

¹⁴⁴ 2021 and 2022 Rule of Law Reports, Country Chapter on the rule of law situation in Malta, pp. 12 and 14, respectively.

¹⁴⁵ Based on Commission Recommendation (C(2022) 2028 final) on immediate steps in the context of the Russian invasion of Ukraine in relation to investor citizenship schemes and investor residence schemes, Malta withdrew its citizenship from two investors in 2022.

¹⁴⁶ The Court referral took place on 21 March 2023. Court of Justice of the European Union, Case C-181/23.

¹⁴⁷ EU Commission's report of January 2019, the Commission has been monitoring wider issues of compliance with EU law raised by investor citizenship schemes.

¹⁴⁸ Article 41 of the Constitution.

¹⁴⁹ Articles 118 and 119 of the Constitution.

¹⁵⁰ Malta ranks 84th in the 2023 Reporters without Borders World Press Freedom Index compared to 78th the previous year.

¹⁵¹ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 2.

¹⁵² Establishment of a Committee of Experts on Media, Government of Malta, 3 January 2022.

¹⁵³ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, pp. 15-16.

¹⁵⁴ Bills 17 – 19 of 2021. See 2022 Rule of law report, Country Chapter on Malta, p. 16.

¹⁵⁵ According to the 2023 Media Pluralism Monitor report on Malta a 'scanned copy' of this report was eventually made available by the Committee of Media Experts, around 3 months after its submission to the Prime Minister.

organisations¹⁵⁶, civil society¹⁵⁷, NGOs¹⁵⁸ as well as by the two members of the Institute of Maltese Journalists sitting on the Committee of Experts¹⁵⁹ with regard to various aspects of the process. These concerns included the Government's failure to publish the Committee of Experts' above-mentioned report in line with the relevant terms of reference¹⁶⁰ and to ensure widespread public consultation throughout the process. As a result, in October 2022, the Government acceded to requests for additional consultation being organised by the Committee of Experts and announced that it was putting on hold the legislative process related to the above-mentioned draft bills¹⁶¹. The Committee subsequently convened a national conference for this purpose in February 2023. Consequently, to date, the only public inquiry recommendation which has been implemented is the establishment of the above-mentioned Committee of Experts and its ongoing work and no other measures have been adopted. Throughout its report on Malta, the 2023 Media Pluralism Monitor (MPM) refers to the above-mentioned process and deficiencies therein¹⁶². Therefore, there has been some progress in the implementation of the recommendation made in the 2022 Rule of Law Report.

While there have been no developments with regard to the legislative framework establishing the Broadcasting Authority, a constitutional court ruling has clarified the nature of the authority's watchdog role. In February 2023, the Constitutional Court ruled on the Broadcasting Authority's monitoring and watchdog role in response to the public service broadcaster's previously proven lack of impartiality with regard to certain news items concerning matters of political controversy and public interest¹⁶³. The Constitutional Court emphasised that the Broadcasting Authority has a constitutional duty to, *ex officio*, proactively and expeditiously ensure impartiality in broadcasting, in particular in cases of 'unbalanced and propagandistic' news reports previously broadcast by the public broadcaster¹⁶⁴. The Constitutional Court made it clear that the Broadcasting Authority should not only rely on the lodging of complaints by aggrieved individuals to ensure impartiality in broadcasting.

There have been no developments with regard to media ownership transparency and a legal framework for transparent state advertising remains lacking. While Malta possesses a beneficial ownership register, there are no specific obligations relating to beneficial ownership in Maltese media law which would require media companies to publish their ownership structures on their website or in records and documents that are accessible to the public, that go beyond the obligations to list the company directors and shareholding stipulated in the Companies Act¹⁶⁵ and the Media and Defamation Act which stipulates that editors and

¹⁵⁶ Commissioner for Human Rights of the Council of Europe letter to the Prime Minister published on 6 October 2022 and OSCE Representative on Freedom of the Media visit to Malta 9 to 11 November 2022 (OSCE Representative on Freedom of the Media concludes visit to Malta).

¹⁵⁷ Letter to the Prime Minister of Malta, 20 September 2022.

¹⁵⁸ Contributions of the Daphne Caruana Galizia Foundation, Aditus Foundation, Repubblika and the Committee to Protect Journalists (Malta) for the 2023 Rule of Law Report.

¹⁵⁹ Information received from the Institute of Maltese Journalists in the context of the country visit to Malta.

¹⁶⁰ See Establishment of a Committee of Experts on Media: "The recommendations will be presented to the Prime Minister, who will be bound to table a copy thereof in Parliament in 10 days".

¹⁶¹ Letter from the Prime Minister dated 13 October 2022 addressed to the Chairman of the Committee of Experts on Media.

¹⁶² Media Pluralism Monitor 2023 report on Malta, in particular pp. 13-16.

¹⁶³ Partit Nazzjonalista vs. Awtorita tax-Xandir et – Rikors Kostituzzjonali 73/2022/1 1 of 27 February 2023.

¹⁶⁴ Paragraph 20 of the judgement.

¹⁶⁵ 2020, 2021 and 2022 Rule of law reports, Country Chapter Malta.

publishers shall submit relevant details to the Media Registrar¹⁶⁶. While the Commissioner for Standards in Public Life adopted a set of guidelines on government advertising and promotional material, the lack of a legal framework regulating state advertising continues to provide room for abuse¹⁶⁷, MPM 2023 confirms that “information about the allocation of indirect state subsidies for media outlets by Government, in the form of advertising or sponsorship is not publicly available and there is no legislation that regulates the process” maintaining an unchanged medium risk score for this area¹⁶⁸. There is no legislation in Malta pertaining specifically to concentration or mergers in the media market and neither the Broadcasting Authority nor the responsible minister may override mergers and acquisitions in this domain. Given the particular nature of the Maltese media market¹⁶⁹, the lack of cross-ownership rules and the general lack of available data relating to revenue market share, the MPM considers market plurality to be an area of very high risk¹⁷⁰.

There has been no progress with regard to improving access to official documents. The 2022 Rule of Law Report recommended to Malta to “advance with the introduction of legislative and other safeguards to improve [...] access to official documents, taking into account European standards on the protection of journalists”¹⁷¹. The review of the legal framework enabling access to information held by public authorities remains pending. The Institute of Maltese Journalists (IGM)¹⁷², several NGOs and MPM 2023 have reported that journalists have continued to consistently encounter difficulties when requesting such access, due to numerous rejections, significant delays, absence of reply and multiple appeals instituted by the Government against decisions by the Information and Data Protection Commissioner and the Appeals Tribunal granting access¹⁷³. In the meantime, the Government review of the matter remains pending and has not made public any documents related to the matter¹⁷⁴. For these reasons MPM 2023 has maintained its relatively high medium risk score (61%) for this area¹⁷⁵. There has thus been no progress in the implementation of the recommendation made in the 2022 Rule of Law Report.

There has been no progress on enhancing the independent governance and editorial independence of public service media. The 2022 Rule of Law Report recommended to Malta to “strengthen the rules and mechanisms to enhance the independent governance and editorial independence of public service media taking into account European standards on public service media”¹⁷⁶. The MPM has consistently considered the lack of independence of public service governance and its funding to be an area presenting very high risk in Malta, a state of affairs it confirms again this year stating that “there has been no change in the direct manner in which

¹⁶⁶ Chapter 579 of the Laws of Malta, Article 19.

¹⁶⁷ 2021 and 2022 Rule of law reports, Country Chapter on Malta.

¹⁶⁸ Media Pluralism Monitor 2023 report on Malta, p. 24.

¹⁶⁹ 2020, 2021 and 2022 Rule of law reports, Country Chapter Malta.

¹⁷⁰ Media Pluralism Monitor 2023 report on Malta, p. 19.

¹⁷¹ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 2.

¹⁷² Information received from the Institute of Maltese Journalists in the context of the country visit to Malta.

¹⁷³ Contributions from the Committee to Protect Journalists (Malta), the Daphne Caruana Galizia Foundation for the 2023 Rule of Law Report and The Shift News (2022), Government rushes to appeals court as The Shift wins more FOI tribunal cases.

¹⁷⁴ The legal analysis contracted by the Government to a private law firm for the purposes of reforming the Freedom of Information Act was submitted in 2021. This legal analysis is now the subject of a freedom of information request filed by media outlet The Shift News.

¹⁷⁵ Media Pluralism Monitor 2023 report on Malta, pp. 14-15.

¹⁷⁶ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 2.

PSM members of its Board of Directors, its Editorial Board and key decision-making personnel are appointed by the State, meaning that the government continues to have significant and direct influence on PSM structures” providing examples of political control via the affiliation of key decision-makers involved in the management and editorial decision-making of Public Broadcasting Services (PBS)¹⁷⁷. This state of affairs has been confirmed by stakeholders in detailed submissions on the matter¹⁷⁸. In September 2022, PBS adopted a set of internal ethics guidelines addressed to “all the news staff who work directly with the preparation of content” whose central aim appears to be ensuring the impartiality of PBS staff¹⁷⁹. These guidelines do not, however, have any bearing on PBS governance or functional independence from the Government. There has thus been no progress in the implementation of the recommendation made in the 2022 Rule of Law Report¹⁸⁰.

Journalists continue to face challenges in the exercise of their profession¹⁸¹. This has been confirmed by journalists, the Institute of Maltese Journalists as well as several NGOs¹⁸² and MPM 2023 maintains its medium risk score for this area also referring to the stalled reform process¹⁸³. The Council of Europe Platform to promote the protection of journalism and the safety of journalists reported one new alert¹⁸⁴ relating to the safety of journalists since the publication of the last rule of law report, namely the intimidation of a journalist by the health operator involved in the above-mentioned public contract¹⁸⁵.

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

Malta is a Parliamentary Republic where legislative power is vested in the House of Representatives, a unicameral Parliament elected for a five-year term. The executive authority is vested in the President elected by Parliament, and in the Cabinet headed by the Prime Minister. All Government ministers, including the Prime Minister, must be members of Parliament. The Constitutional Court carries out *ex post* constitutional review as it hears appeals from decisions of other courts on questions relating to the interpretation of the Constitution and on the validity of laws, as well as appeals from decisions on alleged breaches of fundamental human rights. The Constitution establishes a number of independent authorities, including the Office of the Ombudsperson¹⁸⁶.

The lack of a formalised process for public participation in the legislative process continues to raise concerns. As referred to in previous Rule of Law Reports, there are no rules

¹⁷⁷ Media Pluralism Monitor 2023 report on Malta, pp. 24-25.

¹⁷⁸ Contributions of the Daphne Caruana Galizia Foundation and Repubblika for the 2023 Rule of Law Report.

¹⁷⁹ PBS Ethics Guidelines for Staff Members (September 2022).

¹⁸⁰ According to European Parliament’s Flash Eurobarometer: News & Media Survey 2022, 45% of respondents in Malta stated that they trust public TV and radio stations, below the EU average of 49%.

¹⁸¹ On 14 October 2022, following guilty pleas, Malta’s Criminal Court sentenced two more hitmen in the assassination of Daphne Caruana Galizia to forty years imprisonment. Legal proceedings against the suspected bomb suppliers as well as an alleged mastermind behind the assassination remain pending.

¹⁸² Contributions of the Daphne Caruana Galizia Foundation, Aditus Foundation, Repubblika and the Committee to Protect Journalists (Malta) for the 2023 Rule of Law Report.

¹⁸³ Media Pluralism Monitor 2023 report on Malta, p. 15.

¹⁸⁴ Council of Europe, Platform to promote the protection of journalism and safety of journalists. The government condemned this incident stating that: “It is unacceptable for a journalist to be threatened with being reported to the government for investigation”.

¹⁸⁵ See Chapter II, above.

¹⁸⁶ Article 64 of the Constitution.

or guidelines on public participation on the drafting of legislation¹⁸⁷. Consultations occasionally take place, but they are subject to the discretion of the Ministry in charge of the preparation of the initiative, and are inconsistent between Ministries as regards timing, format, and involvement of stakeholders¹⁸⁸. Stakeholders may be invited to meetings of Parliamentary Committees to present their views during the committee stage of the legislative process. However, this practice is subject to a decision by each Committee and is not systematic nor governed by clear rules¹⁸⁹. Stakeholders have continued¹⁹⁰ to raise concerns regarding the lack of a formalised process for public participation, claiming that calls for public consultation ahead of anticipated legislation are not considered¹⁹¹. Moreover, stakeholders have pointed out that the time between the tabling of a proposal and its discussion in Parliament is often very limited, reducing the possibility of Members of Parliament to add any significant value to legislative debates¹⁹². The increased use of legal notices¹⁹³ has also been raised as a concern by some stakeholders¹⁹⁴.

The establishment of a Human Rights and Equality Commission remains pending. The 2022 Rule of Law Report recommended to Malta to “re-launch efforts to establish a National Human Rights Institution taking into account the UN Paris Principles”¹⁹⁵. A proposal to establish a national human rights institution which was tabled in Parliament in 2019¹⁹⁶, lapsed with the end of the previous parliamentary term in 2022. The Government has announced its intention to table a new Human Rights and Equality Commission Bill in line with the UN Paris Principles¹⁹⁷ but the proposal has not yet been tabled in Parliament. So far, there has been no progress in the implementation of the recommendation made in the 2022 Rule of Law Report.

A new Ombudsperson has been appointed. The term of office of the Ombudsperson expired on 16 March 2021. Until the new appointment, the former Ombudsperson continued exercising his duties in a caretaker mode¹⁹⁸. In this context, the former Ombudsperson expressed concerns over the failure to reach consensus on the appointment of persons in high office¹⁹⁹. Discussions have also taken place about the risk that the lack of political will to reach agreement could lead

¹⁸⁷ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 15; 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 19.

¹⁸⁸ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 19; Information received from the Secretariat of the Parliament in the context of the country visit to Malta.

¹⁸⁹ Ibid.

¹⁹⁰ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 19.

¹⁹¹ Contribution from Repubblika for the 2023 Rule of Law Report, p. 24.; information by the Daphne Caruana Galizia Foundation and Aditus Foundation in the context of the country visit to Malta.

¹⁹² Contribution from Repubblika for the 2023 Rule of Law Report, p. 24.; information provided by Repubblika, Daphne Caruana Galizia Foundation and Aditus Foundation in the context of the country visit to Malta.

¹⁹³ Legal notices are pieces of legislation prepared by Ministries or other public bodies, in cases where the Parliament has delegated powers to make subsidiary legislation within the sphere of authority delegated to them.

¹⁹⁴ Contribution from the Aditus Foundation and the Daphne Caruana Galizia Foundation for the 2023 Rule of Law Report, p. 18.

¹⁹⁵ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 2.

¹⁹⁶ Ibid, p. 20.

¹⁹⁷ Input from Malta for the 2023 Rule of Law Report, p. 49.

¹⁹⁸ The Ombudsman Act (Act XXI of 1995) provides that unless the Office of the Ombudsperson becomes vacant before the expiry of the Ombudsperson’s term, the person appointed as Ombudsperson shall hold office until a successor is appointed.

¹⁹⁹ Ombudsplan Report 2023, tabled in Parliament on 4 October 2022.

to deadlocks paralysing the functioning of constitutional bodies²⁰⁰. The former Ombudsperson has stated that the fact that the mechanism of appointment is provided in the Constitution and can only be amended by a law that obtains the approval of a qualified majority of two-thirds of Members of Parliament has proved to be a vital safeguard, in contrast with the appointment of other bodies such as the Commissioner of Standards in Public Life²⁰¹. The Venice Commission stressed the importance of providing for qualified majorities for appointments of members of constitutional institutions but has also warned about the risk of stalemates and has recommended to devise effective and solid mechanisms to minimise the risk of deadlocks²⁰². A new Ombudsperson was appointed on 6 March 2023.

The Constitutional Convention announced in 2019, which is to contribute to addressing concerns regarding the appointment of constitutional bodies and the role of Parliament, remains on hold without a clear calendar for its works. The Constitutional Convention that was announced in 2019 has remained on hold since 2020²⁰³, with the President announcing its intention to launch the Constitutional Convention as soon as the pandemic situation permitted²⁰⁴. However, a timeline for the launch and finalisation of the Convention has not yet been presented. The Convention is expected to address important concerns regarding the appointment procedures of bodies such as the Electoral Commission, the Public Service Commission, the Broadcasting Authority²⁰⁵, the Central Bank of Malta and the Information and Data Protection Commissioner²⁰⁶. Moreover, the Convention is also meant to reflect on the role of the Parliament, which the Venice Commission has considered to be in need of strengthening in order to be able to exert an effective check on Government²⁰⁷.

On 1 January 2023, Malta had 15 leading judgments of the European Court of Human Rights pending implementation, an increase of two compared to the previous year. At that time, Malta's rate of leading judgments from the past 10 years that remained pending was at 45% (the same number as in 2022) and the average time that the judgments had been pending implementation was 5 years and 4 months (compared to 5 years and 1 month in 2022)²⁰⁸. The oldest leading judgment, pending implementation for 16 years, concerns the disproportionate

²⁰⁰ Ibid.

²⁰¹ See Section II. Anticorruption framework.

²⁰² Venice Commission (CDL-AD(2018)015-f), para. 12. Anti-deadlock mechanisms have to discourage the opposition from behaving irresponsibly but should not create opportunities for the majority by impossible proposals to lead to the necessity for the application of such mechanisms. This is why they should be limited in time and, while avoiding permanent blockages they should not aim at avoiding any blockage at all, which can be an expression of the need for political change. Also Venice Commission (CDL-AD(2015)037-e), para. 162. In that vein, European standards provide that it is important that a political culture is well developed allowing for compromises between majority and opposition forces. At the same time, trade-offs, where both sides accept less qualified candidates in exchange for the acceptance of their own less qualified candidates, are discouraged.

²⁰³ 2021 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 17; 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 20.

²⁰⁴ Input from Malta for the 2022 Rule of Law Report, p. 50.

²⁰⁵ Venice Commission opinion, CDL-AD(2020)019-e, para. 85.

²⁰⁶ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 15.

²⁰⁷ Venice Commission opinion, CDL-AD(2020)006, paras. 92-94. The Venice Commission also recommended changing the system of remunerations in order to provide for full-time work and payment of members.

²⁰⁸ All figures are calculated by the European Implementation Network and are based on the number of cases that are considered pending at the annual cut-off date of 1 January 2023. See the Contribution from the European Implementation Network for the 2022 Rule of Law Report, p. 6.

restrictions to property rights²⁰⁹. On 15 June 2023, the number of leading judgments pending implementation remains 15²¹⁰.

A mechanism to consistently follow-up on Constitutional Court rulings holding laws to be unconstitutional remains lacking, as illustrated by specific cases. As reported in previous Rule of Law Reports²¹¹, according to the constitutional order, judgments of the Constitutional Court do not have an *erga omnes* effect, and therefore laws found unconstitutional remain in force until Parliament repeals them. The lack of consistency on the side of Parliament to follow up on Constitutional Court rulings has been raised as an issue by the Venice Commission²¹². There are no plans to address this issue, despite specific cases that have shown the challenges of this situation²¹³.

Work continues to establish an enabling regulatory framework for the civil society space. Civil society space continues to be considered as narrowed²¹⁴. The Office of the Commissioner for Voluntary Organisations continued²¹⁵ consultations with major stakeholders to map the status of the voluntary sector, including civil society, in Malta²¹⁶. In this context, the Office is categorising over 1750 organisations²¹⁷ present in Malta in order to create a regulatory framework for these organisations, while respecting their governance. A report presenting conclusions and recommendations is expected by the end of 2023.

²⁰⁹ Judgment of the European Court of Human Rights of 26 September 2006, *Ghigo v. Malta*, 31122/05, pending implementation since 2006.

²¹⁰ Data according to the online database of the Council of Europe (HUDOC-EXEC).

²¹¹ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 5; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 17; 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 20.

²¹² Venice Commission, CDL-AD(2020)006, para. 80-84.

²¹³ Contribution from the Aditus Foundation and the Daphne Caruana Galizia Foundation for the 2023 Rule of Law Report, p. 18. A case is reported relating to a judgment from the Constitutional Court from 2020 regarding the Procedural Obligation under Article 460 COCP. The judgment held that this provision was unconstitutional due to the nullification of the act if the procedure is not followed, but the provision concerned still remains in place and is being applied.

²¹⁴ Rating by CIVICUS; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed. According to CIVICUS, in general, civic space freedoms are generally respected in Malta. However, reports indicate that conditions for journalists and activists who campaign for justice have become increasingly hostile, especially those reporting on corruption.

²¹⁵ 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 21.

²¹⁶ Input from Malta for the 2022 Rule of Law Report, p. 54.

²¹⁷ The categorisation affects all types of organisations, including Civil Society Organisation but also leisure and other organisations.

Annex I: List of sources in alphabetical order*

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

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Annex II: Country visit to Malta

The Commission services held virtual meetings in February 2023 with:

- Association of Judges and Magistrates of Malta
- Auditor General
- Aditus Foundation
- Broadcasting authority
- Chamber of Advocates
- Chief Justice
- Commissioner for Voluntary Organisations
- Committee to Protect Journalists
- Court Service Agency
- Daphne Caruana Galizia Foundation
- Information and Data Protection Commissioner
- Internal Audit and Investigations Department
- Institute of Maltese Journalists
- Ministry for Foreign and European Affairs and Trade
- Ministry for Justice
- Ministry for the National heritage, the Arts and Local Government
- Moviment Graffiti
- Office of the Attorney General
- Permanent Commission against Corruption
- Police: Financial Crimes Investigations Department
- Public Broadcasting Services Limited
- Public Service Commission
- Repubblika
- Secretariat of the Parliament
- State Advocate

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

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

- JEF Europe
- Osservatorio Balcani e Caucaso Transeuropa
- Philea
- Reporters Without Borders
- SOLIDAR
- Transparency International EU