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COMMISSION STAFF WORKING DOCUMENT

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

Accompanying the

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

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

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ABSTRACT

The reforms of 2020, in particular the reform of the system of judicial appointments and of judicial discipline, have contributed to strengthening the independence of the Maltese justice system. The perception of judicial independence has notably improved. Steps have been taken to depoliticise the appointment of the Chief Justice, while certain aspects of this procedure require further attention. The transfer of prosecutions from the police to the Attorney General is progressing. Whereas this transfer needs time, it is important that it also covers less serious offences. There are ongoing discussions to enhance the independence of specialised tribunals. Serious challenges remain as regards the efficiency of the justice system, in particular the length of court proceedings, the impact of the low number of judges and the digitalisation of justice.

A new targeted anti-fraud and corruption strategy was approved by the Government. While investigative and prosecution bodies have improved their capacity to deal with corruption cases, as shown by an increase in the number of cases opened, investigations continue to be lengthy depending on their complexity and a track record of convictions in high-level cases remains to be established. The reforms concerning the appointment of the Police Commissioner and of the Commissioners of the Permanent Commission against Corruption, as well as the reorganised cooperation between the Police and the Attorney General, are recent and results are yet to be seen. Concerning the rules on integrity for public officials, including members of Parliament and ministers, further changes are envisaged. Specific guidance has been put in place to mitigate the risks of corruption in public procurement during the COVID-19 pandemic.

The public inquiry into the assassination of investigative journalist Daphne Caruana Galizia continued to hear testimonies throughout 2020 and 2021, concluding its work on 15 July 2021. There have been developments in the separate criminal proceedings relating to this case. Journalists still face obstacles when requesting access to information held by public authorities as well as in the exercise of their profession more generally. Amendments to Malta's Broadcasting Act have not introduced any changes which would enhance the Broadcasting Authority's effective independence. In the light of the ownership by the two main political parties of their own television and radio stations, a constitutional case has been lodged challenging the relevant section of the Maltese Broadcasting Act and the media regulator's application of that provision. In 2020, Malta established a support scheme for news media providers to counteract the adverse effects of the COVID-19 pandemic.

Further reforms have been carried out to enhance checks and balances. Reforms of the appointment of persons exercising top executive functions and appointments to certain independent commissions, proposed in 2020, have been adopted. Remaining concerns regarding the appointment process for certain other public bodies will be addressed under the Constitutional Convention. However, due to the COVID-19 pandemic, the timing and organisation of this Convention are still to be set. The Ombudsperson's role has been strengthened, although he noted a lack of consistency in the follow-up to his recommendations. The draft law on the establishment of a national human rights institution is still under discussion in Parliament. Challenges remain in relation to the limited use of public consultations in the law-making process, including on structural reforms. While civil society organisations continue to participate actively in the public debate, they raised certain concerns on access to funding and actions by the Commissioner for Voluntary Organisations.

I. JUSTICE SYSTEM

The Maltese justice system is influenced by both the continental and the common law legal traditions¹. 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 work of the judiciary. 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. The Bar Association (Chamber of Advocates) is an independent and self-regulated professional body of lawyers².

Independence

The level of perceived judicial independence has improved and is now high. The fairly or very good perception of judicial independence among the general public (69%) has improved significantly since 2020 (52%), including as compared to 2016 (44%)³. The fairly good or very good perception of judicial independence among companies (67%) has also improved significantly since 2020 (48%), inverting a previously decreasing trend⁴.

The new system of judicial appointments has contributed to strengthening judicial independence. The new system of judicial appointments⁵, adopted in July 2020, was assessed by the Venice Commission in its Opinion of October 2020⁶. The Venice Commission welcomed the reform, positively assessing the new composition of the Judicial Appointments Committee ('JAC'), the publication of judicial vacancies, the direct proposals

¹ See 2020 Rule of Law Report: country chapter on the rule of law situation in Malta – Part I.

² Act No. XIX of 2021 - Legal Profession (Reform) Act was published on 20 April 2021. According to the Maltese Government (contribution to the present report), the draft law aims at addressing recommendations made by the Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (Moneyval) relative to the regulation of the legal profession (see Moneyval's Anti-money laundering and counter-terrorist financing measures in Malta – 5th Round Mutual Evaluation Report). The Chamber of Advocates has raised concerns about this draft law, arguing that it does not address the persisting issues (such as raising the standards of ethics and professionalism in the legal profession and regulating market entry measures for legal professionals) (information received in the context of the country visit to Malta). See also Chamber of Advocates (2021), Malta Financial Services Authority Consultation on new Company Service Providers Rulebook. Chamber of Advocates Feedback and Position Paper.

³ Figure 48 of the 2021 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

⁴ Figure 50 of the 2021 EU Justice Scoreboard.

⁵ See 2020 Rule of Law Report, Country Chapter on the situation of the rule of law in Malta, p. 2. The Court of Justice assessed the compliance of the previous system for judicial appointments, in force between 2016 and 2020, in the context of a preliminary reference procedure (judgment of 20 April 2021 in Case C- 896/19, *Repubblika*). The Court found that Article 19(1) TEU must be interpreted as not precluding national provisions which confer on the Prime Minister of the Member State concerned a decisive power in the process for appointing members of the judiciary, while providing for the involvement, in that process, of an independent body responsible for, inter alia, assessing candidates for judicial office and giving an opinion to that Prime Minister.

⁶ 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.

by the JAC of judicial candidates to the President of Malta, the submission of detailed reports on candidates by the JAC and the presentation by the JAC of the three most suitable candidates for appointments⁷. These reforms, which take into account Council of Europe recommendations, contribute to strengthening judicial independence⁸. The Chamber of Advocates⁹ and civil society organisations¹⁰ have welcomed the reforms. However, the Venice Commission regretted the procedure followed by the Maltese Government for its adoption, which did not allow for a wider consultation of civil society or a wider public debate¹¹, as also highlighted by civil society¹². It also pointed out that, in light of its previous recommendations, the names of the three candidates proposed by the Judicial Appointments Committee should be made public before the President of Malta decides on the appointment, so as to ensure the transparency of the process, as this was not part of the adopted reform¹³. The new procedure for judicial appointments was applied for the recruitment of four judges and four magistrates in April and June 2021 respectively.

The reform of the procedure for dismissal of magistrates and judges has also strengthened judicial independence. Changes have been introduced to the procedure for the dismissal of magistrates and judges. Under the new system¹⁴, the dismissal procedure is under the remit of the Commission for the Administration of Justice, composed in majority of members of the judiciary, as opposed to the previous system where Parliament was in charge of this procedure. In its October 2020 Opinion, the Venice Commission considered the reform to be generally in line with existing standards¹⁵.

Steps have been taken to depoliticise the appointment of the Chief Justice. In its October 2020 Opinion, the Venice Commission reiterated the need for depoliticising the appointment of the Chief Justice as much as possible¹⁶. The same opinion considered that the requirement of a two-thirds majority in Parliament for the appointment of the Chief Justice would lead to such a depoliticisation¹⁷, but it regretted that no anti-deadlock mechanism has been provided in that respect¹⁸. More generally, the appointment of the Chief Justice by Parliament, without the involvement of the judiciary, considered together with the possibility that a person from outside the judiciary could be appointed as Chief Justice, will require further attention¹⁹. The

⁷ *Ibid*, paras. 24-40.

⁸ Venice Commission opinion CDL-AD(2020)019-e and Council of Europe – Committee of Ministers Recommendation CM/Rec(2010)12 on judges: independence, efficiency and responsibilities.

⁹ Chamber of Advocates, press release of 14 May 2020.

¹⁰ See Repubblica, Press Release n. 52/2021.

¹¹ Venice Commission, CDL-AD(2020)019-e, para. 13.

¹² See Repubblica, Press Release n.117/2020.

¹³ Venice Commission, CDL-AD(2020)019-e, para. 31.

¹⁴ Details regarding the adoption process are set out in 2020 Rule of Law Report: Chapter for Malta – Part I pp. 2-3.

¹⁵ Venice Commission, CDL-AD(2020)019-e, para. 48.

¹⁶ Venice Commission, CDL-AD(2020)019-e, para. 41.

¹⁷ Venice Commission, CDL-AD(2020)019-e, para. 42.

¹⁸ Venice Commission, CDL-AD(2020)019-e, para. 43. In particular, the Venice Commission considers that an election of the Chief Justice by the Supreme Court judges would be preferable. In its observations to the Venice Commission, the Government pointed out that no agreement on an anti-deadlock mechanism could be reached in Parliament.

¹⁹ It is noted that the appointment of the Chief Justice by Parliament without involvement of the judiciary retains a strong political element. This issue is of particular importance in view of many roles played by the Chief Justice in the Maltese justice system (see also the 2020 Rule of Law Report: country chapter on the rule of law situation in Malta – Part I). 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.

Chamber of Advocates expressed the view that the appointment of the Chief Justice should be made from among senior judges, thus eliminating the possibility that persons from outside the judiciary could be appointed directly as Chief Justice, and that the appointment should be made by members of the judiciary themselves, without intervention of any political power²⁰.

The transfer of certain types of prosecutions from the police to the Attorney General is progressing according to a timeline, but there is no timeline for the transfer of the less serious offences. Until recently, all prosecutions before the inferior courts (Courts of Magistrates) were carried out by the police, while the office of the Attorney General prosecuted cases before the Superior Courts (Criminal Court and Court of Criminal Appeal both in its inferior and superior jurisdiction)²¹. The implementation of the transfer started early in 2020 with a recruitment of 20 new lawyers to the Office of the Attorney General in order to enable the Office to handle the additional workload more efficiently. On 1 October 2020, the first phase of the transitory period ended²² and the Attorney General had taken over the decisions to prosecute and the initiation of prosecution concerning specified serious crimes, including corruption²³. The Government's plan is to continue, until 1 October 2024, transferring annually an additional number of offences to the Attorney General. However, this plan does not include the transfer of contraventions or crimes punishable with a fine or a maximum of two years' imprisonment or less (summary cases). Currently, no clear indication exists as to whether these cases would also be subject to the transfer. While this transfer needs appropriate time²⁴, it would be important to transfer all prosecutions, including for summary offences, to the Attorney General and to do so as soon as possible²⁵.

Safeguards regarding the procedure for the appointment and removal of the Attorney General leave room for strengthening. Following an amendment to the Constitution adopted in July 2020, the removal of the Attorney-General can be carried out by the President of Malta following a resolution adopted by a two-thirds majority in Parliament. Similar changes have been introduced for the State Advocate²⁶. In its October 2020 Opinion, the Venice Commission recommended that an expert body should decide on the grounds for removal, or that an appeal to the Constitutional Court should be possible against a decision of a parliamentary committee, before the plenary of Parliament takes the final decision on the removal²⁷. As regards the procedure for appointment, while safeguards were added following

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).

²⁰ Chamber of Advocates, press release of 14 May 2020.

²¹ As noted in the 2020 Rule of Law Report: country chapter on the rule of law situation in Malta (Part I).

²² By virtue of the Prosecution of Offences (Transitory Provisions) Regulations, 2020 (L.N. 378 of 2020).

²³ These concern also wilful homicide, terrorism, money-laundering, bribery, fraud and misappropriation where the financial loss caused is at least fifty thousand euro (€50,000), as well as evasion of customs duties.

²⁴ Venice Commission, CDL-AD(2020)019-e, para. 57.

²⁵ See also Venice Commission, CDL-AD(2020)019-e, para. 98. In this context, Standard Operating Procedures between the Police and the Attorney General's Office are in place between the two entities to ensure the smooth taking over of these duties by prosecutors at the Office of the Attorney General.

²⁶ See Article 91A(5) of the constitution of Malta. It is noted, however, that modalities applicable to the removal of the State Advocate are not entrenched by the constitution and can be amended by an absolute majority of Parliament. It is also noted that the removal of the Attorney General and the State Advocate can only be effectuated in case of "proved inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour".

²⁷ Venice Commission, CDL-AD(2020)019-e, paras. 49-50. The Office of the Attorney General indicated that the Constitutional Court could be seized in case the removal decision was such as to give rise to a violation of human rights (information received in the context of the country visit to Malta). It is noted that the

a reform in 2019, in practice the appointment of the Attorney General still remains predominantly under the power of the Prime Minister, which has been raised as an issue²⁸.

A significant number of specialised tribunals continue to operate. Many of these tribunals²⁹ are appointed through a procedure involving the executive power. The Venice Commission has raised concerns regarding the operation of these specialised tribunals³⁰, considering that they do not enjoy the same level of independence as that of the ordinary judiciary, and reiterated in October 2020 its recommendations in that respect³¹. Stakeholders, including the Chamber of Advocates, have also expressed concerns³². There are ongoing discussions in the context of the Recovery and Resilience Facility about the review of the independence of these specialised tribunals.

Quality

Important gaps exist in the digitalisation of the justice system, which the implementation of a forthcoming digital strategy could contribute to address. In 2020, a public consultation was announced on a digital strategy and an action plan, to be overseen by the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe and funded by the Structural Reform Support Programme. Following the consultation process, a draft digital strategy and action plan will be presented around mid-2021 to the Ministry for Justice. The implementation of the strategy is needed to address the current important gaps in the digitalisation of the justice system, as highlighted by stakeholders in particular as regards the limited possibility to file and follow a procedure by electronic means³³. Areas that could be further strengthened include the use of digital technology by courts and prosecution services³⁴, the use of electronic communication tools by courts³⁵ and by the prosecution service³⁶, and digital solutions to conduct and follow court proceedings in criminal cases³⁷. A law adopted in February 2021 allows the Minister for Justice to enact regulations that would allow for electronic filing of criminal judicial acts, to submit electronically notifications, and to conduct criminal court proceedings online³⁸. In order to face the COVID-19 pandemic,

Commission for the Administration of Justice acts as the responsible body for investigating allegations for such removal.

²⁸ In practice the appointment of the Attorney General is made by the President acting upon a recommendation by the Prime Minister after his giving due consideration to the recommendations of the Appointment Commission. See also the 2020 Rule of Law Report: country chapter on the rule of law situation in Malta – Part I, p. 5.

²⁹ See also 2020 Rule of Law Report: country chapter on the rule of law situation in Malta – Part I.

³⁰ These tribunals include the Refugee Appeals Board, Environment and Planning Review Tribunal, the Consumer Claims Tribunal, the Competition and Consumer Appeals Tribunal, the Industrial Tribunal, the Information and Data Protection Appeals Tribunal, the Mental Health Review Tribunal, the Patent Tribunal, the Police Licences Appeals Tribunal, the Panels of Administrative Review Tribunals and the Prison Appeals Tribunal.

³¹ Venice Commission, CDL-AD(2020)019-e, para. 98; see also CDL-AD(2020)006 paras. 97-98; and CDL-AD(2018)028 paras. 80-83.

³² These concerns relate i.a. to the method of appointment of members of the tribunals. Information received from the Chamber of Advocates in the context of the country visit to Malta.

³³ Information received from the Chamber of Advocates in the context of the country visit to Malta.

³⁴ Figure 41, 2021 EU Justice Scoreboard.

³⁵ Figure 42, 2021 EU Justice Scoreboard.

³⁶ Figure 43, 2021 EU Justice Scoreboard.

³⁷ Figure 45, 2021 EU Justice Scoreboard.

³⁸ Act No. III of 2021.

amendments to the Code of Organization and Civil Procedure were adopted in November 2020 to allow civil proceedings to be held online³⁹.

Amendments have been proposed that would empower administrative authorities to impose sanctions for violations currently decided by courts. In February 2021, legislative amendments⁴⁰ were proposed that would regulate types of violations that could be considered to be of criminal nature in situations where a public authority imposes a civil penalty, an administrative fine, or other civil or administrative sanctions or measures⁴¹. The draft amendments would empower administrative authorities to impose certain sanctions for violations of criminal nature that currently can only be decided by judicial authorities. Stakeholders have raised concerns in that respect, considering that these amendments might lead to violations of the right to fair trial, as they would lead to an increase in cases dealt with by administrative authorities instead of by courts, and because the amendments proposed could only be introduced through a constitutional amendment and not through statutory legislation as proposed by the Government⁴². In its Urgent Opinion of 1 June 2021, the Venice Commission considered that the proposed reform should be achieved through an amendment of the constitution, whilst ensuring further clarification as regards its relations with Article 6 European Charter of Human Rights⁴³.

Efficiency

The length of proceedings remains a serious concern⁴⁴. The duration of litigious civil and commercial cases at first instance, in 2019, remained very long (465 days), showing an increasing trend since 2017⁴⁵. The duration of these proceedings in appeal was also very long (875 days) in 2019⁴⁶. The average length of money laundering cases remained particularly long in 2019 (over 1350 days), even if with a decreasing trend⁴⁷. While the time needed to resolve administrative cases at first instance remained lengthy, it has shown a decreasing trend since 2017⁴⁸. The clearance rate for civil, commercial, administrative and other cases in 2019 was below 100% and continued to decrease⁴⁹. Serious concerns about the efficiency of

³⁹ Act No. LIII of 2020.

⁴⁰ Bill No. 198 An act to amend the interpretation act, cap. 249. In October 2020, legislative amendments (Bill 166 of 2020) were proposed to Article 39 of the Constitution to affirm that regulatory authorities may impose administrative penalties of a criminal nature, as long as, the decision to impose such penalties is subject to the right of appeal before an independent and impartial court or tribunal established by law. The parliamentary two-thirds majority required to amend Article 39 was, however, not obtained.

⁴¹ See Article 2 of Bill No. 198.

⁴² Press Release of the Chamber of Advocates of 10 March 2021. Information received from the Chamber of Advocates and in the context of the country visit to Malta. According to the information received, the draft legislation could circumvent Article 39 of the constitution as interpreted by the Constitutional Court and, as such, it would warrant a constitutional amendment.

⁴³ Venice Commission, CDL-PI(2021)009, paras. 96 – 104. According to the information received from the Maltese authorities, the Government intends to propose amendments to Bill 166 of 2020 and resume the parliamentary debate on this (i.e. the constitutional amendment), in line with the Urgent Opinion of the Venice Commission.

⁴⁴ See also 2020 Rule of Law Report: country chapter on the rule of law situation in Malta – Part I.

⁴⁵ Figure 7, 2021 EU Justice Scoreboard.

⁴⁶ Figure 8, 2021 EU Justice Scoreboard.

⁴⁷ Figure 22, 2021 EU Justice Scoreboard.

⁴⁸ Figure 9, 2021 EU Justice Scoreboard.

⁴⁹ Figure 11, 2021 EU Justice Scoreboard.

the Maltese justice system were raised by stakeholders⁵⁰. These concerns are exacerbated by the COVID-19 pandemic that led to the suspension of the work of courts for a period in 2020⁵¹ and continues to hamper the activity of courts. In relation to criminal proceedings, in November 2020, the Minister for Justice announced amendments to speed up magisterial inquiries and criminal proceedings as well as to reduce the backlog in the Court of Appeal⁵². Moreover, a new law⁵³ in the field of civil procedure has been enacted that would provide for a shortening of the compilation of evidence. The law also appears to aim at reducing the backlog of cases before the Court of Appeal by providing the possibility for the appellate court to grant a hearing only when necessary.

A relatively low number of judges and magistrates might affect the efficiency of the justice system. The number of judges per capita is among the lowest in the EU⁵⁴. While four judges were appointed in April 2021 to fill in existing vacancies, and four magistrates were appointed in June 2021, this would amount to an increase by one of the overall number of judges and magistrates, as most vacancies were opened to replace the retired or promoted judges and magistrates⁵⁵. The Association of Judges and Magistrates has called on the Government to appoint at least six new magistrates in order to ensure the efficiency of the Maltese justice system⁵⁶.

II. ANTI-CORRUPTION FRAMEWORK

The institutional anti-corruption framework comprises several authorities. The Permanent Commission against Corruption 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, are under the competence of the Police (the Financial Crimes Investigation Department) and the Attorney General respectively. The latter will, during a transition period between 2021 and 2024, take over the prosecution of all offences carrying a conviction of more than two years imprisonment. Other bodies involved in the fight against corruption are the Financial Intelligence Analysis Unit (FIAU) and the Internal Audit and Investigations Department. The latter conducts internal audits and investigations within all governmental departments and agencies. As stated in the 2020 Rule of Law Report, the ongoing investigation and separate public inquiry into the assassination of investigative journalist Daphne Caruana Galizia have unveiled deep corruption patterns and raised a strong societal demand for significantly strengthening the capacity to tackle corruption and carrying out wider rule of law reform⁵⁷.

⁵⁰ Information received from the Chamber of Advocates in the context of the country visit to Malta and contribution received from Aditus Foundation following the country visit.

⁵¹ See 2020 Rule of Law Report, country chapter on the rule of law situation in Malta, p. 6.

⁵² See input from Malta for the 2021 Rule of Law Report, p. 23 (submitted following the country visit). In particular, a Bill detailing the reform of the compilation of evidence proceedings has been drafted and is expected to be presented to the Cabinet of Ministers soon.

⁵³ Act No. XXXII of 2021 - Justice Reform (Civil Procedure) Act.

⁵⁴ Figure 31, 2021 EU Justice Scoreboard. Malta had 8,7 judges per 100.000 inhabitants in 2019.

⁵⁵ Press Release of the Association of Judges and Magistrates of Malta, 22 April 2021.

⁵⁶ *Ibid.*

⁵⁷ 2020 Rule of Law Report: country chapter on the rule of law situation in Malta – Part II.

The perception among experts and business executives is that the level of corruption in the public sector remains relatively high. In the 2020 Corruption Perceptions Index by Transparency International, Malta scores 53/100 and ranks 15th in the European Union and 52th globally⁵⁸. This perception has significantly decreased⁵⁹ over the past five years⁶⁰.

A targeted National Anti-Fraud and Corruption Strategy for the period 2021-2024 was approved by the Government in March 2021⁶¹. The Cabinet of Ministers approved the strategy, which was notified publicly to the Parliament⁶² in May 2021. Its pillars are training and education, sharing of information, institutional cooperation (domestically and internationally), as well as accountability on public financing⁶³. The implementation of the strategy is coordinated by a committee chaired by the Internal Audit and Investigations Department (IAID). Representatives of the Ombudsman office, the private sector, civil society and non-governmental organisations regretted not having been invited or consulted prior to the adoption of the strategy⁶⁴.

While investigative and prosecution bodies have improved their capacity to deal with corruption cases, as shown by an increase in the number of cases opened, investigations continue to be lengthy depending on their complexity and a track record of convictions in high-level cases remains to be established⁶⁵. Since October 2020, the Attorney General has taken over the prosecution of certain serious crimes⁶⁶, including high-level corruption. A total of 14 prosecutors are dedicated to financial crimes and, since the second quarter of 2020, a task force on complex financial crimes has been in place⁶⁷. The number of financial

⁵⁸ Transparency International, Corruption Perceptions Index 2020 (2021), pp. 2-3. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

⁵⁹ In 2015 the score was 60, while, in 2020, the score is 53. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last five years.

⁶⁰ The Eurobarometer data on corruption perception and experience of citizens and businesses as reported last year is updated every second year. The latest data set is the Special Eurobarometer 502 (2020) and the Flash Eurobarometer 482 (2019).

⁶¹ The strategy aims at having a “normative, institutional and operational framework for the effective and efficient fight against irregularities, fraud and corruption in Malta” and “to reduce irregularities, fraud and corruption to the barest minimum, and to enable a framework that facilitates deterrence, detection, identification, investigation and prosecution of instances of fraud and corruption” (<https://parlament.mt/media/112504/06624.pdf>). The strategy is the result of discussions held by a Coordinating Committee set-up in terms of the Internal Audit and Financial Investigations Act, (Chapter 461 of the Laws of Malta), consisting of several institutional representatives (namely the Office of the Prime Minister; the Ministry for Justice, Equality and Governance; the Ministry for Finance and Employment; the Ministry for Home Affairs, National Security and Law Enforcement; and the Principal Permanent Secretary). Information received in the context of the country visit to Malta.

⁶² Parliament of Malta (2021), Paper Laid No. 6624, National Anti-Fraud and corruption Strategy, published by the Office of the Prime Minister, dated May 2021 (<https://parlament.mt/en/paper-laid/?id=34616>).

⁶³ Maltese Government (2021), National Anti-Fraud and Corruption Strategy.

⁶⁴ Information received in the context of the country visit to Malta.

⁶⁵ 2020 Rule of Law Report: country chapter on the rule of law situation in Malta – Part II.

⁶⁶ In accordance with the Prosecution of Offences (Transitory Provisions) Regulations, 2020 (L.N. 378 of 2020), this includes terrorism, money-laundering, bribery, corruption, fraud and misappropriation, and evasion of customs duty.

⁶⁷ Information received in the context of the country visit to Malta.

crimes cases investigated and solved has increased substantially⁶⁸, following the recent increase of resources and capacity of the financial crimes investigations department (FCID) that took place between 2019 and September 2020⁶⁹. However, the investigation and prosecution of corruption remains a lengthy process, especially in those cases that require large financial data analysis or that are considered complex⁷⁰. There are currently several high-level corruption cases that remain pending before the court.

New measures were introduced to improve integrity in the Police. In September 2020, under the lead of the newly appointed Police Commissioner⁷¹, the Police launched a Transformation Strategy for the years 2020-2025⁷², aimed at strengthening anti-corruption measures⁷³. The Police has implemented a policy regulating Business Interests and Additional Occupations, whose monitoring is the mandate of the Evaluation Board, appointed by the Police Commissioner⁷⁴. In 2020, the Police Act⁷⁵ was amended in order to allow police officers to make anonymous reports on breach of integrity within the police. However, the effectiveness of this measure will depend on its actual implementation.

Although the independence of the Permanent Commission against Corruption has been strengthened, clear results of recent reforms are still missing. The Permanent Commission against Corruption (PCAC) is responsible for the prevention of corruption in the public administration and can conduct administrative investigations. As reported in 2020, the PCAC underwent a structural reform⁷⁶ aimed at improving the appointment procedure of its three commissioners and extending the scope of its investigative competences. While the PCAC may request the assistance of the Police in the conduct of investigations, the PCAC has no in-house investigators nor data analysts; its resources remain limited, and concerns regarding its capacity to conduct impactful inquiries therefore persist⁷⁷. Police investigations

⁶⁸ In terms of investigations (about 245% increase), cases solved (about 280% increase), number of cases and persons prosecuted (about 50% and 173% increase, respectively). Input from Malta for the 2021 Rule of Law Report.

⁶⁹ See 2020 Rule of Law Report: Chapter for Malta – Part II.

⁷⁰ Complexity due to the extraterritoriality of some suspects or the facts occurred that may demand a joint-action or collaboration with foreign jurisdictions. Information received in the context of the country visit to Malta.

⁷¹ In 2020, the Police Commissioner was appointed in accordance with the recently amended procedure. For further details, see the 2020 Rule of Law Report: country chapter on the rule of law situation in Malta – Part II.

⁷² Input from Malta for the 2021 Rule of Law Report. The desired outcomes are as follows: i) increase in trust, confidence, legitimacy and responsiveness externally from the perspective of the community, and internally from that of police officers and staff; ii) transformation of the current police organisation into a flexible, efficient, data-driven, community centric, outcome focused and modern Police Force; and iii) innovation and sustainment of the positive changes resulting from reform through leadership and management practices that are both effective and efficient. Eleven strategic objectives have been identified based on the three desired outcomes.

⁷³ The implementation of this strategy is monitored by the Police Governance Board. Input from Malta for the 2021 Rule of Law Report.

⁷⁴ The Evaluation Board assesses whether or not a business interest or employment may be allowed as it could conflict with work of police officers, or negatively affect the reputation of the Police or the officer's ability to execute his/her duties impartially. This Policy also provides a definition of a business interest as well as the procedure which an officer must follow to be granted leave to pursue such business interest. In case of breach of policy, the officer will be liable to disciplinary action.

⁷⁵ The Police Act (Amendment of Second Schedule) Regulations, 2020.

⁷⁶ Act No. XLVI of 2020 - Permanent Commission Against Corruption (Amendment) Act.

⁷⁷ See the 2020 Rule of Law Report: Chapter for Malta – Part II.

and PCAC assessments can moreover be very lengthy⁷⁸. In 2020, the PCAC examined four cases of corruption, and two cases at the beginning of 2021. However, there is no detailed information on the workload of the PCAC⁷⁹. To date, very few whistleblowers have addressed their complaints to the PCAC⁸⁰. Once the examination of a file is concluded, the PCAC can close the case, or forward it to the Attorney General⁸¹. In case the Attorney General decides not to prosecute, the PCAC may challenge that decision⁸². Since August 2020⁸³, the PCAC has forwarded two cases to the Attorney General's office⁸⁴.

New provisions allow the Auditor General to notify its findings to the prosecution. The Internal Audit and Investigations Department (IAID) is responsible for auditing all governmental departments, including verification on financial books of public institutions and on conflicts of interest of public officials⁸⁵. The office of the Auditor General has competence to audit the accounts of public departments, including state-owned enterprises⁸⁶. On 15 March 2021, amendments to the Auditor General and National Audit Office Act⁸⁷ were adopted which provide that, under specific circumstances, the Auditor General may refer their findings directly to the Attorney General⁸⁸.

The mandate of the Ombudsperson, who is responsible for the integrity of civil servants, has expired. The Ombudsman office⁸⁹ is entitled to conduct investigations on officers and institutions performing administrative functions, including for cases of corruption, which are forwarded to the Attorney General. The Ombudsman office has the right to appeal against a decision of the Attorney General not to prosecute a case of corruption. To date, this right has

⁷⁸ Police investigations are known to have taken up to five years and the PCAC does not have standard operating procedures prescribing the duration of a case under its examination. Information received in the context of the country visit to Malta.

⁷⁹ Such as information on the number of whistleblower reports received, investigations, hearings performed yearly, or the number and types of cases concluded, classified or forwarded to the Ministry of Justice or the Attorney General's office.

⁸⁰ Information received in the context of the country visit to Malta. As noted in the 2020 Rule of Law Report, the Protection of the Whistleblower Act of 2013 covers both the private and the public sector requiring employers to nominate whistleblower reporting officers and containing provisions against retaliation for employees who make a protected disclosure.

⁸¹ According to the ACT No. XLVI of 2020 [former Bill No. 143], the case shall be forwarded to the Attorney general if "the conduct investigated is corrupt or connected with or conducive to corrupt practices".

⁸² Act No. XLI of 2020 [former Bill No. 154]. However, in its opinion of October 2020 (CDL-AD(2020)019-e) the Venice Commission suggested to give those with injured party status⁸² (including the PCAC) the right to contest the decision of the AG of non-prosecution "*independently of whether they themselves reported to the Attorney General or not*".

⁸³ New Permanent Commission Against Corruption Act, modified by the Act No. XLVI of 2020.

⁸⁴ Input from Malta for the 2021 Rule of Law Report.

⁸⁵ IAID has a staff of 20 audit officers, in addition to a secretariat divided into 4 departments, including one for investigations (with three investigators).

⁸⁶ The Auditor General office has a personnel of 50 auditors. In 2020, 40 compliance audits and seven performance audits were conducted, and 19 reports were published (On the webpage of the National Audit Office (<https://nao.gov.mt/en/recent-publications>), for a total of 120 audited entities. Information received in the context of the country visit to Malta.

⁸⁷ Auditor General and National Audit Office (Amendment) Act 74.

⁸⁸ In its opinion of October 2020 on this draft bill, the Venice Commission recommended using wording such as "*connected with or conducive to*" corruption. CDL-AD(2020)019-e.

⁸⁹ For further information see part IV below.

not been exercised⁹⁰. The mandate of the current Ombudsperson expired in March 2021, therefore the current Chair continues to serve until a successor is nominated⁹¹.

The ethics rules for high-ranking officials, members of Parliament and ministers are in place, including on asset disclosure and lobbying, although further changes are envisaged in the integrity framework. The Commissioner for Standards in Public Life (“the Commissioner”) monitors the ethical conduct of ministers, parliamentary secretaries and members of Parliament. The regulation on lobbying and the codes of ethics for ministers and members of Parliament are currently under review⁹². In 2020, the Commissioner presented a report on the Code of Ethics⁹³, which remains to be considered by Parliament⁹⁴. Every year, members of Parliament and ministers submit their declaration of assets to the office of the Speaker of the Assembly, while the Commissioner performs the verifications. The Commissioner is currently following up on eight cases of potential conflicts of interest for members of Parliament⁹⁵.

Rules of ethics applicable to persons of trust have been amended but concerns were raised on the feasibility and the effectiveness of controls. Persons of trust are required to submit the basic asset disclosure⁹⁶. Recommendations for amendments of the draft law on the appointment of persons of trust were issued by both the Venice Commission and the Group of States against Corruption (GRECO)⁹⁷. Since March 2021, following the adoption of a clear legal basis for their appointment⁹⁸, a public official seconded to another administration remains bound to the regulations applicable to the public administration of origin. However, the Commissioner for Standards in Public Life has voiced concerns on the feasibility and effectiveness of the control on the ethics of persons of trust, especially for those that work more closely with or under a minister⁹⁹.

⁹⁰ Information received in the context of the country visit to Malta.

⁹¹ Information received in the context of the country visit to Malta. The appointed Ombudsperson will have to be supported “by the votes of no less than two-thirds of all the members of the House” (this in accordance with article 64A2 of the Constitution, amended in 2020, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2020\)055-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2020)055-e)).

⁹² Information received in the context of the country visit to Malta. The project’s goals are to review the existing codes of ethics and, based on recommendations, review and improve the proposal for the regulation of lobbying, including the register of integrity, which contains the declarations of assets and positions.

⁹³ For Members of the House of Representatives and for Ministers and Parliamentary Secretaries.

⁹⁴ Input from Malta for the 2021 Rule of Law Report.

⁹⁵ Information received in the context of the country visit to Malta.

⁹⁶ In compliance with the Code of ethics for public employees Appended to the Public Administration Act.

⁹⁷ CDL-AD(2020)019-e, where the Venice Commission considered that “*two issues needed to be regulated directly in the law: the maximum number and the duration of such engagements*” (i.e. persons of trust). In its Fifth Evaluation Round On “Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies”, published on 3 April 2019 by the Council of Europe Group of States against Corruption (GRECO): “*recommends that measures be taken to solve the legal situation of persons of trust and to limit the number of such discretionarily appointed officials to an absolute minimum*”.

⁹⁸ Act No. XVI of 2021, to provide for the amendment of the laws relative to the appointment of persons of trust. Today, the persons of trust are only those individuals that come from the private sector, and are appointed to a temporary position in the public administration. If, on the other hand, a public official is temporarily seconded to another public service (such as a Ministry or any other institution), s/he is not considered by the law a person of trust *stricto sensu*.

⁹⁹ In practice, the control on the ethics (including conflicts of interests and external positions) of a seconded public official is mandated to the appointing authority, which creates possible conflict of interest, between the controller and the controlled person. Information received in the context of the country visit.

The individual investor programme, allowing for the granting of citizenship in exchange for pre-determined payments and investments, has been replaced by a new scheme¹⁰⁰. Documents published by different media sources under the project name “passport papers” raised doubts about the compliance of applicants for the individual investor programme with the programme’s requirements¹⁰¹. The European Commission launched an infringement procedure against Malta in relation to the previous and the new investor citizenship scheme as regards compliance with EU law¹⁰².

Specific guidance has been put in place to mitigate the risks of corruption in public procurement during the COVID-19 pandemic. In 2020, the Department for Contracts within the Ministry for Finance and Employment implemented the Procurement of Property Regulations¹⁰³, published on 30 April 2020, including provisions against corruption and collusion¹⁰⁴. The Department for Contracts has also implemented an online post-contract module, within the official public procurement portal¹⁰⁵, aimed at preventing conflicts of interest in tendering procedures.

III. MEDIA PLURALISM AND MEDIA FREEDOM

Freedom of expression is enshrined in the Constitution of Malta¹⁰⁶, as well as in the European Convention Act (Chapter 319 of the laws of Malta). The Media and Defamation Act of 14 May 2018 repealed the 1974 Press Act, bringing about an overall positive overhaul of defamation laws. The Constitution sets out the composition, appointment and removal procedures and independence of the Broadcasting Authority and lays down its basic functions¹⁰⁷. The Freedom of Information Act establishes the legal framework for access to information held by public authorities¹⁰⁸. Legislation was enacted in 2020 to transpose the Audiovisual Media Service Directive¹⁰⁹ into Maltese law.

Amendments to Malta’s Broadcasting Act have not brought about any changes which would strengthen the independence and functioning of the Broadcasting Authority. The members of the Broadcasting Authority are appointed by the President, following the advice

¹⁰⁰ The individual investor programme allowed for the naturalisation of up to 1,800 investors, excluding dependents, in exchange for substantial investments (Regulation 12 of the Individual Investor Programme of the Republic of Malta Regulations, 2014). The scheme was repealed following the enactment of the Maltese Citizenship (Amendment No. 2) Act, 2020 (Act XXXVIII of 2020). The provisions concerning the granting of citizenship by means of the Individual Investor Programme are therefore no longer in force and replaced by the “Maltese Citizenship by Naturalisation for Exceptional Services by Direct Investment” scheme, established by the Granting of Citizenship for Exceptional Services Regulations, 2020. The new scheme allows for the naturalisation of up to 400 investors annually and 1,500 investors in total, excluding dependents, in exchange for substantial investments. Input from Malta for the 2021 Rule of Law Report.

¹⁰¹ Times of Malta ‘*Exposed: the great residency sham to obtain a Maltese passport*’ of 22 April 2021.

¹⁰² Commission press releases IP 20/1925 and INF/21/2743. On 20 October 2020, the Commission adopted a letter of formal notice concerning the investor citizenship scheme and, upon its change, the Commission adopted, on 9 June 2021, an additional letter of formal notice to expand the concerns to the new scheme operated by Malta.

¹⁰³ Subsidiary legislation 601.03, Public procurement regulations.

¹⁰⁴ See article 187 of Subsidiary legislation 601.03, Public procurement regulations.

¹⁰⁵ <http://www.etenders.gov.mt>.

¹⁰⁶ Article 41 of the Constitution.

¹⁰⁷ Articles 118 and 119 of the Constitution.

¹⁰⁸ Malta maintained its 81st position worldwide in the Reporters Without Borders World Press Freedom Index. This means that the country is ranked 25th in the EU.

¹⁰⁹ Directive (EU) 2018/1808 of 14 November 2018.

of the Prime Minister and after consultation with the Leader of the Opposition. Although the authority's five board members are all political appointees, given that it has clearly defined responsibilities at law and is generally transparent about its activities, the Media Pluralism Monitor 2021 considers the independence and the effectiveness of the authority to present low risk¹¹⁰. Act No. LVI of 2020, which amended the Broadcasting Act to align it with the Audiovisual Media Service Directive, has introduced no changes relating to the independence of the Broadcasting Authority¹¹¹.

Concerns with regard to political party ownership of and influence on the work of several media outlets and broadcasters persist. The two main political parties represented in Parliament¹¹² effectively own, control or manage a number of Maltese media outlets and broadcasters, including online news portals. MPM 2021 considers that this state of affairs means that these two parties “actively contribute towards shaping the working environment for journalists” while their media outlets are “a major influence on public discourse”¹¹³. This leads MPM 2021 to once more consider political independence of the media to be at acute high risk in the country¹¹⁴. As pointed out in MPM 2020 and reiterated in MPM 2021¹¹⁵ the Broadcasting Authority mainly monitors and regulates public service media (i.e. Public Broadcasting Services (PBS)) while *de facto* allowing the two other main broadcasting outlets - owned by the Labour Party and the Nationalist Party respectively - “to balance themselves out editorially”. In the light of this state of affairs, a constitutional case has been lodged to challenge a proviso of Section 13(2) of the Broadcasting Act and the regulator's application of this proviso which, it is argued, consolidates a polarised media landscape¹¹⁶.

Minor changes were made to the statute of the Institute of Maltese Journalists (IGM). The IGM, the professional journalists' organisation in the country, which was founded in 1989, unanimously approved a number of amendments to its statute (including an increase of its board members and additional scrutiny of its finances) proposed by the Commissioner for Voluntary Organisations¹¹⁷. While MPM 2020 had pointed out that the institute is generally not considered as being effective in safeguarding editorial independence¹¹⁸, MPM 2021 notes a change in approach over the past year during which the institute has “become more vocal about the needs of its members, as well as proactive in addressing any obstacles faced by journalists in the carrying out of their duties.”¹¹⁹

There have been no developments with regard to media ownership transparency and no legislative changes are planned. The Broadcasting Authority gathers ownership information of media outlets, but there are no obligations to make this easily accessible to the public. Given the relatively small size of the media market, the public is largely aware of who owns media companies in the country. Consequently, MPM 2021 maintains its medium risk score

¹¹⁰ 2021 Media Pluralism Monitor, Country Report on Malta pp. 10-11.

¹¹¹ Act No. LVI of 2020 amending the Broadcasting Act, Cap. 350.

¹¹² The ruling Partit Laburista (PL) and opposition Partit Nazzjonalista (PN).

¹¹³ 2021 Media Pluralism Monitor, Country Report on Malta p. 7.

¹¹⁴ *Ibid*, p. 14.

¹¹⁵ *Ibid*, p. 11.

¹¹⁶ Case 47/2021 - Lovin Malta Ltd. et vs. the State Advocate, lodged on 1 February 2021.

¹¹⁷ Input from Malta for the 2021 Rule of Law Report, p. 47 and information received in the context of the country visit to Malta, 19 April 2021.

¹¹⁸ 2020 Media Pluralism Monitor, Country Report on Malta, p. 11.

¹¹⁹ 2021 Media Pluralism Monitor, Country Report on Malta, p. 10.

in terms of media ownership transparency¹²⁰. The Broadcasting Act contains specific limitations to prevent a high degree of horizontal ownership concentration in the audiovisual media sector. However lack of complete data makes it difficult to make a full assessment¹²¹.

The lack of a legal framework regulating state advertising continues to provide room for abuse both by the Government and by individual politicians. This emerges from investigations conducted by Malta's Commissioner for Standards in Public Life relating to the allocation of public funds for alleged political advertising in print media by a sitting government minister¹²². Draft guidelines on government advertising and promotional material were issued for the first time by the Commissioner for Standards in Public life in June 2021 and are pending consultation¹²³.

In April 2020, Malta Enterprise launched a support scheme for news media providers to cushion the adverse effects of the COVID-19 pandemic. The scheme, which by February 2021 had distributed a little over EUR 1.2 million in funds, was designed to assist media operators which employ at least four full-time journalists and which provide daily news services. Several major independent media houses have defended the scheme. Other stakeholders, including certain other independent media houses and outlets, have commented that the scheme lacked transparency in terms of the criteria used to determine the amounts allocated and that it was designed in a manner that would benefit media houses owned by the political parties¹²⁴. MPM 2021 reports that several freedom of information requests made on the matter remained unanswered¹²⁵. For the above-mentioned reasons MPM 2021 maintains its medium risk score in terms of state regulation of resources and support for the media sector¹²⁶.

The Government has started a review of the legal framework enabling access to information held by public authorities. The Freedom of Information Act establishes that Maltese citizens, EU citizens and people who have resided in Malta for a period of at least five years are eligible to request access to information held by public authorities¹²⁷. Any refusal to provide access must be motivated and can be appealed. Journalists, NGOs¹²⁸ and MPM 2021 report that journalists consistently encounter difficulties when requesting such access, due to outright rejection, significant delays and absence of reply. The IGM has furthermore pointed out that public authorities habitually initially deny full access to information and data while also raising concerns with regard to the handling of certain COVID-19 related press conferences during which journalists questions were not broadcast¹²⁹. For these reasons MPM 2021 has significantly increased the risk score for this area albeit maintaining it within the medium risk band¹³⁰. The Government has announced

¹²⁰ 2021 Media Pluralism Monitor, Country Report on Malta, p. 12.

¹²¹ MPM 2021 reports in particular a general lack of data pertaining to the market share of individual news outlets apart from the audience ratings of the top four television stations.

¹²² Commissioner for Standards in Public Life, Case Report of 17 March 2021, No. K/028.

¹²³ <https://standardscommissioner.com/wp-content/uploads/draft-guidelines-government-advertising-promotional-material.pdf>

¹²⁴ Information received from several stakeholders in the context of the country visit to Malta.

¹²⁵ 2021 Media Pluralism Monitor, Country Report on Malta, pp. 15-16.

¹²⁶ 2021 Media Pluralism Monitor, Country Report, Malta, p. 15.

¹²⁷ Freedom and Information Act of 2008, as amended in 2012 (Chapter 496 of the Laws of Malta).

¹²⁸ Contribution from NGOs Aditus Foundation for the 2021 Rule of Law Report and information received from several stakeholders in the context of the country visit to Malta.

¹²⁹ Information received in the context of the country visit to Malta.

¹³⁰ 2021 Media Pluralism Monitor, Country Report, Malta, p. 10.

that in the light of GRECO Recommendations on the matter¹³¹, an independent study was launched in January 2021 to examine the issue.

The public inquiry established to determine whether the state bears any responsibility for the circumstances that led to the assassination of journalist Daphne Caruana Galizia continued hearing testimonies¹³². In the course of 2020 and 2021, the public inquiry pointed to what some stakeholders qualified as worrying instances of political interference, police cover-up and collusion with criminals¹³³. A submission to the public inquiry authored by the international free speech organisation *Article 19* and supported by several international press associations concludes that if the mandate of the inquiry is completed and its recommendations implemented “*it has the potential to form an important precedent for achieving justice for journalists globally*” adding that the work of the inquiry “*is essential for ensuring reparations for the victim, her family and Maltese society*”¹³⁴.

Journalists continue to face a number of challenges in the exercise of their profession. This has been confirmed by journalists, the IGM, MPM as well as NGOs¹³⁵ though MPM 2021 registers a slight reduction of risk compared to MPM 2020¹³⁶. The Council of Europe Platform to promote the protection of journalism and the safety of journalists reported two new alerts in 2020¹³⁷, which are yet to be resolved, relating to the opening of SLAPP¹³⁸ lawsuits by a British-Azerbaijani businessman against five Maltese media outlets and to the alleged bribery of a Times of Malta journalist. Both alerts are related, respectively, to investigative journalism conducted by Daphne Caruana Galizia and to the criminal proceedings related to her assassination¹³⁹. The IGM has raised concerns with regard to what it terms ‘the normalisation of ridicule and derision’ of journalists on social media¹⁴⁰.

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. Constitutional cases are heard by the Constitutional Court. The Constitution establishes a number of independent authorities, including the Office of the Ombudsperson.

¹³¹ GRECO (2019), Fifth Evaluation Round - Evaluation Report.

¹³² On 15 July 2021 the board of inquiry announced that it had drawn up the report which it would first send to the Prime Minister and to the State Advocate and subsequently to Ms Caruana Galizia’s family. The date of publication will be announced at a later date.

¹³³ Reporters Without Borders, 2021 report on Malta.

¹³⁴ Article 19 (2021), Public Inquiry into the assassination of Daphne Caruana Galizia, Written submission, 31 March 2021.

¹³⁵ Contribution from Aditus Foundation for the 2021 Rule of Law Report and information received from several stakeholders in the context of the country visit to Malta.

¹³⁶ 2021 Media Pluralism Monitor, Country Report, Malta, pp. 9-10.

¹³⁷ Council of Europe, Platform to promote the protection of journalism and safety of journalists. As indicated by Council of Europe Recommendation 2016/4, Member States should put in place a comprehensive legislative framework that enables journalists and other media actors to contribute to public debate effectively and without fear.

¹³⁸ Strategic lawsuit against public participation.

¹³⁹ Council of Europe, Platform to promote the protection of journalism and safety of journalists (Media freedom alerts).

¹⁴⁰ Information received in the context of the country visit to Malta.

Checks and balances in the procedure of appointment and removal of the President of Malta were strengthened. The reform adopted in July 2020 provides that the President of Malta is elected by a two-thirds majority in Parliament, instead of a simple majority. This is in line with the opinions of the Venice Commission, which nonetheless also called for providing for an anti-deadlock mechanism, currently absent¹⁴¹. In addition, the removal of the President now requires a two-thirds majority in Parliament and can only be decided on the grounds of a proved inability to perform functions of the office¹⁴² or “proved misbehaviour”. While welcoming the reform, the Venice Commission recommended that the President should have a right of appeal to the Constitutional Court against a finding of such misbehaviour, ideally before the final vote in Parliament¹⁴³.

The strengthened role of the Ombudsperson could be further enhanced and the draft law establishing a national human rights institution is still under discussion in Parliament. A reform adopted in June 2020 brought the rules on appointment¹⁴⁴, suspension and dismissal of the Ombudsperson at the constitutional level. In its October 2020 Opinion, the Venice Commission welcomed the reform, while making a number of additional recommendations¹⁴⁵, in particular recommending that the Ombudsperson enjoy a right to judicial review of the decision on his dismissal due to “proved misbehaviour”¹⁴⁶. The incumbent Ombudsperson regretted the lack of consultation on the reform, whilst making proposals to further strengthen this Office¹⁴⁷. Furthermore, the Ombudsperson raised concerns as regards a lack of follow-up to his recommendations and proposed that Parliament should be bound to discuss the opinions submitted¹⁴⁸. The mandate of the current Ombudsperson expired on 21 March 2021, but no successor has been nominated by the date of publishing this report¹⁴⁹. The proposal to establish a national human rights institution, proposed in 2019, is still being discussed in Parliament.

A constitutional reform concerning the appointments to certain independent commissions has been adopted The reform adopted on 24 March 2021¹⁵⁰ provided that

¹⁴¹ Venice Commission, CDL-AD(2020)019-e, para. 44.

¹⁴² Whether arising from infirmity of body or mind or any other cause.

¹⁴³ Venice Commission, CDL-AD(2020)019-e, para. 45.

¹⁴⁴ An Act to amend various laws with the aim of reforming the procedure by which the appointments of the Principal Permanent Secretary and Permanent Secretaries are made. See also 2020 Rule of Law Report: country chapter on the rule of law situation in Malta – Part IV.

¹⁴⁵ The Venice Commission noted that the threshold conditioning the Ombudsperson’s exercise of its power to refer potential evidence of a corrupt practice directly to the Attorney General is too high (the current threshold conditioning the power of the Ombudsman is high as this power can be exercised only if the Ombudsman possesses ‘evidence of any corrupt practice’ instead of, as recommended, ‘connected with or conducive to [any corrupt practice]’). Moreover, according to the Venice Commission the Ombudsperson should not only be empowered, but indeed obliged to report corrupt practices to the Attorney General and the right to file a complaint to the Ombudsperson should not be limited to persons who claim to have been victims of any wrongdoing. Furthermore, the Ombudsman could enjoy the necessary support and cooperation from the Government. See Venice Commission, CDL-AD(2020)019-e, paras. 67, 69, 71.

¹⁴⁶ Venice Commission, CDL-AD(2020)019-e, para. 67.

¹⁴⁷ Information received from the Ombudsperson in the context of the country visit to Malta.

¹⁴⁸ Ombudsman Annual Report of 2019. In this regard, the Venice Commission recommended inscribing the power of the Ombudsman’s right to information in the constitution.

¹⁴⁹ Pending the appointment of a new office holder, the incumbent Ombudsperson continues in office. Following attempts to find a candidate between the government and the opposition parties, on 16 May 2021 media reported that no agreement was reached. Further consultations in that respect are ongoing.

¹⁵⁰ See also 2020 Rule of Law Report: country chapter on the rule of law situation in Malta – Part IV, p. 15.

powers relating to the appointment of a number of independent commissions¹⁵¹ will now be vested in the Cabinet of Ministers, instead of the Prime Minister. The Venice Commission welcomed the reform as a positive step, making recommendations as regards the exact formulation to be used in this regard¹⁵². The Venice Commission also reiterated its recommendation to strengthen the appointment procedures of the Electoral Commission, the Public Service Commission and the Broadcasting Authority¹⁵³. The Government plans to discuss this matter in the context of the Constitutional Convention. Due to the current COVID-19 pandemic, the timing of the Convention has not yet been decided. Civil society organisations have underlined the need for information about the timing, process and participation to the Convention¹⁵⁴.

Reforms proposed in 2020 as regards the appointment of persons exercising top executive functions in the public administration were adopted¹⁵⁵. On 24 March 2021, an amendment was adopted establishing a clear basis for the appointment of persons of trust¹⁵⁶. Another amendment, adopted on 24 May 2021, ensures that the Public Service Commission, which is an independent constitutional body, makes recommendations to the President of the Republic for the appointment and removal of permanent secretaries, on the basis of clear and pre-established requirements¹⁵⁷. These amendments aim at following up on recommendations of the Venice Commission and GRECO¹⁵⁸.

There is a need to ensure consistent follow-up of judgments of the Constitutional Court where laws are found to be unconstitutional. According to the Maltese constitutional order, judgments of the Constitutional Court do not have *erga omnes* effect. Laws found unconstitutional remain in force until Parliament repeals them. The Venice Commission found that in practice Parliament does not seem to consistently ensure such follow up and recommended in that respect¹⁵⁹ to introduce an obligation for Parliament to repeal or amend within a limited time-frame provisions found unconstitutional. There are currently no initiatives planned to address this issue¹⁶⁰.

¹⁵¹ These comprise the Central Bank of Malta, the Information and Data Protection Commissioner, the Chairman of the Malta Financial Services Authority and the members of the Board of the Arbitration Centre.

¹⁵² The Venice Commission noted that the wording remains weak ('giving due consideration'). The formulation used elsewhere is: 'acting on the advice of the Cabinet of Ministers' or 'after obtaining the approval of the Cabinet of Ministers'. Venice Commission, CDL-AD(2020)019-e, para. 84.

¹⁵³ Venice Commission, CDL-AD(2020)019-e, para. 85.

¹⁵⁴ Information and contribution received in the context of the country visit to Malta.

¹⁵⁵ 2020 Rule of Law Report: Chapter for Malta – Part IV, p. 9.

¹⁵⁶ 2020 Act to provide for the amendment of laws relative to the appointment of persons of trust.

¹⁵⁷ An Act to amend various laws with the aim of reforming the procedure by which the appointments of the Principal Permanent Secretary and Permanent Secretaries are made.

¹⁵⁸ Venice Commission Opinion (CDL-AD(2020)006), paras. 115-129; GRECO (2019), Fifth Evaluation Round, Evaluation Report, paras. 24-26.

¹⁵⁹ See also See 2020 Rule of Law Report: country chapter on the rule of law situation in Malta – Part I, p. 15. Venice Commission, CDL-AD(2020)019-e, para. 98, CDL-AD(2020)006, para. 80-84 and CDL-AD(2018)028, para. 74-79. The Venice Commission noted that it is up to Parliament to repeal or amend laws found unconstitutional. According to the Venice Commission, '*in practice, this seems not to happen in all cases and the Constitutional Court is faced with repetitive cases, because the administration – and sometimes even judges, it seems – continue to apply the provisions found unconstitutional*'.

¹⁶⁰ The Maltese Government considers that ensuring the *erga omnes* effect of Constitutional Court's judgments would not comply with principles of the Maltese legal system. Aditus Foundation raised concerns as regards the absence of the *erga omnes* effect and compliance with Article 6 ECHR (information received in the context of the country visit to Malta). It is also noted that in accordance with Article 242 of the Code of the

A reflection on the role of Parliament could be addressed in the context of the Constitutional Convention. The Venice Commission reiterated the recommendations in respect of Parliament, notably to provide sufficient research capacity for individual Members of Parliament (MPs), independent legal advice for such Members and ensuring that backbench Members of Parliament are made less dependent from government posts¹⁶¹. In that respect, the Government announced its intention to discuss, in the context of the constitutional reform, whether MPs should be given the choice between working full-time or part-time¹⁶². Discussions regarding the allocation of additional funds for the engagement of research officers by each parliamentary group are ongoing.

Challenges remain in the law-making process as regards the limited use of evidence-based instruments and effectiveness of public consultations¹⁶³. Previous concerns about the limited use of public consultations remain valid with regard to the reforms adopted in June 2020¹⁶⁴. Civil society organisations have also raised concerns about the lack of consultations regarding laws which affect their functioning¹⁶⁵. The e-Participation platform that is being developed by the government¹⁶⁶, is set to be used to conduct public consultations¹⁶⁷.

Measures to face the COVID-19 pandemic continued to be adopted. The Public Health Act¹⁶⁸ vests the Superintendent of Public Health with the power to declare the state of public health emergency, without the need to set the time-frame of its duration¹⁶⁹. The same Act provides the Superintendent with the power to make, amend or revoke orders in cases of epidemics and infectious diseases. These powers were used more than 55 times from June to December 2020 and twice (January and February) 2021¹⁷⁰. Regulations and orders issued under the state of public health emergency can be subject to scrutiny by Parliament¹⁷¹.

Civil society organisations have expressed concerns regarding access to funding and the role of the Commissioner for Voluntary Organisations. The civic space continues to be

Organisation of Civil Procedure (Cap 12), where a Court finds a law to be invalid or in breach of the Constitution or fundamental rights, it must notify the House of Representatives of its judgment. The Prime Minister may, within six months from the date that the judgment has become final, make regulations deleting the relevant instrument or provision thereof declared to be contrary to the Constitution or human rights.

¹⁶¹ Venice Commission, CDL-AD(2020)019-e, para. 98.

¹⁶² As noted in the 2020 Rule of Law Report, the Venice Commission found that the Maltese Parliament needs to be strengthened in order to be an effective check on Government and recommended changing the system in order to provide for full-time work and payment of members (CDL-AD(2020)006 paras. 92-94).

¹⁶³ See 2020 Rule of Law Report, country chapter on the rule of law situation in Malta, p. 15.

¹⁶⁴ Venice Commission, CDL-AD(2020)019-e, para. 95.

¹⁶⁵ Information received in the context of the country visit to Malta.

¹⁶⁶ See the Maltese Government's contribution to the 2021 Rule of Law Report.

¹⁶⁷ In particular, the citizens would be continuously notified about the feedback given and about procedural steps so far taken in the consultation process. The new system will also introduce a more detailed statistical information about the kind of feedback provided from the departments/entities.

¹⁶⁸ Articles 14 ff. of the Act.

¹⁶⁹ The state of public health emergency was declared on 16 March 2020 and lifted on 1 July 2020.

¹⁷⁰ Input from Malta for the 2021 Rule of Law Report.

¹⁷¹ In accordance with the Interpretation Act of 1975 (chapter 249), any subsidiary legislation – such as regulations and orders issued by the Superintendent – has to be submitted for parliamentary scrutiny and may be annulled or amended by Parliament within 60 days from their submission. According to the public authorities, no motions have so far been presented to contest subsidiary legislation put in place under the Public Health Act since its amendment in 2020; see contribution from the Secretariat of the Parliament for the 2021 Rule of Law Report.

considered as narrowed in view of, among others, the conditions for journalists¹⁷². Civil society organisations participate actively in the public debate. However, they have expressed concerns about new rules on fundraising activities adopted in September 2020¹⁷³ as these are seen as creating a double hurdle for associations to conduct their activities¹⁷⁴ and grant undue discretion to the Commissioner for Voluntary Organisations to refuse approval to anyone to act as collectors¹⁷⁵. Civil society organisations have raised concerns that actions of the Commissioner could be politically motivated¹⁷⁶. Various schemes were open in 2020, including an emergency fund¹⁷⁷ set up in 2020 to help Voluntary Organisations to overcome challenges entailed by the COVID-19 pandemic which was extended until March 2021 and provided with an additional EUR 150 000. More than 120 non-profit groups benefited from the first stage of the scheme launched in May 2020 with a EUR 125 000 funding¹⁷⁸. On 1 July 2021, the Commissioner for Voluntary Organisations resigned¹⁷⁹.

¹⁷² Ratings given by CIVICUS, Malta. Ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed. The main considerations of CIVICUS to consider Malta's civic space as narrowed concern the hostile conditions for journalist and anti-corruption activists.

¹⁷³ The Voluntary Organisations (Public Collections) Regulations (S.L.492.03.) and Voluntary Organisations (Charity Shops) Regulations (S.L.492.04.). According to information received from the Maltese authorities, legal amendments concerning access to funding and the role of the Commissioner for Voluntary Organisations were necessary to implement recommendations by international organisations.

¹⁷⁴ The reported double hurdle results from the fact that the organisations interested in obtaining funding for their activities, despite already being enrolled under the Voluntary Organisations Act, must request the permission of the authorities every time they intend to seek such funding.

¹⁷⁵ In 2020 and 2021 the Office of the Commissioner for Voluntary Organisations contacted over 200 Voluntary Organisations regarding issues pertaining to their respective statutes. In 2020 alone 124 organisations had to amend their statutes before being accepted as registered Voluntary Organisations, whilst 31 organisations had their application rejected because they failed to amend their statute so as to align it with the Voluntary Organisations Act. The Investigations and Monitoring Unit section within the Office of the Commissioner for Voluntary Organisations investigated nine (9) cases throughout 2019 and five (5) cases throughout 2020 regarding various complaints on different VO's. Input from Malta for the 2021 Rule of Law Report.

¹⁷⁶ Repubblika's reply to the Commissioner for Voluntary Organisations, 6 March 2021, in which Repubblika raised concerns that it is being targeted by the Commissioner due to political motivations in an attempt to silence it (see: <https://repubblika.org/press-release/government-wants-ban-repubblika/>). In his reply of 15 March 2021, the Commissioner rebutted the allegations made. The rebuttal was dismissed by Repubblika in its statement of 16 March 2021. The Office of the Commissioner for Voluntary Organisations continues to carry out routine administrative checks in order to ensure compliance with the Voluntary Organisations Act of the statutes of organisations already registered with it, as well as of those which apply for Voluntary Organisation status.

¹⁷⁷ The fund is administered by the Malta Council for the Voluntary Sector in collaboration with the Parliamentary Secretariat for Sport, Recreation and Voluntary Organisations. Organisations working in the voluntary sector that have been affected by the COVID-19 epidemics are eligible under the scheme to receive up to EUR 5000.

¹⁷⁸ Providing information on available national and EU funding for Voluntary Organisations is required by law and ensured on dedicated digital platforms (see <https://www.vofunding.org.mt/> and <https://maltacvs.org/latest-news/mobile-app-vo-funding-malta-2/>). Personalised assistance and support to local organisations is provided in the practical aspects related to EU funding opportunities.

¹⁷⁹ Independent, 'Jesmond Saliba nominated to be new commissioner for VOs' of 2 July 2021.

Annex I: List of sources in alphabetical order*

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

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Annex II: Country visit to Malta

The Commission services held virtual meetings in April 2021 with:

- Association of Judges and Magistrates of Malta
- Auditor General
- Aditus Foundation
- Broadcasting Authority
- Chamber of Advocates
- Chief Justice and members of the Commission for the Administration of Justice
- Commissioner for Standards in Public Life
- Daphne Caruana Galizia Foundation
- Industrial Tribunal
- Information and Data Protection Commissioner
- Internal Audit and Investigations Department
- Institute of Maltese Journalists
- Lovin Malta
- Ministry for Justice, Equality and Governance
- Office of the Attorney General
- Office of Parliamentary Ombudsman – Malta
- Permanent Commission against Corruption
- Police: Financial Crimes Investigations Department
- Public Service Commission
- Prof. Justin Borg-Barthet
- Repubblica
- Secretariat of the Parliament
- State Advocate

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

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

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