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**COMMISSION STAFF WORKING DOCUMENT**

**2022 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**

**2022 Rule of Law Report  
The rule of law situation in the European Union**

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## **ABSTRACT**

The reforms of the Maltese justice system that started in 2020 have continued to be implemented. The transfer of prosecutions from the police to the Attorney General, included in the Maltese Recovery and Resilience Plan, continues, and a review on the independence of specialised tribunals has been announced by the Government. No further steps have been taken regarding the system of appointment of the Chief Justice, and the lack of involvement of the judiciary in that system requires further attention. The level of resources for the judiciary remains a concern. Regarding the quality of justice, several initiatives have been carried out, including the publication of the first national Digital Justice Strategy (2022-2027) and improvements in the legal aid framework. The efficiency of justice, in particular the length of proceedings, has deteriorated further and the Government is preparing several initiatives to continue addressing this issue.

The Government adopted the National Anti-Fraud and Corruption Strategy, whose implementation is overseen by an inter-ministerial Committee. Despite increased resources allocated to investigative and prosecution bodies, the investigation of high-level corruption cases remains lengthy. Results in terms of final judgments are still lacking. The Permanent Commission against Corruption, which was subject to a reform in 2020, is to be further strengthened. Currently, it has limited resources and has not shown tangible results in its work. Integrity and ethics rules in the public service, including within the Police and for high-ranking officials, are being implemented, although legislative and operational gaps exist. The existing regulation on the protection of whistleblowers was amended in 2021, and a database for collecting data on whistleblowing is planned to be implemented by the end of 2024. The Citizenship-by-Investment legislative framework continues to raise concern. Rules remain in place to mitigate risks of corruption in public procurement during the COVID-19 pandemic.

The report of the public inquiry into the assassination of investigative journalist Daphne Caruana Galizia published a set of conclusions and recommendations relating to the media landscape in Malta. The Government has proposed a number of reforms to address some of those recommendations. An alleged mastermind of the assassination has been indicted on charges of complicity in murder and criminal association and the criminal proceedings are ongoing. While an independent review of the applicable legislation is underway, journalists and citizens at large continue to face obstacles when requesting access to information held by public authorities. The independence and governance of public service media are a cause for concern. The ownership of, or editorial control over, several media outlets by the two main political parties continues to characterise the news media market. Guidelines on Government advertising and promotional material have recently entered into force. However the absence of a legal framework to ensure transparency in state advertising remains an issue of concern.

With regards to checks and balances, while impact assessments are mandatory, the lack of a formalised process for public consultations and their limited use in the preparation of legislation remain a concern. A new Commissioner for Voluntary Organisations was appointed. The Ombudsperson remains carrying out his mandate since March 2021 until an agreement is reached in Parliament to appoint a new person. The law establishing a national human rights institution continues to be pending in Parliament. The future Constitutional Convention has the potential to address concerns on the appointment process for certain constitutional bodies, although it remains on hold. Previous concerns related to access to funding by civil society organisations were addressed.

## **RECOMMENDATIONS**

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:

- 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.
- Strengthen efforts to improve the efficiency of justice, particularly to reduce the length of proceedings.
- Address challenges related to the length of investigations of high-level corruption cases, including by establishing a robust track record of final judgments.
- Advance with the introduction of 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.
- 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.
- Re-launch efforts to establish a National Human Rights Institution taking into account the UN Paris Principles.

## **I. JUSTICE SYSTEM**

The Maltese justice system is influenced by both the continental and the common law legal traditions<sup>1</sup>. 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, 67% of the general population and 68% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2022<sup>2</sup>. According to data in the 2022 EU Justice Scoreboard, the level has evolved positively since 2016 and consolidated a positive trend. The perceived judicial independence among the general public has slightly decreased in comparison with 2021 (69%), but it is higher than in 2016 (44%). The perceived judicial independence among companies remains at the same level than in 2021.

**No further steps have been taken as regards the system of appointment of the Chief Justice, since no agreement on the matter could be reached in Parliament.** As explained in the 2021 Rule of Law Report<sup>3</sup>, some steps were taken to depoliticise the appointment of the Chief Justice. However, the fact that there is no involvement of the judiciary requires further attention, in particular in view of the many roles played by the Chief Justice in the Maltese justice system<sup>4</sup> and due to the fact that, according to the law<sup>5</sup>, a person who is not already a judge could be appointed<sup>6</sup>. It is worth noting that according to European standards, where there are legal provisions prescribing that the legislative power take decisions on the selection of judges, the opinion of an independent and competent authority drawn in

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<sup>1</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Malta – Part I.

<sup>2</sup> Figures 50 and 52, 2022 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%).

<sup>3</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 3.

<sup>4</sup> 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).

<sup>5</sup> The appointment, role and functions of the Chief Justice are determined primarily by the Constitution and by the Code of Organisation and Civil Procedure.

<sup>6</sup> In practice, the person occupying the position of the Chief Justice in Malta has always been a seasoned lawyer or judge.

substantial part from the judiciary should be followed by the relevant appointing authority in practice<sup>7</sup>. In addition, even though efforts were made to reach an agreement in Parliament, the concern raised by the Venice Commission in relation to the lack of a mechanism to break a potential deadlock for the appointment of the Chief Justice has not been addressed<sup>8</sup>.

**Rules on the removal of online court judgments have raised some concerns.** On 30 November 2021, the Government adopted a legal notice<sup>9</sup> which formalised the process by which the Director General of the Courts is allowed to decide on requests to remove judgments including personal data in respect of the content of a court judgment published online on the website of the Court Services Agency<sup>10</sup>. According to the legal notice, all judgements are put online and it is only upon request of the parties that judgements are removed from the online portal<sup>11</sup>. In a letter of December 2021, seven media organisations and civil society organisations expressed their concerns and asked for the withdrawal of the legal notice<sup>12</sup>. In particular, the organisations criticised that the legal notice fails to define the legitimate circumstances and criteria in which the Director General may choose to remove the judgements published online. The fact that these requests are handled solely at the discretion<sup>13</sup> of the Director General, who is appointed by the Government, and not by the courts, raises concerns<sup>14</sup>. The Court Services Agency has issued a set of guidelines on the application of the legal notice<sup>15</sup>, addressing some of these concerns. However, those guidelines are not legally binding. Those decisions of the Director General are nevertheless subject to review by the Information and Data Protection Commissioner or challenged on the grounds of judicial review. European standards provide that while aspects on data protection, privacy, personal security and confidentiality should be taken into account, judicial decisions shall be clearly reasoned and made public<sup>16</sup>.

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<sup>7</sup> 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 procedure 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, *AB et al.*, C-824/18, EU:C:2021:153, paras. 124-127 and the case-law cited.

<sup>8</sup> 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; information provided by Maltese authorities in the context of the country visit to Malta.

The report of the public inquiry into the assassination of investigative journalist Daphne Caruana Galizia highlighted the need to implement the recommendations of the Venice Commission.

<sup>9</sup> Online Publication of Court Judgments (Data Protection) Conferment of Functions Regulation, 2021 (LN 456 of 2021).

<sup>10</sup> Input from Malta for the 2022 Rule of Law Report, p. 18.

<sup>11</sup> According to the Maltese Government, the Director General does not have an a priori discretion not to upload a judgement online and the courts retain the power to decide if a judgement is not to be published online.

<sup>12</sup> Franet (2022), Country research - Legal environment and space of civil society organisations in supporting fundamental rights – Malta, p. 4.

<sup>13</sup> Franet (2022), Country research - Legal environment and space of civil society organisations in supporting fundamental rights – Malta, p. 5.

<sup>14</sup> Written contribution received by *Repubblika* in the context of the country visit to Malta; Information provided by the Chamber of Advocates in the context of the country visit to Malta.

<sup>15</sup> Court Services Agency (2021), Right to be Forgotten (Guidelines).

<sup>16</sup> European Network of Councils for the Judiciary (2009), Resolution on Transparency and Access to Justice, para. 2.d.

**The transfer of certain types of prosecutions from the police to the Attorney General continues.** As reflected in the 2021 Rule of Law Report, the transfer of certain types of prosecutions<sup>17</sup> from the police to the Attorney General continues to progress according to a timeline<sup>18</sup>. On 1 October 2021, the second phase of the transition period was carried out and the Office of the Attorney General became empowered to prosecute additional offences before inferior courts<sup>19</sup>. In addition, 8 new prosecutors were recruited in 2021, and 5 new prosecutors were recruited in early 2022, so that the Office of the Attorney General is now composed of 42 prosecutors<sup>20</sup>. Moreover, in the Maltese Recovery and Resilience Plan<sup>21</sup> the Government committed to carrying out an independent review by the end of 2024 to assess how the prosecution of summary cases<sup>22</sup> shall be shifted from the police to the Attorney General. It has also committed to introducing legislative changes by 31 March 2026 on the basis of this independent review<sup>23</sup>. This should contribute to addressing concerns raised in the 2021 Rule of Law Report<sup>24</sup>.

**A review of the independence of specialised tribunals has been announced.** Concerns have been expressed<sup>25</sup> in relation to the independence of specialised tribunals<sup>26</sup>, as many of those are appointed through a procedure involving the executive power and do not enjoy the same level of independence as that of the ordinary judiciary. Moreover, decisions of many of those tribunals are subject to judicial review only on points of law but not on points of fact.

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<sup>17</sup> Those relate to non-summary cases, which are cases with a penalty exceeding 2 years of imprisonment.

<sup>18</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 4.

<sup>19</sup> Input from Malta for the 2022 Rule of Law Report, p. 9. In particular, the Office of the Attorney General is empowered now to take the decision to prosecute the following offences: a) trafficking of persons; (b) piracy; (c) rape, abduction, defilement of minors and instigation, encouragement or facilitation of defilement of minors; (d) causing or permitting an elderly or a dependent adult to suffer under circumstances likely to produce bodily harm or death; grievous bodily harm followed by death; offences relating to crimes against property and public safety; (e) computer misuse; (f) wilful damage or destruction of cultural property; (g) endangering safety at airports; (h) attempts or conspiracy to commit or complicity in the previous mentioned-offences.

<sup>20</sup> Input from Malta for the 2022 Rule of Law Report, p. 9.

<sup>21</sup> 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. 6.5 states: ‘A review shall be undertaken by an independent contractor on the transfer of the prosecution of less serious crimes from the Police to the Attorney General’s Office, following the coming into force of the Offences (Transitory Provisions) Regulations of 2020 (L.N. 378 of 2020). The review shall formulate policy options and recommendations for the shift of the remaining cases (i.e. summary cases). It shall be shared with the European Commission’.

<sup>22</sup> Summary cases are contraventions or crimes punishable with a fine or a maximum of 2 years’ imprisonment or less.

<sup>23</sup> 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. 6.6 states: ‘The legislative changes shall be based on the findings/recommendations made by the independent review on the transfer of summary cases from the Police to the Attorney General’s Office’.

<sup>24</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 4. Furthermore, the appointment of the Attorney General is in practice made by the President acting upon a recommendation by the Prime Minister after giving due consideration to the recommendations of the Appointment Commission.

<sup>25</sup> 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. 5.

<sup>26</sup> 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.

The Venice Commission has echoed these concerns<sup>27</sup>. The Government has committed in the Maltese Recovery and Resilience Plan to carry out a review of the independence of those specialised tribunals in communication with the Venice Commission<sup>28</sup>. This review will include a study, to be completed by end 2024, as well as legislative amendments to enter into force by 31 March 2026.

## Quality

**A new national Digital Justice Strategy (2022-2027) was adopted aiming to increase the use of digital tools by courts and addressing other gaps in the digitalisation of justice.** As shown by the 2022 EU Justice Scoreboard, there are important gaps in the digitalisation of justice. In particular, Malta is lagging behind in areas such as the use of digital technology by courts and prosecution services<sup>29</sup>, availability of electronic communication tools for communication of courts and prosecution service with users and other bodies<sup>30</sup>, availability of electronic tools in criminal cases<sup>31</sup> and regarding arrangements for producing machine-readable judicial decisions<sup>32</sup>. In December 2021, the Government launched the Digital Justice Strategy 2022-2027<sup>33</sup>. The Strategy seeks to provide a more coordinated approach amongst stakeholders in the justice system and establish a set of guiding fundamental principles which all digital initiatives shall adhere to<sup>34</sup>. A number of dedicated project teams are being set-up for the implementation of the Strategy<sup>35</sup>. Nevertheless, the Strategy is yet to be further operationalised in a detailed action plan specifying which specific deliverables are envisaged and setting out a timeline for this<sup>36</sup>.

**The level of resources for the judiciary, in particular the low number of judges per inhabitant, remains a concern.** The number of judges per capita in Malta continues to be among the lowest in the EU<sup>37</sup>, which might affect the efficiency of the justice system as

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<sup>27</sup> Venice Commission Opinion on proposed legislative changes, CDL-AD(2020)006, paras. 97-98.

<sup>28</sup> 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’.

<sup>29</sup> Figure 43, 2022 EU Justice Scoreboard.

<sup>30</sup> Figures 44 and 45, 2022 EU Justice Scoreboard.

<sup>31</sup> Figure 47, 2022 EU Justice Scoreboard.

<sup>32</sup> Figure 49, 2022 EU Justice Scoreboard. The Association of Judges and Magistrates have mentioned in the context of the country visit to Malta that this aspect remains challenging due to the limited availability of documents in Maltese.

<sup>33</sup> Input from Malta for the 2022 Rule of Law Report, pp. 16-17; Digital Justice Strategy 2022-2027. The Strategy was prepared with the support of an EU-funded project.

<sup>34</sup> Digital Justice Strategy 2022-2027, p. 2.

<sup>35</sup> Information received by the Ministry of Justice in the context of the country visit to Malta.

<sup>36</sup> Moreover, additional investments on the digitalisation of justice are also planned within the Maltese Recovery and Resilience Plan. Annex to the Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Malta, p. 65.

<sup>37</sup> Figure 36, 2022 EU Justice Scoreboard.

reflected in the 2021 Rule of Law Report<sup>38</sup>. In August 2021, the Association of Judges and Magistrates of Malta<sup>39</sup> raised concerns related to the acute lack of adequate space, trained and dedicated clerks and administrative personnel and resources in the law courts and defined the situation as critical. These concerns have been reiterated by other stakeholders<sup>40</sup>. The Government has announced its willingness to increase the deputy registrars by around 14% and the clerks by around 28%<sup>41</sup>, but it has not committed to a specific timeline. It has been mentioned that an important issue is the lack of a dedicated programme of training and preparation for deputy registrars and clerks, as well as the high turnover in these positions<sup>42</sup>.

**The system of legal aid has been improved, while stakeholders call for further reforms.**

In February 2022, a law<sup>43</sup> was approved increasing the threshold for persons to be eligible to benefit from legal aid from EUR 7 000 to EUR 13 000 for the preceding 12 months to the request for legal aid<sup>44</sup>. Stakeholders have welcomed this development, but have also pointed out the need for a comprehensive review of the overall legal aid framework<sup>45</sup>. In addition, on 9 September 2021, Legal Aid Malta<sup>46</sup> signed a declaration of intent with the Victim Support Agency for mutual assistance and cooperation in support of victims of crime<sup>47</sup>. Legal Aid Malta and the Foundation for Social Welfare Services also signed a Memorandum of Understanding on 15 September 2021 establishing working methods for the provision of services relating to cross-border disputes<sup>48</sup>.

## Efficiency

**The efficiency of the Maltese justice system has continued to deteriorate.** This is shown by the 2022 Justice Scoreboard. In 2020, the duration of litigious civil and commercial cases at first instance further increased (550 days), showing an increasing trend since 2017<sup>49</sup>. The duration of these proceedings in appeal was also very long (838 days) in 2020<sup>50</sup>, though a small decrease since 2019 is observed<sup>51</sup>. The average length of money laundering cases remained particularly long in 2020 (over 1310 days), even if it decreased compared to 2019<sup>52</sup>. Moreover, the time needed to resolve administrative cases at first instance remained lengthy and increased in 2020, inverting the decreasing trend<sup>53</sup>. The clearance rate for civil,

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<sup>38</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 7.

<sup>39</sup> Statement of Association of Judges & Magistrates of Malta, 23 August 2021.

<sup>40</sup> Written contribution received by the Daphne Caruana Galizia Foundation in the context of the country visit to Malta; Written contribution received by Repubblika in the context of the country visit to Malta.

<sup>41</sup> Input from Malta for the 2022 Rule of Law Report, p. 16.

<sup>42</sup> Information received by the Association of Judges and Magistrates in the context of the country visit to Malta.

<sup>43</sup> Bill 258 of 2022 (Code of Organisation & Civil Procedure (Amendment no. 5) Bill).

<sup>44</sup> Input from Malta for the 2022 Rule of Law Report, p. 15.

<sup>45</sup> Contribution from the Aditus Foundation for the 2021 Rule of Law Report, pp. 5-7; Information provided by the Chamber of Advocates and the Aditus Foundation in the context of the country visit to Malta.

<sup>46</sup> Legal Aid Malta is a Government Agency with the mission of ensuring that the low-income persons are professionally and legally represented in a broad spectrum of litigations, defence and advocacy in a democratic society.

<sup>47</sup> Input from Malta for the 2022 Rule of Law Report, p. 15.

<sup>48</sup> Input from Malta for the 2022 Rule of Law Report, p. 15.

<sup>49</sup> Figure 7, 2022 EU Justice Scoreboard.

<sup>50</sup> Figure 8, 2022 EU Justice Scoreboard.

<sup>51</sup> Figure 8, 2021 EU Justice Scoreboard. The estimated time to resolve litigious civil and commercial cases on appeal was 875 days in 2019.

<sup>52</sup> Figure 24, 2022 EU Justice Scoreboard.

<sup>53</sup> Figure 9, 2022 EU Justice Scoreboard.



commercial, administrative and other cases, showing how courts deal with caseload, in 2020 continued to decrease and continues to remain below 100% (around 91% in 2020), and for litigious civil and commercial cases it has been continuously decreasing for several years (around 91% in 2020)<sup>54</sup>. Stakeholders have continued<sup>55</sup> raising concerns regarding the efficiency of the justice system, in particular in relation to the length of proceedings and the increasing complexity of cases<sup>56</sup>.

**Several initiatives are ongoing to contribute to improve the efficiency of the justice system.** The establishment of a Third Chamber of the Court of Appeal<sup>57</sup> has contributed to a reduction in the high number of pending applications; while in November 2018 there were 1 537 pending applications, in December 2021 this number was reduced to 1 208 pending applications<sup>58</sup>. In addition, legal changes in August 2021 made possible for most appeals not to need an oral hearing but be decided only with written submissions<sup>59</sup>. Moreover, the Government is currently working on the preparation of a draft law aimed at reforming legal provisions related to the compilation of evidence procedure<sup>60</sup>, which may shorten proceedings.

## **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<sup>61</sup> 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 2 years imprisonment, including corruption. Other bodies involved in the fight against corruption are the Financial Intelligence Analysis Unit (FIAU) and the Internal Audit and Investigations Department (IAID)<sup>62</sup>. The latter conducts internal audits and investigations within all governmental departments and agencies.

**The perception of public sector corruption among experts and the business community is that the level of corruption in the public sector is relatively high.** In the 2022 Corruption Perceptions Index by Transparency International, Malta scores 54/100 and ranks 14<sup>th</sup> in the European Union and 49<sup>th</sup> globally<sup>63</sup>. This perception has been relatively stable

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<sup>54</sup> Figures 11 and 12, 2022 EU Justice Scoreboard.

<sup>55</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Malta, pp. 6-7.

<sup>56</sup> Association of Judges & Magistrates of Malta (2021), *Press article Court: a critical situation*; written contribution received by the Daphne Caruana Galizia Foundation in the context of the country visit to Malta.

<sup>57</sup> Appeals from judgments and decrees of the Civil Court (Family Section) and appeals from judgments and decrees in causes for the eviction from immovable property and from decisions of the Land Arbitration Board are to be assigned to the Third Chamber of the Court of Appeal.

<sup>58</sup> Input from Malta for the 2022 Rule of Law Report, p. 20.

<sup>59</sup> Information received by the Chief Justice in the context of the country visit to Malta.

<sup>60</sup> Input from Malta for the 2022 Rule of Law Report, p. 20.

<sup>61</sup> Who monitors the ethics of ministers, parliamentary secretaries and members of Parliament.

<sup>62</sup> It conducts internal audits and investigations within all governmental departments and agencies.

<sup>63</sup> 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

over the past 5 years<sup>64</sup>. The 2022 Special Eurobarometer on Corruption shows that 79% of respondents consider corruption widespread in their country (EU average 68%) and 34% of respondents feel personally affected by corruption in their daily lives (EU average 24%)<sup>65</sup>. As regards businesses, 72% of companies consider that corruption is widespread (EU average 63%) and 58% consider that corruption is a problem when doing business (EU average 34%)<sup>66</sup>. Furthermore, 30% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 34%)<sup>67</sup>, while 27% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 29%)<sup>68</sup>.

**The public inquiry into the assassination of journalist Daphne Caruana Galizia issued recommendations on anti-corruption, to some of which there has been no specific follow-up.** Among others, the public inquiry<sup>69</sup> recommended the adoption of legislative measures to improve the asset declaration mechanism geared at avoiding and detecting unexplained wealth; the establishment of codes of ethics for public officials in order to prevent improper conduct of public officials in the execution of their duties and actions geared at improving the protection of whistleblowers<sup>70</sup>. On 11 January 2022, the Government announced the establishment of a Committee of Experts on Media<sup>71</sup> in response to the report of the Public Inquiry into the assassination of journalist Daphne Caruana Galizia, however, no specific action for the implementation of the public inquiry recommendations relating to anticorruption has been announced or taken by the Government so far.

**The National Anti-Fraud and Corruption Strategy was adopted and the monitoring of its implementation by an inter-ministerial Committee continues<sup>72</sup>.** The multifaceted National Anti-Fraud and Corruption Strategy (NAFCS), adopted by the Government in May 2021, has four main objectives, namely: 1) capacity building, 2) communications strategy, 3) maximisation of national co-operation, and 4) maximisation of EU and international co-operation<sup>73</sup>. A Co-ordinating Committee<sup>74</sup> is responsible for the effective implementation of the NAFCS action plan, and it reports to the Chairperson of the Internal Audit and Investigations Board<sup>75</sup>. As part of the Malta's Recovery and Resilience Plan (RRP), some of

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sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

<sup>64</sup> In 2017 the score was 56, while in 2021 the score is 54. 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 5 years.

<sup>65</sup> Special Eurobarometer 523 (2022). The Eurobarometer data on citizens' corruption perception and experience is updated every second year. The previous data set is the Special Eurobarometer 502 (2020).

<sup>66</sup> Flash Eurobarometer 507 (2022). The Eurobarometer data on business attitudes towards corruption as is updated every second year. The previous data set is the Flash Eurobarometer 482 (2019).

<sup>67</sup> Special Eurobarometer 523 (2022).

<sup>68</sup> Flash Eurobarometer 507 (2022).

<sup>69</sup> See page 14 below.

<sup>70</sup> Board of Inquiry (2021), Public Inquiry Report Daphne Caruana Galizia.

<sup>71</sup> Government of Malta, Establishment of A Committee Of Experts On Media, Information Note, 11.01.2022.

<sup>72</sup> This is set out in Malta's Recovery and Resilience Plan.

<sup>73</sup> See National Anti-Fraud and Corruption Strategy, published by the Office of the Prime Minister Malta, in May 2021.

<sup>74</sup> Set up under Article 23 of the Internal Audit and Financial Investigations Act (Chapter 461 of the Laws of Malta).

<sup>75</sup> Information received from the Ministry of Justice in the context of the country visit to Malta.

the actions identified in Malta's NAFCS are expected to be implemented by the end of 2024, including the online publication of the National Risk Assessment (in 2022)<sup>76</sup>.

**Despite the increased resources allocated to investigative and prosecution bodies, the investigation of high-level corruption cases remains lengthy.** Results in terms of final judgments are still lacking. Eight prosecutors were hired by the Attorney General's office in the course of 2021<sup>77</sup>, and five prosecutors in early 2022<sup>78</sup>. In 2021, two departments were created within the Financial Crimes Investigations Department (FCID)<sup>79</sup>. With a staff of 107 officers, in 2021, FCID dealt with 32 cases (compared to 38 cases in 2020): 14 cases were concluded (i.e. either closed or brought to trial), and 16 are pending for prosecution<sup>80</sup>. In addition to the 23 in-house investigators<sup>81</sup>, the Police hired 16 financial crime prosecutors in 2021 and three external accounting experts were employed in January 2022<sup>82</sup>. The length of investigations remains a serious problem<sup>83</sup> in Malta, not least because non-collected elements of evidence may deteriorate with time, which ultimately hampers the outcome of justice<sup>84</sup>. There is no final judgment of cases of high-level corruption.

**There are plans to strengthen the Permanent Commission against Corruption, which currently has limited resources and has not shown tangible results in its work.** Despite the structural reform undergone in 2020<sup>85</sup>, serious challenges concerning investigations of corruption cases persist, including follow up action to corruption reporting and disclosures<sup>86</sup>. The PCAC remains staffed with three part-time Commissioners, supported by one administrative officer. 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, shall be implemented by the end of 2024. For 2021, there is no documented evidence on the size and type of workload dealt with by PCAC, nor of any tangible result achieved by the institution. Given the lack of

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<sup>76</sup> Input from Malta for the 2022 Rule of Law Report, p. 30. 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 Milestones no. 6.10 and 6.11 relate to anti-fraud and corruption measures.

<sup>77</sup> Information received from the Attorney General office in the context of the country visit to Malta.

<sup>78</sup> The plan is to recruit six additional officers, as to reach a total of 63 officers (44 prosecutors, plus 19 administrative officers) in the course of 2022, with an allocated budget of around EUR 3.5 million (compared to approximately EUR 2.5 million for 2021); information received from the Attorney General office in the context of the country visit to Malta.

<sup>79</sup> The Online Fraud office (with one officer) to investigate cyber-enabled reports, and the International Unit (with one inspector and two officers) to facilitate the execution of foreign decisions. Input from Malta for the 2022 Rule of Law Report, p. 25.

<sup>80</sup> The cases involved 18 persons (natural or legal). Input from Malta for the 2022 Rule of Law Report, p. 35.

<sup>81</sup> 13 for the money-laundering and fiscal crime squad, and 10 for the economic crimes squad.

<sup>82</sup> The contract to the consulting company is for a six-month period, at a total cost of about EUR 252 000. Information received from the Police in the context of the country visit to Malta.

<sup>83</sup> 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. 2021 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 10.

<sup>84</sup> Information received in the context of the country visit to Malta from the NGOs, notably Repubblika, the Daphne Caruana Galizia Foundation, and Aditus Foundation. GRECO recommended that investigation bodies have the authority to use special investigative techniques, for the use of evidence in court. GRECO (2022) Fifth Evaluation Round – Compliance Report, p. 18.

<sup>85</sup> According to the new procedure, the chairperson of the PCAC is to be appointed by the President of the Republic, acting in accordance with a two-thirds majority resolution by Parliament. 2020 Rule of Law Reports, Country Chapter on the rule of law situation in Malta, pp. 7-8.

<sup>86</sup> Information received in the context of the country visit to Malta from the NGOs, notably Repubblika, the Daphne Caruana Galizia Foundation, and Aditus Foundation.

in-house capacity<sup>87</sup>, investigations of the few corruption cases reported to PCAC are performed by the Police. However, by law there is no monitoring system over the duration of the investigations<sup>88</sup>. In 2021, PCAC indicates to have transmitted three reports to the Attorney General, and to the Minister of Justice for information<sup>89</sup>, stating enough evidence existed for trial in two cases<sup>90</sup>. All cases transmitted by PCAC to the Attorney General were sent to the Police for criminal investigation, which remained ongoing at the time of publication of this report<sup>91</sup>. There is no indication that PCAC monitors the outcome of the two cases that were transmitted to the Attorney General's office in August 2020<sup>92</sup>.

**Integrity rules in the public service, including within the Police, were updated and are being implemented.** In November 2021, the Government launched the strategy for the public service, including the promotion of ethical conduct<sup>93</sup>. The Public Service Commission is competent to manage the organisation and integrity of the public servants (approximately 35 000), not including Ministers<sup>94</sup>. In 2021, there were 89 cases of serious misconduct (15 cases were closed, with recommendations to the Prime Minister's office of either dismissal, suspension or warning)<sup>95</sup>, and 107 disciplinary measures taken at departmental level<sup>96</sup>. In 2021, the Profession and Standard office of the Police treated approximately 440 cases and found breaches of police ethics in 110 cases<sup>97</sup>. In 2021, a new audit department was established (divided into two units: one on professional standards and one on auditing)<sup>98</sup>. Since 2020, the Police Evaluation Board<sup>99</sup> treated 323 requests for authorisation of outside activities: all requests were approved, except for two<sup>100</sup>.

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<sup>87</sup> PCAC has no in-house investigators nor data analysts. Including a digital registry to collect information on corruption cases, as well as an internal Standard Operating Procedure. 2021 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 9.

<sup>88</sup> Investigations are pending until the prosecutor decides to close the investigations or bring the case to Court. Also, there is no criminal or administrative responsibility for abuse of power or omission of duty committed by investigators or prosecutors (for example, for recklessly procrastinating or prolonging an investigation or prosecution). Information received in the context of the country visit to Malta from the PCAC.

<sup>89</sup> Although the law indicates that PCAC should establish a *prima facie* case of corruption, the Commissioners have chosen to assess cases on a "beyond reasonable doubt" base. Information received in the context of the country visit to Malta from the PCAC.

<sup>90</sup> While in one case no recommendation was issued since the case was already pending in court for trial. Information received in the context of the country visit to Malta from the PCAC.

<sup>91</sup> Information received in the context of the country visit to Malta from the Ministry of Justice.

<sup>92</sup> In case the Attorney General decides not to prosecute, the PCAC 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. 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. 2021 Rule of Law Reports, Country Chapter on the rule of law situation in Malta, p. 10.

<sup>93</sup> The programmes aims at addressing the skills gap, see at <https://publicservice.gov.mt/en/Pages/Initiatives/New-Strategy-for-the-Public-Service.aspx>.

<sup>94</sup> Written contribution from the Public Service Commission in the context of the country visit to Malta.

<sup>95</sup> In light of criminal proceedings initiated against public officers, the Commission recommended suspension in the 13 cases. There is no data concerning the follow-up of the recommendations issued by the Prime Minister's office. Written contribution from the Public Service Commission in the context of the country visit to Malta.

<sup>96</sup> Disciplinary measures for minor misconduct are taken at the department level.

<sup>97</sup> Information received from the Police in the context of the country visit to Malta.

<sup>98</sup> An Internal Audit Office (IAO) within the Malta Police Force has been set up and a new Internal Auditor has been appointed in May 2021. Input from Malta for the 2022 Rule of Law Report, p. 23.

<sup>99</sup> Appointed by the Police Commissioner in accordance with the policy regulating Business Interests and Additional Occupations.

<sup>100</sup> Information received from the Police in the context of the country visit to Malta.

**Although ethics rules for high-ranking officials are being implemented, improvement is needed so as to overcome legislative and operational gaps.** There are ethics rules for high-ranking officials, members of Parliament and ministers in place, including on asset disclosure<sup>101</sup>, conflicts of interest<sup>102</sup> and lobbying<sup>103</sup>. The Commissioner for Standards in Public Life (‘the Commissioner’) monitors the ethical conduct of ministers, parliamentary secretaries and members of Parliament. In the second half of 2021, on the recommendation of the Commissioner<sup>104</sup>, the Standards Committee of the Parliament issued one reprimand for a case of failure to declare income, and one on a conflict of interest<sup>105</sup>. Following recommendations presented by the Commissioner, the regulation on lobbying is under review<sup>106</sup>. Legislative and operational gaps exist on the appointment and functioning of the Commissioner’s office<sup>107</sup>. Despite the expiration of the Commissioner’s mandate, a new Commissioner was not appointed<sup>108</sup>. By law, the Commissioner has the power to collect evidence in the course of an open investigation but has no power to decide whether to open an investigation<sup>109</sup>, including against individuals whose public office ceased. Following the adoption of the 2021 law<sup>110</sup>, the concerns previously raised by both the Venice Commission

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<sup>101</sup> GRECO recommended that the regime of asset and interest declaration be extended to persons entrusted with top executive functions, ensuring the publication and checks of the declarations. GRECO (2022) Fifth Evaluation Round – Compliance Report, p. 13.

<sup>102</sup> GRECO recommended that the system for managing conflicts of interest be supplemented with clearer limits on permissible parallel activities. GRECO (2022) Fifth Evaluation Round – Compliance Report, pp. 11-13.

<sup>103</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 11.

<sup>104</sup> Since 2021, Commissioner for Standards in Public Life (‘the Commissioner’) has the power to refer *prima facie* findings of possible corruption to the prosecution authorities. Act No. XVI of 2021 - Appointment (Persons of Trust) Act published in April 2021. Input from Malta for the 2022 Rule of Law Report, p. 28.

<sup>105</sup> The other case is suspended, pending criminal proceedings. Information on the composition, competence and activity reports of the Standing Committee for Standards in Public Life is available at the official webpage <https://parlament.mt/en/14th-leg/standards-in-public-life-committee/>.

<sup>106</sup> The Government decided to request the OECD to review of the proposed recommendations. Input from Malta for the 2022 Rule of Law Report, p. 28. GRECO recommended that rules be laid down to govern contacts between persons with top executive functions and lobbyists. GRECO (2022) Fifth Evaluation Round – Compliance Report, p. 10.

<sup>107</sup> For example, the publication of cases decided by the Parliament’s Standards Committee is subject to the Committee’s authorisation, regardless of the recommendations of the Commissioner. The political composition of the members of the Committee raises concerns on the technical expertise and independence of its decisions. Finally, the members of government boards (including the governing boards of public entities) and local councillors are currently excluded by the application of the ethical provisions. Neither group is currently subject to an independent body capable of enforcing ethical standards. Information on the composition, competence and activity reports of the Standing Committee for Standards in Public Life is available at the official webpage <https://parlament.mt/en/14th-leg/standards-in-public-life-committee/>. Information on the competence of the Commissioner for Standards in Public Life (‘the Commissioner’) is available at the official webpage at <https://standardscommissioner.com/the-role-of-the-commissioner/>.

<sup>108</sup> The law indicates for the current Commissioner to remain in office until a new Commissioner is appointed (except in case of resignation before the term of office expires). In case the Parliament is unable to appoint a new Commissioner (for example for lack of a two-thirds majority), the President of the Republic could be granted the right to make an appointment on his own judgement. Although the appointment of the Commissioner requires a two-thirds majority in Parliament, the law governing the office can be amended with a simple majority.

<sup>109</sup> For instance, the Commissioner may need to determine whether the subject of the complaint is a person of trust (who can be investigated by the Commissioner’s office) or a regular public employee (who cannot be investigated by the Commissioner’s office). GRECO recommended that all persons with top executive functions be subjected to the supervision of the Commissioner for Standards in Public Life. GRECO (2022) Fifth Evaluation Round – Compliance Report, p. 19.

<sup>110</sup> 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

and the Group of States against Corruption (GRECO), on the number and duration of persons of trust, as well as those of the Commissioner (on the feasibility and effectiveness of the control on the ethical conduct of persons of trust)<sup>111</sup>, remain unaddressed<sup>112</sup>. In 2021, the Commissioner's office issued clarification letters to six members of Parliament for verification of declarations of assets for 2020: these cases remain pending<sup>113</sup>. The review of the code of conduct for members of Parliament and Ministers that was recommended by the Commissioner's office in July 2020, remains unaddressed. An ongoing initiative<sup>114</sup> aims to strengthen the capacity of the Commissioner for Standards in Public Life's Office to perform its advisory and control functions, and to improve the ethics framework in Malta.

**There are provisions in place to audit public institutions including political parties' finances.** In 2021, the National Audit Office (NAO), responsible to audit the accounts of Government offices, performed 40 compliance audits, six performance audits and 12 follow-up audits. The findings did not reveal suspicion of corruption<sup>115</sup>. Stakeholders raised concerns that cases of unexplained wealth (or illicit enrichment) are solved by tax authorities and are therefore not considered a crime nor properly investigated by prosecution or judicial authorities<sup>116</sup>. The online publications by the Electoral Commission, competent to audit the finance of political parties (including statement of accounts and donation reports), only refer to checks performed prior to 2019, and checks after such date are still being reviewed<sup>117</sup>. The Commissioner for Standards in Public life's office launched an investigation into the misuse of public funds by a political party in early 2022<sup>118</sup>.

**A new regulation on the protection of whistleblowers has recently been adopted.** The Protection of the Whistleblower Act was amended in December 2021<sup>119</sup>, aiming to transpose Directive (EU) 2019/1937. In line with the Malta's Recovery and Resilience Plan, a milestone on a database collecting data on whistleblowing is foreseen to be implemented by

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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*.

<sup>111</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 11. A guidance note on persons of trust was published online in 2019 (revised in April 2021) by the Commissioner's office, available at <https://standardscommissioner.com/wp-content/uploads/persons-of-trust-guidance-note.pdf>.

<sup>112</sup> GRECO recommended that on the basis of proper risk assessments an integrity strategy be developed and implemented in respect of all pertinent categories of persons entrusted with top executive functions. GRECO (2022) Fifth Evaluation Round – Compliance Report, p.5-7. Additionally, in December 2021 the US State department issued a Public Designation of Former Maltese Public Officials Konrad Mizzi and Keith Schembri Due to Involvement in Significant Corruption.

<sup>113</sup> 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, despite a demand that was placed with the Speaker of the Parliament. 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/>.

<sup>114</sup> The project 'Improving the integrity and transparency framework in Malta', implemented by the OECD, was launched in September 2021 and has a duration of 24 months.

<sup>115</sup> Information received in the context of the country visit to Malta from the NAO.

<sup>116</sup> Information received in the context of the country visit to Malta from the NGOs, notably Repubblika, the Daphne Caruana Galizia Foundation, and Aditus Foundation.

<sup>117</sup> Information received from the Ministry of Justice in the context of the country visit to Malta. Electoral Commission of Malta webpage <https://electoral.gov.mt/finance-en>.

<sup>118</sup> 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/>.

<sup>119</sup> By the Act No. LXVII of 2021. Input from the Country for the 2022 Rule of Law Report, p. 32.

the end of 2024<sup>120</sup>. In total, two reports from whistleblowers were addressed to PCAC since it was created<sup>121</sup>.

**Malta’s investor citizenship legislative framework continues to raise concerns.** The European Commission has frequently raised its serious concerns about investor citizenship schemes and certain risks, including corruption, that are inherent in such schemes<sup>122</sup>. As noted in the 2021 Rule of Law Report<sup>123</sup>, the Commission considers that Malta’s operation of an investor citizenship (‘golden passport’) scheme, that is the systematic granting of EU citizenship in return for pre-determined payments or investments, is in breach of EU law and should therefore be repealed. As a result, in April 2022, the European Commission proceeded with the next stage of the infringement<sup>124</sup> procedure and decided to send a reasoned opinion to Malta<sup>125</sup> regarding the current legislative framework<sup>126</sup>.

**The specific rules to mitigate the risks of corruption in public procurement during the COVID-19 pandemic remain in place.** Since July 2021, procurement officers are mandated to sign and submit a declaration of absence of conflict of interest<sup>127</sup>. In 2021, the Department of Contracts issued two internal policy notes on fraud and corruption, aimed at assessing and mitigating risk of corruption in public procurement<sup>128</sup>.

### **III. MEDIA PLURALISM AND MEDIA FREEDOM**

Freedom of expression is enshrined in the Constitution of Malta<sup>129</sup>, as well as in the European Convention Act. The Media and Defamation Act of 14 May 2018 brought about an overall positive overhaul of defamation laws. The Constitution sets out the composition, appointment

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<sup>120</sup> 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. 6.14 states: ‘Data/statistics to be made accessible by publishing regular information on (i) number of complaints received; (ii) when they are received; (iii) when they were treated; (iv) when the whistle-blower is informed of the outcome; and (v) sectors reported’.

<sup>121</sup> The two reports were transmitted in 2021 to the Police, for investigation. PCAC requested updated information to the Police on the ongoing investigation. The response has yet to come. Information received in the context of the country visit to Malta from the PCAC.

<sup>122</sup> As mentioned in the EU Commission’s report of January 2019, those risks relate in particular to security, money laundering, tax evasion and corruption and the Commission has been monitoring wider issues of compliance with EU law raised by investor citizenship schemes.

<sup>123</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p.12.

<sup>124</sup> INFR(2020)2301.

<sup>125</sup> Following Russia’s invasion of Ukraine, the Commission also called on Member States operating an investor citizenship scheme to repeal it immediately and to assess the possibility to revoke naturalisations previously granted to certain Russian and Belarusian individuals (see Commission recommendation on immediate steps in the context of the Russian invasion of Ukraine in relation to investor citizenship schemes and investor residence schemes (C(2022) 2028 final)). On 2 March 2022, Malta suspended, until further notice, the processing of applications from nationals of the Russian Federation and Belarus in view of the impossibility to effectively carry out due diligence checks, and later initiated the process of deprivation of Maltese nationality for an individual sanctioned by the United States (Maltese Ministry for Home Affairs, Security, Reforms and Equality (2022), Press Release of 1 April 2022, PR220426en).

<sup>126</sup> Commission recommendation on immediate steps in the context of the Russian invasion of Ukraine in relation to investor citizenship schemes and investor residence schemes (C(2022) 2028 final).

<sup>127</sup> Published through an Internal Policy Note dated 9 July 2021. Input from Malta for the 2022 Rule of Law Report, p. 33.

<sup>128</sup> Definition and Mitigation Measure (dated 9 September 2021) and Collusive Bidding in Public Procurement (dated 13 October 2021). Input from Malta for the 2022 Rule of Law Report, p. 33.

<sup>129</sup> Article 41 of the Constitution.

and removal procedures and independence of the Broadcasting Authority and lays down its basic functions<sup>130</sup>. The Freedom of Information Act establishes the legal framework for access to information held by public authorities. Legislation was enacted in 2020 to transpose the Audiovisual Media Service Directive<sup>131</sup> into Maltese law. The reforms proposed by the Government in the wake of the report of the public inquiry into the assassination of Daphne Caruana Galizia include an amendment to the Constitution of Malta<sup>132</sup> to specifically include a reference to freedom and pluralism of the media and a number of amendments to the Media and Defamation Act<sup>133</sup>.

**The public inquiry into the assassination of journalist Daphne Caruana Galizia issued conclusions and recommendations directly relating to the state of media freedom .** On 29 July 2021, the final report of the public inquiry was published<sup>134</sup>, concluding that no evidence had been brought proving that the state *qua* state was *directly* involved in the assassination of Ms Caruana Galizia, but that nevertheless the State is still responsible for failing to fully protect Ms Caruana Galizia and her right to exercise her profession in a free and secure manner<sup>135</sup>. The board concluded that the Police had failed to properly gauge the risks increasingly faced by Ms Caruana Galizia in particular after her investigations into the Panama Papers<sup>136</sup> and that the State should remedy this state of affairs impacting the safety of journalists in Malta. The report concludes that public service media had failed to carry out its public service mission due to its failure to correctly and adequately report on the serious allegations of corruption which were uncovered by investigative journalists, including Ms Caruana Galizia. The board consequently recommends amendment of the relevant constitutional provisions governing the Broadcasting Authority's remit, in particular with regard to public service media<sup>137</sup>. Furthermore, the report recommends a reform of the Freedom of Information Act to prevent the common practice of arbitrary refusals by public authorities of requests for access to information held by them<sup>138</sup>, the adoption of adequate anti-SLAPP (Strategic Lawsuits Against Public Participation) legislation, and the prohibition of frivolous libel cases against journalists by people in power<sup>139</sup>. The board recommends the establishment of a system geared at ensuring fair, equitable and non-discriminatory distribution of state advertising revenues to counter the risks of political pressure and control<sup>140</sup>.

**Following the publication of the board of inquiry's report, the Government has proposed a number of reforms to address certain recommendations.** The Government

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<sup>130</sup> Articles 118 and 119 of the Constitution.

<sup>131</sup> Directive (EU) 2018/1808 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities.

<sup>132</sup> Article 41 of the Constitution.

<sup>133</sup> Malta ranks 78th in the 2022 Reporters without Borders World Press Freedom Index compared to 81st in the previous year.

<sup>134</sup> Board of Inquiry (2021), Public Inquiry Report Daphne Caruana Galizia. The inquiry heard of 120 witnesses over 93 sittings throughout 2020 and 2021.

<sup>135</sup> Board of Inquiry (2021), Public Inquiry Report Daphne Caruana Galizia, p. 395.

<sup>136</sup> Board of Inquiry (2021), Public Inquiry Report Daphne Caruana Galizia, p. 418.

<sup>137</sup> Board of Inquiry (2021), Public Inquiry Report Daphne Caruana Galizia, p. 432.

<sup>138</sup> Board of Inquiry (2021), Public Inquiry Report Daphne Caruana Galizia, pp. 432 – 433.

<sup>139</sup> Board of Inquiry (2021), Public Inquiry Report Daphne Caruana Galizia, p. 433.

<sup>140</sup> Board of Inquiry (2021), Public Inquiry Report Daphne Caruana Galizia, p. 434.



held consultations with certain stakeholders<sup>141</sup> and submitted a number of draft legislative amendments. On 11 January 2022, it established a Committee of Experts on Media to follow up on the matter. The Committee was tasked with analysing the journalism and media sector in Malta; underlining areas which require development; making recommendations to the Prime Minister and examining the draft legislative amendments prepared by Government<sup>142</sup>. The draft legislative amendments submitted by the Government concern an anti-SLAPP provision; amendments to the Media and Defamation Act relating to discontinuance of defamation cases following death of the defendant and to the moment of payment of court fees by the defendant; an amendment to the Criminal Code increasing the punishment for offences when committed against journalists while they are exercising their profession and an amendment to Article 41 of the Constitution to specifically include reference to freedom and pluralism of the media and the status of journalists<sup>143</sup>. These draft amendments, if adopted, would improve certain procedural aspects of defamation law and would specifically recognise the status of journalists in the Criminal Code and the Constitution. The Committee of Experts was initially given 2 months to conclude its work and present a report. International and Maltese NGOs have expressed concerns with regard to a consultation process which appears to have been selective and not fully transparent in spite of the fact that this is a matter of wide public interest<sup>144</sup>.

**There have been no developments with regard to the legislative framework establishing the Broadcasting Authority.** Due to the Broadcasting Authority's clearly defined responsibilities<sup>145</sup> and transparent operations, the Media Pluralism Monitor 2022 maintains its low risk score in terms of the independence and the effectiveness of the authority while finding the fact that all board members are political appointees to be problematic.<sup>146</sup> Reiterating its analysis made in previous years<sup>147</sup>, MPM 2022 states that the Broadcasting Authority mainly monitors and regulates public service media (i.e. Public Broadcasting Services - PBS)<sup>148</sup>. This means that the two other main broadcasting outlets - owned by the Labour Party and the Nationalist Party respectively – are considered “*to balance each other out editorially*”, thereby in effect contributing to a polarised media landscape. The public inquiry report specifically concluded that the concept of impartiality is erroneously interpreted by the Broadcasting Authority<sup>149</sup> and the constitutional case lodged to challenge this state of affairs is ongoing<sup>150</sup>.

**There have been no developments with regard to media ownership transparency.** As explained in previous reports, the Broadcasting Authority gathers ownership information

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<sup>141</sup> Consultations were held with the Caruana Galizia family and their legal representatives, the Institute of Maltese Journalists (IGM) and certain international media freedom organisations. The Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, the European Commission, the European Parliament LIBE Committee and the Rule of Law and Fundamental Rights Monitoring Group (DFRMG) were informed about these developments.

<sup>142</sup> The Committee is chaired by former Justice, who also acted as Chair of the Public Inquiry Board and is composed of individuals who have a wide knowledge of or experience in the media in Malta.

<sup>143</sup> Input from Malta for the 2022 Rule of Law Report.

<sup>144</sup> Written contributions of NGOs Repubblika, the Daphne Caruana Galizia Foundation and Article 19.

<sup>145</sup> Articles 118 and 119 of the Constitution and Chapter 350 of the Laws of Malta.

<sup>146</sup> 2022 Media Pluralism Monitor, country report on Malta, p. 13.

<sup>147</sup> 2020 and 2021 Media Pluralism reports on Malta.

<sup>148</sup> 2022 Media Pluralism Monitor, country report on Malta, p.13.

<sup>149</sup> Board of Inquiry (2021), Public Inquiry Report Daphne Caruana Galizia, p. 441.

<sup>150</sup> Case 47/2021 - Lovin Malta Ltd. et vs. the State Advocate, lodged on 1 February 2021.

relating to broadcasting media outlets<sup>151</sup> while no specific obligations exist whereby media companies are required 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 Act. There have been no developments with regard to the legislative or policy frameworks regulating media ownership transparency and no legislative changes are planned. Consequently, MPM 2022 maintains its medium risk score in this field<sup>152</sup>.

**Guidelines on government advertising and promotional material proposed by the Commissioner for Standards in Public life have entered into force<sup>153</sup> but a legal framework for transparent state advertising is lacking.** As noted in the 2021 Report the lack of a legal framework regulating state advertising continues to provide room for abuse<sup>154</sup>. Adopted in August 2021, the guidelines provide guidance to ministers with a view to avoiding the inappropriate use of public funds in the production, publication or distribution of advertising and promotional material by or for the Government. The guidelines are geared at ensuring that ministers do not spend public funds on personal or political publicity and establish certain standards as to the quality and nature of the content of such material. While the guidelines lay down that ‘*public funding should be directed to the media for advertising purposes on the basis of fair and objective criteria*’, they do not, in fact, establish a new legislative framework for the transparent and equitable distribution of state advertising revenues but, rather, provide clarity on how the Commissioner will interpret existing legislation and Ministerial Codes of Ethics in connection with Government advertising and promotional material. .

**The review of the legal framework enabling access to information held by public authorities remains pending<sup>155</sup>.** While the Institute of Maltese Journalists (IGM), several NGOs<sup>156</sup> and MPM 2022 report that journalists have continued to consistently encounter difficulties when requesting such access, due to numerous rejections, significant delays and absence of reply, the government review of the matter is ongoing<sup>157</sup>. For these reasons MPM 2022 has maintained a relatively high medium risk score (61%) for this area<sup>158</sup>.

**The Broadcasting Act establishes a basic framework for the establishment of public service media in Malta.** The Broadcasting Act provides the legislative framework for the establishment of a company, owned by the Government, for the provision of public broadcasting services. The Act establishes that the Government may, through a company designated by the Minister as a company providing public broadcasting services, own, control or be editorially responsible for nationwide television and radio services. Furthermore, the Act defines ‘general interest objective service’. The board of directors of the company which is currently designated, PBS, is entirely nominated by the Government, while a separate editorial board is composed of a chairman, two voting members and three to four non-voting

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<sup>151</sup> 2020 and 2021 Rule of law reports, Country Chapter on Malta.

<sup>152</sup> 2022 Media Pluralism Monitor, country report on Malta, p. 15.

<sup>153</sup> Guidelines available at: <https://standardscommissioner.com/wp-content/uploads/guidelines-government-advertising-promotional-material.pdf>.

<sup>154</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 14.

<sup>155</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Malta, pp. 14-15.

<sup>156</sup> Information received from RSF, Article 19, ECPMF, EFJ, FPU, IPI, OBCT and The Daphne Caruana Galizia Foundation in the context of the country visit to Malta.

<sup>157</sup> Input from Malta for the 2022 Rule of Law Report.

<sup>158</sup> 2022 Media Pluralism Monitor, country report, Malta, p. 12.

members representing management<sup>159</sup>. PBS' revenues accrue from commercial advertising and state advertising (70%) and annual budgetary allocations (30%). The Media Pluralism Monitor has consistently considered the independence of public service governance and funding to be an area presenting very high risk, given that 'the government has a significant and direct influence on public service media structures, in view of the fact that members of its board of directors as well as its editorial board are appointed by the State, and key decision-making personnel are also appointed by the Minister concerned, thus making it particularly vulnerable to political influence'<sup>160</sup>.

**Journalists continue to face challenges in the exercise of their profession<sup>161</sup>.** This has been confirmed by journalists, the IGM as well as several NGOs<sup>162</sup> and MPM 2022<sup>163</sup> maintains its medium risk score for this area. The Government has prepared draft legislative amendments, still under consideration by the Committee of Experts on Media, to address certain concerns raised by the Public Inquiry relating to the protection of journalists and other media actors<sup>164</sup>. The Council of Europe Platform to promote the protection of journalism and the safety of journalists reported three new alerts and one ongoing alert since the publication of the last rule of law report<sup>165</sup>, relating to two spoofing campaigns by unknown individuals<sup>166</sup>; the continued threat of legal action by a UK-based law firm based on data protection legislation against a Maltese newspaper; a journalist who was required to hand over his mobile phone to a court security officer and the targeting of a blogger during the governing party's electoral campaign. The Malta Police Force has sought the assistance of British and Italian counterparts and the European Union Agency for Law Enforcement Training (CEPOL) to facilitate the sharing of information, expertise and best practices relating to the safety of journalists<sup>167</sup>. Furthermore, it intends to sign a Memorandum of Understanding with the IGM on the matter and initiated a Standard Operating Procedure related to the protection of journalists, media actors and public figures at risk<sup>168</sup>. In August 2021, an alleged mastermind of the assassination of Ms Caruana Galizia was indicted for the assassination on charges of complicity in murder and criminal association and the criminal proceedings are ongoing.

#### **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

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<sup>159</sup> PBS runs TVM and TVMNews+ television channels and Radju Malta, Radju Malta 2 and Magic Malta radio stations. It also operates the Parliament TV service under an agreement with the Parliament of Malta.

<sup>160</sup> 2022 Media Pluralism Monitor, country report on Malta, pp. 21-22.

<sup>161</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 15.

<sup>162</sup> Information received from several stakeholders in the context of the country visit to Malta including the IGM, Aditus Foundation, Repubblica and the Daphne Caruana Galizia Foundation.

<sup>163</sup> 2022 Media Pluralism Monitor, country report on Malta, pp. 12-13

<sup>164</sup> See above, p.16.

<sup>165</sup> Council of Europe, Platform to promote the protection of journalism and safety of journalists.

<sup>166</sup> Targeting several news websites, NGO Repubblica and a blogger. The Prime Minister condemned these campaigns and Malta replied to these alerts.

<sup>167</sup> Input from the Commissioner of Police in the context of the country visit to Malta. The Commissioner specified that the creation of a dedicated Unit within the Police was not considered appropriate.

<sup>168</sup> Input from Malta for the 2022 Rule of Law Report, and information received from the Commissioner of Police in the context of the country visit to Malta.

Prime Minister. All Government ministers, including the Prime Minister, must be members of Parliament. The Constitutional Court 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 Ombudsperson<sup>169</sup>.

**Impact assessment reports are mandatory but the lack of a formalised process for public participation on the legislative process raises concerns.** In Malta, there are no rules or guidelines on public participation on law drafting. In practice, various channels of consulting the public exist, but they are subject to the discretion of the Ministry in charge of the preparation of the initiative<sup>170</sup>. In addition, when public consultations exist, they are not always published online in a timely and easily accessible manner<sup>171</sup>. Legal amendments<sup>172</sup> have been introduced so all pieces of primary and subsidiary legislation must now be accompanied by a mandatory impact assessment report<sup>173</sup>. These reports need to be revised by the Legislation Unit within the Office of the State Advocate, although the revision is limited to formal aspects and not based on a quality assessment of the legislation<sup>174</sup>. Once legislative proposals are being discussed in Parliament, there is a practice to invite stakeholders to meetings of Parliamentary Committees to present their views during Committee Stage. However, this practice is subject to a decision by the Chair of each Committee, and it is not systematic or governed by clear rules<sup>175</sup>. In this context, stakeholders have criticised the lack of consultation in the preparation of a number of legislative proposals<sup>176</sup>, reiterating concerns reflected in the 2020 and 2021 Rule of Law Reports<sup>177</sup>. In addition, a group of civil society organisations addressed a letter to the Prime Minister<sup>178</sup>, expressing concerns about the low level of involvement of civil society in policy-making, in particular about the lack of engagement and commitment to the obligations as a member of the Open Government Partnership<sup>179</sup>.

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<sup>169</sup> Article 64 of the Constitution.

<sup>170</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 15; information provided by the Aditus Foundation in the context of the country visit to Malta.

<sup>171</sup> GRECO (2019) Fifth Evaluation Round - Evaluation report.

<sup>172</sup> Act No. XXII of 2021, which amended the Small Business Act (Chapter 512 of the Laws of Malta).

<sup>173</sup> Input from Malta for the 2022 Rule of Law Report, p. 44.

<sup>174</sup> Information received from the Office of the State Advocate in the context of the country visit to Malta.

<sup>175</sup> Information received from the Secretariat of the Parliament in the context of the country visit to Malta.

<sup>176</sup> Repubblica (2022), Letter of 17 January 2022 *Repubblica writes to Ursula von der Leyen and Vera Jourová*; written contribution received by the Daphne Caruana Galizia Foundation in the context of the country visit to Malta.

<sup>177</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 15; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 18.

<sup>178</sup> Civil organisations (The Daphne Caruana Galizia Foundation, aditus Foundation, SOS Malta, Integra foundation, Kopin, Repubblica) (2021) Letter to Prime Minister Abela of 17 June 2021.

<sup>179</sup> Franet (2022), Country research - Legal environment and space of civil society organisations in supporting fundamental rights – Malta, pp. 8-9. The Open Government Partnership (OGP) is a global partnership that brings together Government reformers and civil society to create action plans that make governments more inclusive, responsive, and accountable. On 7 February 2020, the Open Government Partnership notified the Maltese Government of its lack of compliance with the Partnership's obligations to submit a complete version of the Action Plan with all requirements requested. After the lack of submission in 2017, and the incorrect submission in 2020, the Partnership placed Malta under procedural review by the OGP Criteria and Standards Committee.

**The President-led Constitutional Convention remains on hold since the start of the COVID-19 pandemic.** As referred to in the 2021 Rule of Law Report<sup>180</sup>, the Government has announced its intention to launch the Constitutional Convention as soon as the pandemic situation permits<sup>181</sup>. Amongst the issues which the Convention would be expected to address are concerns regarding the appointment procedures of bodies such as the Electoral Commission, the Public Service Commission, the Broadcasting Authority<sup>182</sup>, the Central Bank of Malta and the Information and Data Protection Commissioner<sup>183</sup>, as well as a reflection on the role of the Parliament. As noted in the 2020 Rule of Law Report<sup>184</sup>, the Venice Commission found that the Maltese Parliament needs to be strengthened to be an effective check on Government and recommended changing the system in order to provide for full-time work and payment of members<sup>185</sup>.

**The Ombudsperson remains carrying out his mandate until an agreement is reached in Parliament to appoint a new person to occupy such role and the draft law establishing a Commission for Human Rights and Equality remains under discussion in Parliament.** The term of office of the Ombudsperson expired on 16 March 2021. Since then, consultations between the Prime Minister and the Leader of the Opposition for the choice of his successor have taken place, but no agreement has been reached<sup>186</sup>. The law<sup>187</sup> provides that unless the Office of the Ombudsperson becomes vacant before the expiry of the Ombudsperson's first term, the person appointed as Ombudsperson shall hold office until a successor is appointed. Therefore, the Ombudsperson has continued exercising their duties in a caretaker mode, although the delay in the renewal has been identified as causing uncertainty and apprehension<sup>188</sup>; the lack of an anti-deadlock mechanism for the renewal has also been highlighted by the President of Malta<sup>189</sup>. Furthermore, the proposal to establish a national human rights institution has been pending in Parliament since 2019<sup>190</sup> and no significant progress has occurred since then. The establishment of such an institution would reply to commitments taken under the UN Paris Principles<sup>191</sup>.

**There was no progress on ensuring consistent follow-up of Constitutional Court's judgments where laws are found to be unconstitutional<sup>192</sup>.** According to the Maltese constitutional order, judgments of the Constitutional Court do not have *erga omnes* effect and thus laws found unconstitutional remain in force until Parliament repeals them. While the lack of consistency on the side of the Parliament to follow up to Constitutional Court

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<sup>180</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 17.

<sup>181</sup> Input from Malta for the 2022 Rule of Law Report, p. 50. The timing, process and public participation remain to be determined.

<sup>182</sup> Venice Commission opinion, CDL-AD(2020)019-e, para. 85.

<sup>183</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 15.

<sup>184</sup> 2020 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 15.

<sup>185</sup> Venice Commission opinion, CDL-AD(2020)006, paras. 92-94.

<sup>186</sup> The renewal of the Ombudsperson requires a two-thirds majority of members of Parliament.

<sup>187</sup> The Ombudsman Act (Act XXI of 1995).

<sup>188</sup> Written contribution received from the Daphne Caruana Galizia Foundation in the context of the country visit to Malta.

<sup>189</sup> Press release by the Office of the President of 13 December 2021, Speech delivered by the President of Malta George Vella on the occasion of Republic Day.

<sup>190</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 16.

<sup>191</sup> Resolution 48/134 of the General Assembly of the United Nations of 20 December 1993.

<sup>192</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 17.

judgments has been raised as an issue by the Venice Commission<sup>193</sup>, there are no plans by the Government to address this situation.

**On 1 January 2022, Malta had 13 leading judgments of the European Court of Human Rights pending implementation<sup>194</sup>.** At that time, Malta's rate of leading judgments from the past 10 years that remained pending was at 45% and the average time that the judgments had been pending implementation was 5 years and 1 month<sup>195</sup>. The oldest leading judgment, pending implementation for 16 years, concerns the disproportionate restrictions to property rights<sup>196</sup>. On 1 July 2022, the number of leading judgments pending implementation has increased to 14<sup>197</sup>.

**A new Commissioner for Voluntary Organisations was appointed.** Following the resignation of his predecessor on 1 July 2021, a new Commissioner for Voluntary Organisations was appointed on 3 August 2021<sup>198</sup>. The President of Malta has launched a process entitled 'VO Plus Convention' and has requested the Commissioner for Voluntary Organisations to carry out a consultative process aiming to build a more sustainable voluntary sector, including possible legal changes<sup>199</sup>.

**Concerns on civil society organisations' access to funding have been addressed.** In addition, on 9 November 2021, two legal notices amending the Voluntary Organisations Act were introduced<sup>200</sup>. The legal notices repealed the collector's obligation to be registered with the Commissioner for Voluntary Organisations, diminishing the level of discretion of the Commissioner<sup>201</sup>. These amendments are welcomed, as they address concerns previously raised by stakeholders and reflected in the 2021 Rule of Law Report<sup>202</sup>. However, civil society space continues to be considered as narrowed<sup>203</sup>.

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<sup>193</sup> Venice Commission opinions, CDL-AD(2020)019-e, para. 98, CDL-AD(2020)006, para. 80-84 and CDLAD(2018)028, paras. 74-79.

<sup>194</sup> The adoption of necessary execution measures for a judgment by the European Court of Human Rights is supervised by the Committee of Ministers of the Council of Europe. It is the Committee's practice to group cases against a State requiring similar execution measures, particularly general measures, and examine them jointly. The first case in the group is designated as the leading case as regards the supervision of the general measures and repetitive cases within the group can be closed when it is assessed that all possible individual measures needed to provide redress to the applicant have been taken.

<sup>195</sup> 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 2022. See the Contribution from the European Implementation Network for the 2022 Rule of Law Report, p. 58.

<sup>196</sup> Judgment of the European Court of Human Rights of 26 September 2006, *Ghigo v. Malta*, 31122/05, pending implementation since 2006.

<sup>197</sup> Data according to the online database of the Council of Europe (HUDOC).

<sup>198</sup> Input from Malta for the 2022 Rule of Law Report, p. 49 and 2021 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 18.

<sup>199</sup> Input from Malta for the 2022 Rule of Law Report, p. 49.

<sup>200</sup> The Legal Notices are the Voluntary Organisations (Public Collections) (Amendment) Regulations, 2021 (LN424/21); and the Voluntary Organisations (Charity Shops) (Amendment) Regulations (LN425/21).

<sup>201</sup> Franet (2022), Country research - Legal environment and space of civil society organisations in supporting fundamental rights – Malta, p. 6.

<sup>202</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in Malta, pp. 18-19.

<sup>203</sup> 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.

**Several initiatives by civil society organisations aimed to promote the rule of law and strengthen access to justice are being implemented.** In September 2021, the Daphne Caruana Galizia Foundation launched the Public Interest Litigation Network (PILN), a network of public interest litigation lawyers aimed at increasing awareness of policy and legal systems based on the rule of law and respect for human rights<sup>204</sup>. The objective of the network is to promote access to justice for victims of discrimination, human rights violations, abuse of power, and state collusion in criminal activity through the establishment of a supportive framework of legal cases to command institutional reform and accountability<sup>205</sup>. In addition, the Aditus Foundation<sup>206</sup> is implementing the project “Strengthening Access to Justice for Improved Human Rights Protection”<sup>207</sup>.

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<sup>204</sup> Franet (2022), Country research - Legal environment and space of civil society organisations in supporting fundamental rights – Malta, p. 8.

<sup>205</sup> For the moment, the organisation consists of 12 representatives, including a governance committee composed of 5 members.

<sup>206</sup> Aditus foundation is a non-governmental organisation established in 2011 with a mission to monitor, report and act on access to human rights in Malta.

<sup>207</sup> Franet (2022), Country research - Legal environment and space of civil society organisations in supporting fundamental rights – Malta, p. 7. The project is currently assessing areas such as access and quality of legal aid services, capacity of administrative tribunals to cope with caseload, level of expertise tribunals in relevant matters, enforcement mechanisms, etc. The project will include recommendations in those areas and it is expected to be finalised by December 2022. Aditus Foundation (2022), Strengthening Access to Justice for Improved Human Rights Protection.

## **Annex I: List of sources in alphabetical order\***

\* *The list of contributions received in the context of the consultation for the 2022 Rule of Law report can be found at [https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation\\_en](https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation_en).*

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## **Annex II: Country visit to Malta**

The Commission services held virtual meetings in April 2022 with:

- Academics
- Association of Judges and Magistrates of Malta
- Auditor General
- Aditus Foundation
- Chamber of Advocates
- Commissioner for Standards in Public Life
- Commissioner for Voluntary Organisations
- Court Service Agency
- Daphne Caruana Galizia Foundation
- Industrial Tribunal
- Information and Data Protection Commissioner
- Internal Audit and Investigations Department
- Institute of Maltese Journalists
- Legal Aid Malta
- Ministry for Foreign and European Affairs and Trade
- Ministry for Justice
- 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:

- Amnesty International
- Article 19
- Civil Liberties Union for Europe
- Civil Society 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
- Human Rights Watch
- ILGA Europe
- International Federation for Human Rights (FIDH)
- International Press Institute
- Open Society European Policy Institute ( OSEPI)
- Osservatorio Balcani e Caucaso Transeuropa
- Philea
- Reporters Without Borders
- Transparency International Europe