

2023 Rule of Law Report - targeted stakeholder consultation

Fields marked with * are mandatory.

Introduction

The annual Rule of Law Report lies at the centre of the European rule of law mechanism, which acts as a preventive tool, deepening multilateral dialogue and joint awareness of rule of law issues. So far, three editions of the Rule of Law Report have been published in 2020, 2021 and 2022.

In the preparation of the first three editions of the Rule of Law Report, the Commission has relied on a diversity of relevant sources, including from Member States, country visits, and stakeholders' contributions collected through the targeted stakeholder consultation [1]. The information provided has informed the Commission's country-specific assessments in preparing the Report. Building on the positive experience from the first three editions of the Rule of Law Report, the Commission is now inviting stakeholders to provide written contributions for the preparation of the 2023 Rule of Law Report through this targeted consultation.

The contribution to be provided should include (1) information on measures taken to implement the recommendations addressed to the Member State in the 2022 Rule of Law report, as well as developments with regard to the points raised in the respective country chapter and (2) any other significant developments since January 2022 [2] falling under the 'type of information' outlined in the next section.

The input should be short and concise and summarise information related to one or more of the areas referred to in the template. You are invited to focus on the areas that relate to the scope of work and expertise of your organisation. Existing reports, statements, legislation or other documents may be referenced with a link (no need to provide the full text). Stakeholders are encouraged to make references to any contributions already provided in a different context or to Reports and documents already published. Contributions should focus on significant developments both as regards the legal framework and its implementation in practice.

If you wish to submit information concerning several Member States, you will have to fill-in the questionnaire separately for each Member States (due to the size of the questionnaire). There is no limit to the number of contributions submitted by a single participant. In such cases, you are not required to repeat the information in the section "about you" that is non-mandatory nor the information on horizontal developments.

Please provide your contribution by **20 January 2023**. Should you have any requests for clarifications or encounter difficulties in filling in the questionnaire, you can contact the Commission at the following email

address: rule-of-law-network@ec.europa.eu.

[1] For the consultation for the 2022 Report, see https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation_en

[2] Unless the information was already submitted in the consultation for the previous Rule of Law Reports.

Type of information

The topics are structured according to four pillars: I. Justice system; II. Anti-corruption framework; III. Media pluralism; and IV. Other institutional issues related to checks and balances. The replies could include aspects set out below under each pillar. This can include challenges, current work streams, positive developments and best practices:

Legislative developments

- Newly adopted legislation
- Legislative drafts currently discussed in Parliament
- Legislative plans envisaged by the Government

Policy developments

- Implementation of legislation
- Evaluations, impact assessment, surveys
- White papers/strategies/actions plans/consultation processes
- Follow-up to reports/recommendations of Council of Europe bodies or other international organisations
- Important administrative measures
- Generalised practices

Developments related to the judiciary / independent authorities

- Important case law by national courts
- Important decision/opinions from independent bodies/authorities
- State of play on terms, nominations and expired mandates for high-level positions (e.g. Supreme Court, Constitutional Court, Council for the Judiciary, heads of independent authorities included in the scope of the questionnaire[1])

Any other relevant developments

- Respondents are free to add any further information, which they deem relevant; however, this should be short and to the point.

If there are no changes, it is sufficient to indicate this and the information covered in the contributions for the previous Rule of Law Reports should not be repeated.

[1] Such as: media regulatory authorities and bodies, national human rights institutions, equality bodies, ombudsman institutions, supreme audit institutions and, where they exist, transparency authorities.

About you

* I am giving my contribution as

- ☐ Academic/research institution
- ☐ Business association
- ☒ Civil society organisation/NGO
- ☐ International organisation
- ☐ Judicial association or network
- ☐ Media organisation or association
- ☐ Public authority or network of public authorities
- ☐ Other

* Organisation name

250 character(s) maximum

Reporters without Borders / Reporters sans frontières (RSF)

Main Areas of Work

- ☐ Justice System
- ☐ Anti-corruption
- ☒ Media Pluralism
- ☐ Other

Please insert an URL towards your organisation's main online presence or describe your organisation briefly:

500 character(s) maximum

<https://rsf.org/en>

Transparency register number

Check if your organisation is in the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making

612547127497-45

* Country of origin

Please add the country of origin of your organisation

- ☐ Afghanistan
- ☐ Albania
- ☐ Algeria
- ☐ Andorra
- ☐ Angola
- ☐ Antigua and Barbuda

- ☐ Argentina
- ☐ Armenia
- ☐ Australia
- ☐ Austria
- ☐ Azerbaijan
- ☐ Bahamas
- ☐ Bahrain
- ☐ Bangladesh
- ☐ Barbados
- ☐ Belarus
- ☐ Belgium
- ☐ Belize
- ☐ Benin
- ☐ Bhutan
- ☐ Bolivia
- ☐ Bosnia and Herzegovina
- ☐ Botswana
- ☐ Brazil
- ☐ Brunei Darussalam
- ☐ Bulgaria
- ☐ Burkina Faso
- ☐ Burundi
- ☐ Cabo Verde
- ☐ Cambodia
- ☐ Cameroon
- ☐ Canada
- ☐ Central African Republic
- ☐ Chad
- ☐ Chile
- ☐ China
- ☐ Colombia
- ☐ Comoros
- ☐ Congo
- ☐ Costa Rica
- ☐ Côte D'Ivoire
- ☐ Croatia
- ☐ Cuba
- ☐ Cyprus
- ☐ Czechia
- ☐ Democratic Republic of the Congo
- ☐ Denmark
- ☐ Djibouti
- ☐ Dominica
- ☐ Dominican Republic
- ☐ Ecuador
- ☐ Egypt
- ☐ El Salvador

- ☐ Equatorial Guinea
- ☐ Eritrea
- ☐ Estonia
- ☐ Eswatini
- ☐ Ethiopia
- ☐ Fiji
- ☐ Finland
- ☒ France
- ☐ Gabon
- ☐ Gambia
- ☐ Georgia
- ☐ Germany
- ☐ Ghana
- ☐ Greece
- ☐ Grenada
- ☐ Guatemala
- ☐ Guinea
- ☐ Guinea Bissau
- ☐ Guyana
- ☐ Haiti
- ☐ Honduras
- ☐ Hungary
- ☐ Iceland
- ☐ India
- ☐ Indonesia
- ☐ Iran
- ☐ Iraq
- ☐ Ireland
- ☐ Israel
- ☐ Italy
- ☐ Jamaica
- ☐ Japan
- ☐ Jordan
- ☐ Kazakhstan
- ☐ Kenya
- ☐ Kiribati
- ☐ Kuwait
- ☐ Kyrgyzstan
- ☐ Laos
- ☐ Latvia
- ☐ Lebanon
- ☐ Lesotho
- ☐ Liberia
- ☐ Libya
- ☐ Liechtenstein
- ☐ Lithuania
- ☐ Luxembourg

- ☐ Madagascar
- ☐ Malawi
- ☐ Malaysia
- ☐ Maldives
- ☐ Mali
- ☐ Malta
- ☐ Marshall Islands
- ☐ Mauritania
- ☐ Mauritius
- ☐ Mexico
- ☐ Micronesia
- ☐ Monaco
- ☐ Mongolia
- ☐ Montenegro
- ☐ Morocco
- ☐ Mozambique
- ☐ Myanmar
- ☐ Namibia
- ☐ Nauru
- ☐ Nepal
- ☐ Netherlands
- ☐ New Zealand
- ☐ Nicaragua
- ☐ Niger
- ☐ Nigeria
- ☐ North Korea
- ☐ North Macedonia
- ☐ Norway
- ☐ Oman
- ☐ Pakistan
- ☐ Palau
- ☐ Panama
- ☐ Papua New Guinea
- ☐ Paraguay
- ☐ Peru
- ☐ Philippines
- ☐ Poland
- ☐ Portugal
- ☐ Qatar
- ☐ Republic of Moldova
- ☐ Romania
- ☐ Russian Federation
- ☐ Rwanda
- ☐ Saint Kitts and Nevis
- ☐ Saint Lucia
- ☐ Saint Vincent and the Grenadines
- ☐ Samoa

- ☐ San Marino
- ☐ Sao Tome and Principe
- ☐ Saudi Arabia
- ☐ Senegal
- ☐ Serbia
- ☐ Seychelles
- ☐ Sierra Leone
- ☐ Singapore
- ☐ Slovakia
- ☐ Slovenia
- ☐ Solomon Islands
- ☐ Somalia
- ☐ South Africa
- ☐ South Korea
- ☐ South Sudan
- ☐ Spain
- ☐ Sri Lanka
- ☐ Sudan
- ☐ Suriname
- ☐ Sweden
- ☐ Switzerland
- ☐ Syrian Arab Republic
- ☐ Tajikistan
- ☐ Tanzania
- ☐ Thailand
- ☐ Timor-Leste
- ☐ Togo
- ☐ Tonga
- ☐ Trinidad and Tobago
- ☐ Tunisia
- ☐ Turkey
- ☐ Turkmenistan
- ☐ Tuvalu
- ☐ Uganda
- ☐ Ukraine
- ☐ United Arab Emirates
- ☐ United Kingdom
- ☐ United States of America
- ☐ Uruguay
- ☐ Uzbekistan
- ☐ Vanuatu
- ☐ Venezuela
- ☐ Viet Nam
- ☐ Yemen
- ☐ Zambia
- ☐ Zimbabwe

First name

julie

Surname

majerczak

Email Address of the organisation (this information will not be published)

[REDACTED]

* Publication of your contribution and privacy settings

You can choose whether you wish for your contribution to be published and whether you wish your details to be made public or to remain anonymous.

- ☐ Anonymous - Only your type of respondent, country of origin and contribution will be published. Organisation name, URL, transparency register number, first name and surname given above will not be published. **To maintain anonymity, please refrain from mentioning the name of your organisation and any details from which your organisation can be identified in the rest of your contribution.**
- ☒ Public - Your personal details (name, organisation name, transparency register number, country of origin) will be published with your contribution).
- ☐ No publication - Your contribution will not be published. Elements of your contribution may be referred to anonymously in documents produced by the Commission based on this consultation.

☒ I agree with the personal data protection provisions.

[Specific privacy statement targeted stakeholder consultation 2023 rule of law report.pdf](#)

Questions on horizontal developments

In this section, you are invited to provide information on general horizontal developments or trends, both positive and negative, covering all or several Member States. In particular, you could mention issues that are common to several Member States, as well as best practices identified in one Member State that could be replicated. Moreover, you could refer to your activities in the area of the four pillars and sub-topics (an overview of all sub-topics can be found below), and, if you represent a Network of national organisations, to the support you might have provided to one of your national members.

Overview topics for contribution

[list of topics 2023 Report.pdf](#)

Please provide any relevant information on horizontal developments here

5000 character(s) maximum

[REDACTED]

Questions for contribution

The following four pillars (I.-IV.) are sub-divided into topics (A., B., etc.) and sub-topics (1., 2., 3., etc.). For each of the topics and sub-topics, you are invited to provide (1) information on measures taken to implement the recommendations addressed to the Member States in the 2022 Rule of Law report, as well as developments with regard to the points raised in the respective country chapter of the 2022 Rule of Law Report and (2) any other significant developments since January 2022^[1]. Please include a link to and reference relevant legislation/documents (in the national language and/or where available, in English) if relevant. Significant developments can include challenges, positive developments and best practices, covering both legislative developments or implementation and practices.

If there are developments you consider relevant under each of the four pillars that are not mentioned in the sub-topics, please add them under the section "other - please specify". Only significant developments should be covered.

Information provided in reply to the first question under each pillar, related to the follow-up to the recommendations, does not need to be repeated in subsequent parts of the questionnaire, but can be cross-referenced in the subsequent questions, where relevant. All other questions are not limited to the recommendations, but as in previous years, cover the entire scope of the Report.

[1] Unless already covered in the input for the previous Rule of Law Reports.

Member State covered in contribution [only one choice possible]

If you wish to submit information concerning several Member States, please fill in the questionnaire separately for each Member State. There is no limit to the number of contributions submitted by a single participant.

- ☐ Austria
- ☐ Belgium
- ☐ Bulgaria
- ☐ Croatia
- ☐ Cyprus
- ☐ Czechia
- ☐ Denmark
- ☐ Estonia
- ☐ Finland
- ☐ France
- ☐ Germany
- ☐ Greece
- ☐ Hungary
- ☐ Ireland
- ☐ Italy
- ☐ Latvia
- ☐ Lithuania
- ☐ Luxembourg
- ☐ Malta
- ☐ Netherlands
- ☐ Poland
- ☐ Portugal

- ☐ Romania
- ☐ Slovak Republic
- ☐ Slovenia
- ☐ Spain
- ☐ Sweden

I. Justice System

Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the justice system (if applicable)

3000 character(s) maximum

A. Independence

Appointment and selection of judges, prosecutors and court presidents (incl. judicial review)

(The reference to 'judges' concerns judges at all level and types of courts as well as judges at constitutional courts)

3000 character(s) maximum

Irremovability of judges, including transfers, (incl. as part of judicial map reform), dismissal and retirement regime of judges, court presidents and prosecutors (incl. judicial review)

3000 character(s) maximum

Promotion of judges and prosecutors (incl. judicial review)

3000 character(s) maximum

Allocation of cases in courts

3000 character(s) maximum

Independence (including composition and nomination and dismissal of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

3000 character(s) maximum

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal/civil (where applicable) liability of judges (incl. judicial review)

3000 character(s) maximum

Remuneration/bonuses/rewards for judges and prosecutors, including observed changes (significant and targeted increase or decrease over the past year), transparency on the system and access to the information

3000 character(s) maximum

Independence/autonomy of the prosecution service

3000 character(s) maximum

Independence of the Bar (chamber/association of lawyers) and of lawyers

3000 character(s) maximum

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

3000 character(s) maximum

B. Quality of justice

(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under section 2)

Accessibility of courts (e.g. court/legal fees, legal aid, language)

3000 character(s) maximum

Resources of the judiciary (human/financial/material)

(Material resources refer e.g. to court buildings and other facilities)

3000 character(s) maximum

Training of justice professionals (including judges, prosecutors, lawyers, court staff)

3000 character(s) maximum

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)

3000 character(s) maximum

Use of assessment tools and standards (e.g. ICT systems for case management, court statistics and their transparency, monitoring, evaluation, surveys among court users or legal professionals)

3000 character(s) maximum

Geographical distribution and number of courts/jurisdictions ("judicial map") and their specialization, in particular specific courts or chambers within courts to deal with fraud and corruption cases

3000 character(s) maximum

C. Efficiency of the justice system

(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under section 2)

Length of proceedings

3000 character(s) maximum

Other - please specify

3000 character(s) maximum

II. Anti-Corruption Framework

Where previous specific reports, published in the framework of the review under the UN Convention against Corruption, of GRECO, and of the OECD address the issues below, please make a reference to the points you wish to bring to the Commission's attention in these documents, indicating any relevant updates, changes or measures introduced that have occurred since these documents were published.

Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the anti-corruption framework (if applicable)

3000 character(s) maximum

A. The institutional framework capacity to fight against corruption (prevention and investigation / prosecution)

List any changes as regards relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption and the resources allocated to each of these authorities (the human, financial, legal, and technical resources as relevant), including the cooperation among domestic authorities. Indicate any relevant measure taken to effectively and timely cooperate with OLAF and EPPO (where applicable)

3000 character(s) maximum

Safeguards for the functional independence of the authorities tasked with the prevention and detection of corruption

3000 character(s) maximum

Information on the implementation of measures foreseen in the strategic anti-corruption framework (if applicable). If available, please provide relevant objectives and indicators

3000 character(s) maximum

B. Prevention

Measures to enhance integrity in the public sector and their application (including as regards incompatibility rules, revolving doors, codes of conduct, ethics training). Please provide figures on their application

3000 character(s) maximum

General transparency of public decision-making, including rules on lobbying and their enforcement, asset disclosure rules and enforcement, gifts policy, transparency of political party financing

3000 character(s) maximum

Rules and measures to prevent conflict of interests in the public sector. Please specify the scope of their application (e.g. categories of officials concerned)

3000 character(s) maximum

Measures in place to ensure whistleblower protection and encourage reporting of corruption.

3000 character(s) maximum

List the sectors with high-risks of corruption in your Member State and list the relevant measures taken /envisaged for monitoring and preventing corruption and conflict of interest in these sectors (e.g. public procurement, healthcare, citizen investor schemes, risk or cases of corruption linked to the disbursement of EU funds, other), and, where applicable, list measures to prevent and address corruption committed by organised crime groups (e.g. to infiltrate the public sector)

3000 character(s) maximum

Any other relevant measures to prevent corruption in public and private sector

3000 character(s) maximum

C. Repressive measures

Criminalisation, including the level of sanctions available by law, of corruption and related offences, including foreign bribery

3000 character(s) maximum

Data on investigation and application of sanctions for corruption offences, including for legal persons and high level and complex corruption cases and their transparency, including as regards to the implementation of EU funds

(Please include, if available the number of (data since 2019): indictments; first instance convictions; first instance acquittals; final convictions; final acquittals; other outcomes (final) (i.e. excluding convictions and acquittals); cases adjudicated (final); imprisonment / custodial sentences through final convictions; suspended custodial sentences through final convictions; pending cases at the end of the reference year)

3000 character(s) maximum

Potential obstacles to investigation and prosecution as well as to the effectiveness of criminal sanctions of high-level and complex corruption cases (e.g. political immunity regulation, procedural rules, statute of limitations, cross-border cooperation, pardoning)

3000 character(s) maximum

Information on effectiveness of non-criminal measures and of sanctions (e.g. recovery measures and administrative sanctions) on both public and private offenders

3000 character(s) maximum

Other - please specify

3000 character(s) maximum

III. Media Freedom and Pluralism

Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding media freedom and pluralism (if applicable)

3000 character(s) maximum

A. Media authorities and bodies

(Cf. Article 30 of Directive 2018/1808)

Measures taken to ensure the independence, enforcement powers and adequacy of resources (financial, human and technical) of media regulatory authorities and bodies

3000 character(s) maximum

The main authorities and bodies regulating the media in Malta are the:

- Broadcasting Authority (the “BA”),
- Malta Communications Authority (the “MCA”), and
- Malta Competition and Consumer Affairs Authority (the “MCCAA”).

(Other authorities e.g. Information and Data Protection Commissioner may have relevance in relation to particular aspects such as data protection or FOI requests.)

In addition to the above, Malta has a public broadcaster, “Television Malta” or “TVM” (the “State Broadcaster” or “PBS”) constituted as a government owned limited liability company - Public Broadcasting Services Limited.

The BA’s remit is the regulation of sound (radio) and television broadcasting services in Malta and to issue licences to private operators. This is a constitutional body. The BA also has as part of its remit, overseeing political balance in the State Broadcaster by ensuring equal access to parties represented in parliament.

The MCA is the regulator of communications services, which include fixed and mobile telephony, Internet, and TV distribution services. In practice, the MCA does not have direct regulatory authority over journalists or other operators but it can ensure equal access to the internet or other communications services.

The MCCAA regulates consumer affairs including competition law and consumer matters such as unfair advertising. In practice, the MCCAA’s enforcement activities have been below average.

The State Broadcaster has two television channels (TVM and TVMNews+) and several radio channels (Radju Malta, Radju Malta 2 and Magic Malta).

During 2022 no measures of note were taken to strengthen the above media regulatory authorities and bodies.

Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media regulatory authorities and bodies

The BA is constituted under the Constitution (Art 118 and 119) and the Broadcasting Act (Cap. 350, laws of Malta). Under Article 118 of the Constitution, it is the President that appoints the members, in accordance with advice of the Prime Minister. Article 118 requires the Prime Minister to “consult” with the leader of the opposition but, in practice, this is a mere notification. MPs, Ministers, Parliamentary Secretaries, local council members or public officers are excluded from appointment, and members of the BA are precluded from holding public office for a period of 3 years. Members of the BA have security of tenure for 5 years and can only be dismissed if one of the conditions of ineligibility arises or by the President (acting on the advice of the Prime Minister) but only on grounds of “inability to discharge the functions of his office (whether arising from infirmity of mind or body or any other cause) or for misbehaviour”.

The MCA is constituted under the Malta Communications Authority Act (Cap. 418, laws of Malta). Under the Act, the board of the MCA is to be appointed by the Minister responsible for communications. The members of the MCA Board enjoy security of tenure with limited grounds for their removal (infirmity of mind or of body, behaviour that affects or may affect the reputation, independence, or autonomy of the Authority, being convicted of a criminal offence affecting public trust including theft, fraud, bribery or money laundering) or failing to perform duties for a prolonged period without valid justification. Members of the MCA Board are appointed for periods of 1 to 3 years.

The MCCA is constituted under the Malta Competition and Consumer Affairs Authority Act (Cap. 510, laws of Malta). Under this Act, the board of governors of the MCCA is to be appointed by the Minister responsible. The board of governors enjoy some level of security of tenure though this is not as detailed as for other bodies. Members of the MCCA Board are appointed for periods of 1 to 3 years.

PBS is constituted as a private limited company owned by the Government. The Board of Directors is appointed by the Government (as shareholder), typically by the Minister involved or by the Prime Minister. PBS Directors do not have security of tenure. In late-2020 and 2021, the then Minister responsible for PBS (Carmelo Abela) ushered in multiple changes at PBS including a new (government-friendly) CEO, increased funding, and changes to PBS’s TV channels and their schedules. The result has increased political interference, including on news editorial decisions, further deterioration in PBS’s already questionable impartiality levels, and a decimation of its viewership figures (particularly for current affairs programmes). This deterioration continued throughout 2022.

Existence and functions of media councils or other self-regulatory bodies

3000 character(s) maximum

The Institute of Maltese Journalists (‘Istitut tal-Gurnalisti Maltin’ or IGM) is the sole press association in Malta. The IGM is established as a voluntary non-profit organisation whose membership is restricted to Maltese journalists and correspondents.

The IGM is the Malta representative for / member of the International Federation of Journalists and issues international press cards at a fee. The council and president of the IGM are elected by its members. Since the majority of the media in Malta is directly owned by the two political parties, the majority of council members are reporters tasked with political party propaganda, giving independent journalists limited protection.

Although the IGM issues press cards, the government maintains a filter by issuing access cards. This is another level of authorisation for government events in which accredited journalists, especially those critical of the government, can still be excluded.

B. Safeguards against government or political interference and transparency and concentration of media ownership

Measures taken to ensure the fair and transparent allocation of state advertising (including any rules regulating the matter)

3000 character(s) maximum

State advertising should be allocated to local press through the same processes as those for public procurement – i.e. tenders, quotations, or direct orders.

Frequently, the Maltese government tends to lean in the direction of direct orders which are given at the relevant Minister's discretion and only published 6 months later, if at all.

In practice, State advertising tends to be allocated to the national broadcaster, the political parties on news outlets / television stations and then sporadically to the mainstream news outlets (Times, Independent, Malta Today).

This tends to be at the whim of the relevant Minister without any binding rules or public guidelines as to how advertising is allocated. Over the years, a practice has developed where the Ministry gives a direct order to a PR agency, who in turn allocates publication to the relevant media outlets. This practice further obscures the final allocation of advertising expenditure since procurement notices published only mention the PR agency's name.

State advertising has been used to control the agenda of independent media, with editors clearly stating they had received threats of the withdrawal of advertising if corruption cases continued to be reported.

The owner of an independent mainstream media is regularly receiving direct orders for "positive content" while being the only one allowed a prime time programme on the State broadcaster in which he regularly interviews the Ministers allocating direct orders to him. Initial investigations reveal €1 million in benefits. The government has mounted 40 cases with 80 lawyers against an independent online news portal that filed Freedom of Information requests for the full amount to be disclosed.

The independent media in Malta remains heavily reliant on government advertising. During the initial outbreak of the COVID-19 pandemic (2020), the mainstream media outlets including The Times of Malta and Malta Today appealed for State funding – the meeting was held behind closed doors and the outcome of negotiations was never communicated to the public. There are, to date, no clear details of what was agreed and what, if any, compromises the media had to make in return for COVID assistance funding by the Government or its agencies (such as 'Malta Enterprise').

The Board of Inquiry in the "Daphne Caruana Galizia Public Inquiry" (see below "Rules and practices guaranteeing journalist's independence and safety") recommended that this arbitrary system for the allocation of government advertising replaced with a fair, equal and non-discriminatory system.

To date, that is almost two years later, the government has yet to start bona fide work on implementing this recommendation (and others).

Safeguards against state / political interference, in particular:

- safeguards to ensure editorial independence of media (private and public)
- specific safeguards for the independence of heads of management and members of the governing boards of public service media (e.g. related to appointment, dismissal), safeguards for their operational independence (e.g. related to reporting obligations and the allocation of resources) and safeguards for plurality of information and opinions
- information on specific legal provisions and procedures applying to media service providers, including as regards granting/renewal/termination of licenses, company operation, capital entry requirements, concentration and corporate governance

3000 character(s) maximum

Safeguards to ensure editorial independence of media (private and public) – None of note.

Under Article 10(4)(d) of the Broadcasting Act, the government may not own any broadcasting services (radio or television) or participate in their ownership, control or be editorially responsible for any such services other than through PBS, and that no other company in which the government has a controlling interest may own voting shares in a company providing any broadcasting services.

Specific safeguards for the independence of governing bodies of public service media governance (e.g. related to appointment, dismissal) and safeguards for their operational independence (e.g. related to reporting obligations) – See above (“Conditions for the appointment / dismissal of heads of media regulatory authorities”). As PBS is structured as a limited liability company, its governance is regulated by its Memorandum and Articles of Association (as approved by the government as its shareholder).

Procedures for the concession/renewal/termination of operating licenses – There are no operating licenses for media houses other than for television and radio. The Broadcasting Act sets out the requirements for licensing of companies wishing to operate a television or radio channel in Malta including the criteria to be assessed such as economic potential and viability, quality of scheduled programming, technological and broadcasting plans and projects and ability to fulfil all obligations under the Act. The Broadcasting Act allows a right of appeal from decisions to refuse a licence.

Information on specific legal provisions for companies in the media sector (other than licensing), including as regards company operation, capital entry requirements and corporate governance – None.

Transparency of media ownership and public availability of media ownership information, including on direct, indirect and beneficial owners, as well as any rules regulating the matter

There are no local rules regarding transparency of media ownership beyond general rules and practices relating to company ownership (where a company is used or identifiable) including the register of beneficial owners. During 2022, partly as a result of the ECJ judgments relating to access to registers of beneficial owners, access to these registers was immediately removed.

Yet, the vast majority of the media in Malta is owned or directly controlled by the two main political parties, with a heavy leaning towards the Party in Government.

Despite COVID-19 ostensibly impacting media houses and the commercial viability of press outlets, 2020-2021 saw the establishment of a number of new online only media outlets with little to no information about their ownership or even authors. Given that the editorial line by these new start-ups / pop-up ‘news’ outlets continues to be heavily pro-governing party, there is continued concern that these are both mere propaganda arms and that COVID assistance funding (see “state advertising above) may have been used to promote the establishment of such outlets.

C. Framework for journalists' protection, transparency and access to documents

Rules and practices guaranteeing journalist's independence and safety, including as regards protection of journalistic sources and communications

3000 character(s) maximum

In July 2021, the “Daphne Caruana Galizia Public Inquiry” published its detailed findings and recommendations, a number of which are directly relevant to press freedom and safety in Malta.

The Board of Inquiry concluded that the Maltese State was ultimately responsible for Caruana Galizia’s assassination in 2017, including due to the inaction of the entities responsible for safeguarding her right to life, positive acts of vilification, name-calling, and harassment by public officials in high positions, and the creation of a de facto state of impunity.

The Board of Inquiry’s recommendations to protect the life of journalists and strengthening journalism in Malta included:

- A dedicated Police Unit
- Constitutional recognition of free journalism
- Establishment of a Press Ombudsman
- Revisiting the Broadcasting Authority
- Overhauling the Freedom of Information Act
- The abolition of SLAPPs and vexatious libel suits
- Fair allocation of government advertising
- A law for journalism
- Establishment of a Committee of Experts

To date, two years later, the government has yet to materially implement any of the recommendations.

In January 2022, the government established a committee nominated by the government without consultation and provided them with a set of bills ostensibly to implement the Board’s recommendations to provide their feedback within a strict deadline. The government’s choice of members appointed to the committee was in itself controversial, including individuals loyal to the government but not necessarily having the required knowledge or experience to lead reforms.

The government only published the committee’s feedback months after the deadline after public pressure started building for the government to commence implementing the recommendations. In late summer 2022, the government published the draft Bills and the committee’s feedback which showed that by and large the government was ignoring the committee’s feedback and that the Bills fell far short of the Public Inquiry Board’s recommendations.

Following widespread criticism of the government’s attempt to proceed with the Bill without further consultation including by press freedom iNGOs, the government withdrew the Bill. To date there has been no further attempt at consultation or implementation of the Board’s recommendations.

Law enforcement capacity, including during protests and demonstrations, to ensure journalists' safety and to investigate attacks on journalists

3000 character(s) maximum

No public information is available on this. In practice, law enforcement authorities demonstrate a low aptitude to investigate attacks on the press, particularly non-physically violent attacks, or non-high-profile ones. The Board of Inquiry specifically recommended the establishment of a dedicated Police Unit to ensure journalists' safety. To date, that is just under two years later, the government has yet to start material work on implementing this recommendation (and others).

Access to information and public documents (incl. transparency authorities where they exist, procedures, costs/fees, timeframes, administrative/judicial review of decisions, execution of decisions by public authorities, possible obstacles related to the classification of information)

3000 character(s) maximum

Access to information is primarily regulated by the Freedom of Information Act. On paper, every person who has been resident in Malta for at least 5 years and who is either a Maltese or EU citizen may request the government for access to relevant documents within strict deadlines (This limitation to persons locally resident has been criticised by NGOs).

The Freedom of Information Act offers a two tier right of complaint (internally and externally to the Information and Data Protection Commissioner), a right of appeal to a tribunal (the Data Protection Tribunal) and a final right of appeal (on points of law) to the Courts.

The Maltese Freedom of Information Act has been heavily criticised in the past given the broad exemptions offered to disclosure, however, in recent years there has been a marked deterioration in the way it is administered in practice. Statistically, over half of all FOI requests are outright refused with the remainder frequently being either only upheld in part or granting the requestor partial information.

Orders by the Information and Data Protection Commissioner are routinely ignored or challenged by the government, mounting costs for newsrooms to defend cases in court.

This matter has frequently been the subject of annual reports by the Ombudsman but to date there has been no noticeable improvement. In practice, the most common grounds for refusal of FOI requests are, in order of frequency seen by the authors: (a) commercial sensitivity, (b) national interest, and (c) claims that the FOI Act only covers “documents” and not “information” or other legalistic grounds.

Most refusals stop at the external complaint to the Data Protection Commissioner since appeals tend to be lengthy and the politically appointed adjudicators on the tribunal, tend to offer little chances of success.

Further appeals are yet more lengthy and costly. An example of this abusive approach was experienced by The Shift News, which filed around 40 FOI requests to obtain comprehensive information on government advertising and consultancies. The requests were all denied. Although both the Data Protection Commissioner and the tribunal ruled in favour The Shift, the government proceeded to file court cases against the The Shift, burying the news outlet in paperwork and costly litigation.

The government further limits access to information to journalists through the requirement to register with the Department of Information, which falls under the Office of the Prime Minister. Despite this having no basis in law, journalists who do not register are refused access to government events (even when holding an international press card) and access to documents such as the tax declarations of MPs.

The Board of Inquiry specifically recommended an overhaul of the FOI Act and the enactment of a law regulating journalism as a self-regulating profession to address these shortcomings.

Lawsuits (incl. SLAPPs - strategic lawsuits against public participation) and convictions against journalists (incl. defamation cases) and measures taken to safeguard against manifestly unfounded and abusive lawsuits

3000 character(s) maximum

There is no public data on this which is comprehensive. Libel suits are regularly used, especially by those in government, to silence critical stories in the media. At the time of her assassination in Malta in October 2017, Daphne Caruana Galizia had over 40 libel suits against her. A significant number, including by former prime minister Joseph Muscat, continue posthumously.

SLAPPs remain a significant threat to newsrooms in Malta dealing with cross-border corruption.

The government has made changes to the Press Act, which included the removal of criminal libel, and this was a positive step. Yet it did not serve to eliminate vexatious libel suits against journalists, where in Malta a case drags on for an average of 4 to 5 years, effectively silencing the story. There are no repercussions for those who launch cases for specifically this purpose. They include government members who abandon

cases against journalists at the point in which they are called to testify – after a journalist would have spent at least two years presenting evidence in court. In Malta, when a libel suit is filed against a journalist, the journalist is guilty and has to prove his/her innocence.

The Board of Inquiry specifically recommended amendments to Malta's press laws to ban SLAPPs, avoid vexatious libel suits by public officers, and to stop libel cases continuing posthumously to address these issues. To date, that is just under two years later, the government has yet to start work on implementing these recommendations (and others). As noted above, the appeals system under the FOI Act where the government is permitted to, and does in practice, use three tiers of appeals against FOI requests can result in situations such as that being experienced by The Shift News where FOI appeals are used to silence reporting and cause them to incur existential threat level of costs to defend the cases.

Moreover, while removing criminal libel, the police are accusing journalists of crimes under different laws, such as the Electronic Communications Act, which lead to fines of tens of thousands of euro.

Other - please specify

3000 character(s) maximum

A point that has been raised in various country assessments by European institutions including the European Parliament, the Venice Commission and the Council of Europe was the discrepancy between the laws on paper in Malta and their actual implementation or enforcement.

Institutions set up to deliver checks and balances in the country are in reality compromised by political appointments, an observation also confirmed by the Board of Inquiry. An example arising in 2022 relates to the offices of the Ombudsman and the Commissioner for Standards in Public Life each of which provide checks and balances against executive power and accordingly require under present legislation 2/3 of parliament to appoint thereby ensuring appointees are non-partisan. Each of terms of these offices have since expired and the government and opposition have failed to agree on a new appointee, with the government insisting on persons perceived as overly partisan, thereby leaving these two important offices vacant for an extended period. To compound matters in late 2022, on Boxing Day, the government published a bill proposing to reduce the 2/3 requirement to nominate a Standards Commissioner to a simple majority, ostensibly as an "anti-deadlock" mechanism. The Opposition has raised concern on the dictatorial approach and the government's undermining of democratic checks and balances.

References

- Daphne Caruana Galizia Public Inquiry Report – Official Maltese Version: <https://www.gov.mt/en/Documents/DCG%20final%20version%20as%20at%2012.08.2021.pdf>, Courtesy English Translation: <https://www.documentcloud.org/documents/21114883-public-inquiry-report-en>
- RSF: Landmark public inquiry report finds Maltese state must "shoulder responsibility" for the assassination of Daphne Caruana Galizia - <https://rsf.org/en/news/landmark-public-inquiry-report-finds-maltese-state-must-shoulder-responsibility-assassination-daphne>
- RSF: Statement of the joint press freedom mission to Malta -<https://rsf.org/en/malta-civil-society-denounces-governments-lack-ambition-and-transparency-press-freedom-reforms-and>

IV. Other institutional issues related to checks and balances

Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the system of checks and balances (if applicable)

3000 character(s) maximum

A. The process for preparing and enacting laws

Framework, policy and use of impact assessments and evidence based policy-making, stakeholders'[1] /public consultations (particularly consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process

[1] This includes also the consultation of social partners

3000 character(s) maximum

Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

3000 character(s) maximum

Regime for constitutional review of laws

3000 character(s) maximum

COVID-19: provide update on significant developments with regard to emergency regimes/measures in the context of the COVID-19 pandemic

- judicial review (including constitutional review) of emergency regimes and measures in the context of COVID-19 pandemic
- oversight (incl. ex-post reporting/investigation) by Parliament of emergency regimes and measures in the context of COVID-19 pandemic
- processes related to lessons learned/crisis preparedness in terms of the functioning of checks and balances

3000 character(s) maximum

B. Independent authorities

Independence, resources, capacity and powers of national human rights institutions ('NHRIs'), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions

(Cf. the website of the European Court of Auditors: <https://www.eca.europa.eu/en/Pages/SupremeAuditInstitutions.aspx#>)

3000 character(s) maximum

Statistics/reports concerning the follow-up of recommendations by National Human Rights Institutions, ombudsman institutions, equality bodies and supreme audit institutions in the past two years

3000 character(s) maximum

C. Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data)

3000 character(s) maximum

Judicial review of administrative decisions:

- short description of the general regime (in particular competent court, scope, suspensive effect, interim measures, and any applicable specific rules or derogations from the general regime of judicial review)

3000 character(s) maximum

Follow-up by the public administration and State institutions to final (national/supranational) court decisions, as well as available remedies in case of non-implementation

3000 character(s) maximum

D. The enabling framework for civil society

Measures regarding the framework for civil society organisations and human rights defenders (e.g. legal framework and its application in practice incl. registration and dissolution rules)

3000 character(s) maximum

Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures for protection from attacks – verbal, physical or on-line –, intimidation, legal threats incl. SLAPPs, negative narratives or smear campaigns, measures capable of affecting the public perception of civil society organisations, etc. It also includes measures to monitor threats or attacks and dedicated support services.

3000 character(s) maximum

Organisation of financial support for civil society organisations and human rights defenders (e.g. framework to ensure access to funding, and for financial viability, taxation/incentive/donation systems, measures to ensure a fair distribution of funding)

3000 character(s) maximum

Rules and practices on the participation of civil society organisations and human rights defenders to the decision-making process (e.g. measures related to dialogue between authorities and civil society, participation of civil society in policy development and decision-making, consultation, dialogues, etc.)

3000 character(s) maximum

E. Initiatives to foster a rule of law culture

Measures to foster a rule of law culture (e.g. debates in national parliaments on the rule of law, public information campaigns on rule of law issues, contributions from civil society etc.)

3000 character(s) maximum

Other - please specify

3000 character(s) maximum

Contact

rule-of-law-network@ec.europa.eu