



EUROPEAN
COMMISSION

Brussels, 24.7.2024
SWD(2024) 818 final

COMMISSION STAFF WORKING DOCUMENT

2024 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**

2024 Rule of Law Report

The rule of law situation in the European Union

{COM(2024) 800 final} - {SWD(2024) 801 final} - {SWD(2024) 802 final} -
{SWD(2024) 803 final} - {SWD(2024) 804 final} - {SWD(2024) 805 final} -
{SWD(2024) 806 final} - {SWD(2024) 807 final} - {SWD(2024) 808 final} -
{SWD(2024) 809 final} - {SWD(2024) 810 final} - {SWD(2024) 811 final} -
{SWD(2024) 812 final} - {SWD(2024) 813 final} - {SWD(2024) 814 final} -
{SWD(2024) 815 final} - {SWD(2024) 816 final} - {SWD(2024) 817 final} -
{SWD(2024) 819 final} - {SWD(2024) 820 final} - {SWD(2024) 821 final} -
{SWD(2024) 822 final} - {SWD(2024) 823 final} - {SWD(2024) 824 final} -
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{SWD(2024) 828 final} - {SWD(2024) 829 final} - {SWD(2024) 830 final} -
{SWD(2024) 831 final}

ABSTRACT

The level of perceived judicial independence among the general public continues to be high. Steps are being taken to involve the judiciary in the procedure for the appointment of the Chief Justice. Additional categories of prosecutions have been delegated to the Office of the Attorney General. Concerns persist regarding the independence of specialised tribunals and works have started to address them. New members of the judiciary have been appointed, while concerns persist regarding the overall level of human resources. The degree of digitalisation of the justice system needs substantial improvement. The regulation of the activities of lawyers is still under discussion. There has been some further progress in pursuing efforts to improve the efficiency of the justice system, yet the duration of proceedings remains a challenge.

The anti-corruption recommendations issued following the public inquiry into the assassination of journalist Daphne Caruana Galizia have not been implemented yet. The monitoring of the implementation of the National Anti-Fraud and Corruption Strategy encountered some delays. Organisational and legislative measures were adopted in 2023 to improve the capacity of investigative and prosecution authorities. While its resources increased, the Permanent Commission against Corruption did not achieve tangible results. Integrity measures continue to apply to the public service (including police officers, judges, members of Parliament and high-ranking officers) while those for high-ranking officials were reviewed, and some concerns remain regarding the extent of the integrity measures for persons of trust. Public authorities comply with audit recommendations. New tools for whistleblowing are under preparation, while some concerns were raised as regards the effectiveness of the existing mechanism. While preventive measures exist, public procurement procedures show high risks of corruption. The investor citizenship scheme continues to raise concerns.

In July 2023, the Committee of Experts on Media concluded its work and presented a set of recommendations in its final report. However, to date, no legislative or other concrete measures have been adopted to improve the working environment of journalists and to reform the media landscape. There has been no progress with regard to adopting safeguards to improve access to official documents while journalists continue to face obstacles when requesting public information. There have been no developments to enhance the independence of public service media, to establish transparent criteria for the allocation of public funding for media outlets and to ensure air allocation of state advertising.

While there have been some public consultations in the legislative process, there is no framework in place. The establishment of a human rights institution is still pending. The Constitutional Convention announced in 2019 to address issues concerning the appointment of constitutional bodies and the role of Parliament remains stalled. Efforts by the Commissioner for Voluntary Organisations to establish a supportive regulatory framework for the civil society sector continue.

RECOMMENDATIONS

Overall, concerning the recommendations in the 2023 Rule of Law Report, Malta has made:

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

On this basis, and considering other developments that took place in the period of reference, and in addition to recalling the relevant commitments made under the Recovery and Resilience Plan, it is recommended to Malta to:

- Pursue the draft reform endorsed by the Government to involve the judiciary in the procedure for appointment of the Chief Justice.
- Further strengthen efforts to improve the efficiency of justice including by providing additional resources, particularly to reduce the length of proceedings.
- Continue efforts to address challenges related to the length of investigations of high-level corruption cases and step up efforts to establish a robust track record of final judgments.
- Adopt legislative and other safeguards to improve the working environment of journalists including on access to official documents, taking into account European standards on the protection of journalists and on access to official documents.
- Strengthen the rules and mechanisms to enhance the independent governance and editorial independence of public service media taking into account European standards on public service media.
- Step up measures to establish a National Human Rights Institution taking into account the UN Paris Principles.
- Introduce a formal framework for public participation in the legislative process.

I. JUSTICE SYSTEM

The Maltese justice system is influenced by both the continental and the common law traditions. Courts are divided into Superior and Inferior Courts. Superior Courts are composed of judges and include the Civil Court, the Criminal Court, the Court of Appeal, the Court of Criminal Appeal and the Constitutional Court. Inferior Courts are composed of magistrates and include the Court of Magistrates (Malta) and the Court of Magistrates (Gozo). The judiciary is headed by the Chief Justice who also presides over the Constitutional Court. Judges and magistrates are appointed by the President of Malta acting in accordance with the recommendation made by the Judicial Appointments Committee. A Commission for the Administration of Justice supervises the workings of all the superior and inferior courts¹. 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 among the general public and is now average among companies. Overall, 65% of the general population and 57% of companies perceive the level of independence of courts and judges to be ‘fairly or very good’ in 2024². The perceived judicial independence among the general public has slightly decreased in comparison with 2023 (66%), although it remains higher in comparison with 2020 (52%). The perceived level of judicial independence among companies has decreased in comparison with 2023 (65%) but remains higher in comparison with 2020 (48%)³.

There has been some progress on the involvement of the judiciary in the procedure for appointment of the Chief Justice. The 2023 Rule of Law Report recommended to Malta to ‘[t]ake steps to address the need for involvement of the judiciary in the procedure for appointment of the Chief Justice, taking into account European standards on judicial appointments and the opinion of the Venice Commission’⁴. Under the procedure laid down in Article 96(3) of the Constitution, the Chief Justice is appointed by the President acting in

¹ The Commission is composed of ten members: the President of Malta, as Chairman (having only a casting vote in case of a tied vote); the Chief Justice, as Deputy Chairman; the Attorney General; two members elected from among the Judges of the Superior Courts; two members elected from among the Magistrates of the Inferior Courts; one member appointed by the Prime Minister and one member appointed by the Leader of the Opposition; and the President of the Chamber of Advocates. It should be noted that the share of judges, members of the Commission, who are chosen by their peers represents less than half of the total members of the Commission. Figure 57, 2024 EU Justice Scoreboard.

² Figures 51 and 53, 2024 EU Justice Scoreboard, and 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%).

³ 79% of the companies in Malta are either fairly or very confident that their investments are protected by the law and courts in the Member State. Only 7% of the surveyed companies see the quality, efficiency or independence of justice as one of the main reasons for concern about investment protection in the country. Figures 55 and 56, 2024 EU Justice Scoreboard.

⁴ 2023 Rule of Law Report, Country Chapter on the rule of law situation in Malta, pp. 3-4. In 2023, the Commission concluded that ‘no progress’ had been made on this recommendation which was already included in the 2022 Rule of Law Report, p. 2.

accordance with a resolution of the Parliament adopted by a two-thirds majority. As indicated in previous Rule of Law Reports⁵, the judiciary should in principle be involved in the appointment of the Chief Justice⁶, considering the various roles the Chief Justice fulfils in the justice system⁷. Even though the the Chief Justice enjoys both constitutional and institutional independence from the executive and legislative powers, and the guiding rules to remove the Chief Justice from office are provided for by the Constitution⁸, some stakeholders reiterated their concerns on the current procedure for appointment of the Chief Justice⁹. The Government communicated its intention to involve the judiciary in the procedure for appointment of the Chief Justice. In particular, the Government has endorsed a constitutional reform, which will mandate consultations with the incumbent Chief Justice (who bears statutory obligations in representing the judiciary) prior to the appointment of a new Chief Justice. The bill will be tabled to Parliament in the coming months¹⁰. Based on this development, steps are being taken to involve the judiciary in the procedure for appointment of the Chief Justice, thus some progress has been made in the implementation of the recommendation made in the previous years.

The transfer of certain types of prosecutions to the Office of the Attorney General is progressing. The transfer of prosecution of non-summary cases¹¹ from the police to the Office of the Attorney General continued in the last year, following the commitments under the Recovery and Resilience Plan (RRP)¹². In September 2023, the fourth phase of the

⁵ 2023 Rule of Law Report, Country Chapter on the rule of law situation in Malta, pp. 3-4; 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, pp. 3-4; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 3. Moreover, the previous Rule of Law Reports mentioned the indication coming from the Venice Commission to introduce an anti-deadlock mechanism for the appointment of the Chief Justice (Venice Commission opinion (CDL-AD(2020)019)). In this regard, see 2023 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 4. 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 4. 2021 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 3.

⁶ In principle, if the legislative power takes decisions on the selection of judges, the opinion of an independent authority drawn in substantial part from the judiciary should be followed by the appointing authority (Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 47).

⁷ The Chief Justice is President of the Constitutional Court and President of the Court of Appeal (presiding in both appeal panels); performs important responsibilities in the administration of the justice system such as chairing the Judicial Appointments Committee; is a member of the Commission for the Administration of Justice responsible for judicial discipline and is in charge of initiating disciplinary procedures against members of the judiciary (as is the Minister of Justice). In theory, even non-judges could be appointed to the office, however, in practice, the person occupying the position of Chief Justice has always been a seasoned lawyer or judge.

⁸ Written contribution from the Maltese Government in the context of the country visit to Malta, pp. 1-3.

⁹ Contribution from Aditus Foundation for the 2024 Rule of Law Report, pp. 11-12; Written contributions from Repubblika and Daphne Caruana Galizia Foundation in the context of the country visit to Malta.

¹⁰ Written contribution from the Maltese Government, p. 1, and annex to the same contribution, p. 1.

¹¹ Non-summary cases are cases punishable with a penalty exceeding two years of imprisonment.

¹² 2023 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 4. See RRP C6.R.2, milestone 6.8, which provides the transfer of all non-summary cases to the Office of the Attorney General by the end of 2024. That will be followed by a study on the transfer of summary cases (milestone 6.5 to be completed by the end of 2024), followed by legislative amendments (milestone 6.6 to be completed by the first quarter 2026). In the same context, the authorities are working on a project named ‘Attorney General and State Advocate in Malta – Implementation of action plan of offices re-organization’, whose start date is 1 September 2023 and end date 31 August 2025. The project, financed with EU funds, includes a series of capacity building activities and supports the design of a case management system for each office, contributing thus to the objectives of the above-mentioned measure C6.R.2.

transition was concluded¹³. As of 1 October 2023, the Office of the Attorney General is empowered to take the decision to prosecute additional offences in front of the inferior courts¹⁴. From July 2023 to February 2024, 8 additional lawyers and 2 members of the administrative staff joined the Office. As a result, as of 1 March 2024, the total workforce at the Office of the Attorney General stands at 95 employees, comprising 69 prosecutors and 26 administrative and support staff¹⁵.

The renewal of the disciplinary regime for prosecutors should be discussed starting from the second half of 2024. The 2023 Rule of Law Report¹⁶ noted that, in December 2022, a disciplinary regime for prosecutors had been introduced, which established different levels of disciplinary offences as well as the procedure to be followed. The Maltese authorities clarified that, in accordance with the general principles of national civil and constitutional law, although there is no express mention of an appeal before a court of law, a prosecutor may still challenge a second instance decision adopted by the Appeal Board before the courts. Moreover, they explained that disciplinary proceedings are confidential (whereas according to European standards they should in principle be held in public)¹⁷. The Maltese authorities further declared that discussions for the renewal of the disciplinary regime for prosecutors (whose validity is set to expire at the end of 2024) will start in the second half of 2024¹⁸.

Concerns persist regarding the independence of specialised tribunals and works have started to address them. Criticism has been reiterated regarding the independence of specialised tribunals, especially with respect to the system of appointment of their members¹⁹. As indicated in the 2023 Rule of Law Report²⁰, in the context of the RRP, the Government committed to review the independence of specialised tribunals, in dialogue with the Venice

¹³ Adoption of legislative amendments to the Prosecution of Offences Regulations Subsidiary Legislation 90.01 of the Laws of Malta, introduced on 29 September 2023 by virtue of the Prosecution of Offences (Transitory Provisions) (Amendment) Regulations, 2023 (Legal Notice 225 of 2023). The fifth phase of the transition will take place on 1 October 2024, when the Office of the Attorney General will take over additional cases from the police. In 2025, an independent study will be carried out to assess the taking over of summary cases (see RRP milestone C.6.R2-MT6.5).

¹⁴ Input from Malta for the 2024 Rule of Law Report, pp. 11-12. In particular, the Office of the Attorney General is now also empowered to take the decision to prosecute the following offences: a) grievous bodily harm; grievous bodily harm with arms proper; other cases of grievous bodily harm; grievous bodily harm from which death ensues; b) involuntary homicide; involuntary homicide in the course of theft or attempted theft; c) infanticide; d) stalking involving fear of violence, serious alarm or distress; e) aggravated theft; f) offences against the National Interest (Enabling Powers) Act; g) offences against the Fisheries Conservation and Management Act; h) attempts or conspiracy to commit or complicity in the above-mentioned offences.

¹⁵ Written contribution from the Maltese Government in the context of the country visit to Malta, p. 9.

¹⁶ 2023 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 5.

¹⁷ 2023 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 5.

¹⁸ Written contribution from the Maltese Government in the context of the country visit to Malta, p. 14. The Maltese authorities also informed that, on 3 June 2024, the Government signed the first collective agreement for the staff of the Office of the State Advocate, which includes a comprehensive financial package that offers substantial benefits to the staff and takes into consideration the family circumstances of the lawyers, aiming to improve their work-life balance and overall well-being. The objective of this agreement is to enhance the working conditions and job satisfaction of the staff of the Office of the State Advocate and therefore further strengthening the institution's ability to serve the State effectively.

¹⁹ See contribution from Aditus Foundation for the 2024 Rule of Law Report, p. 13. In this regard, see 2023 Rule of Law Report, Country Chapter on the rule of law situation in Malta, pp. 5-6.

²⁰ 2023 Rule of Law Report, Country Chapter on the rule of law situation in Malta, pp. 5-6. See also 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, pp. 5-6.

Commission²¹. In accordance with the relevant commitments under the RRP, the authorities launched public procurement procedures for the selection of an independent contractor to assess the independence of specialised tribunals²², with a view to adopt any necessary reform.

Quality

Despite a further increase in the number of members of the judiciary, concerns persist over human resources. Malta continues to have one of the lowest ratios of members of the judiciary per capita among EU countries²³. Against this background, the authorities are progressing with the recruitment of new judges and magistrates. Overall, the judiciary saw a rise of five members (one judge and four magistrates) in their ranks²⁴. Stakeholders reported that the number of judges is however still not sufficient to deal with the increasing number of cases brought before the Maltese courts²⁵. In October 2023, the Chief Justice stated that the number of judges and magistrates, the overall human resources, the available premises, and procedural laws, do not cater for the current workload²⁶. In November 2023, the Association of Judges and Magistrates issued a statement warning that the judicial system was at '*the brink of collapse*' due to a persistent lack of resources, staff, and investment²⁷. The view expressed by both the Chief Justice and the Association of Judges and Magistrates is shared by other stakeholders²⁸. According to data in the 2024 EU Justice Scoreboard, the total expenditure on justice in Malta has increased over the last years²⁹.

The Digital Justice Strategy 2022-2027 is currently under implementation and, therefore, the digitalisation of the justice system needs further work of implementation. As indicated in the 2023 Rule of Law Report³⁰, the authorities started the implementation of

²¹ See RRP C6.R.1, milestone 6.3: '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'. Milestone 6.4 then provides, by the first quarter 2026, the legislative amendments to take account of the outcome of the assessment.

²² The assessment of the independent contractor will include (i) the guarantees of independence for appointments of members to specialised tribunals, (ii) 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. The assessment must be finalised by 31 December 2024.

²³ Figure 37, 2024 EU Justice Scoreboard. In 2022, Malta had 9 judges per 100 000 inhabitants.

²⁴ Input from Malta for the 2024 Rule of Law Report, p. 7. Therefore, as of May 2024, the members of the judiciary are 57, namely the Chief Justice, 27 judges and 29 magistrates. Written contribution from the Maltese Government in the context of the country visit to Malta, p. 3. Doubts have been expressed about the actual impact of this increase on the efficiency of the justice system, since some of the additional magistrates will be in charge of inquiring activities, thus they will not be involved in the disposition of cases. Information received in the context of the country visit to Malta from Association of Judges and Magistrates.

²⁵ Written contribution from Chamber of Advocates in the context of the country visit to Malta, p. 1; Contributions from Aditus Foundation (p. 13) and Repubblika (p. 14) for the 2024 Rule of Law Report.

²⁶ Chief Justice (2023), Speech delivered on the occasion of the inauguration of the judicial year 2023-2024.

²⁷ Times of Malta (2023), Judiciary slams authorities' 'persistent failures', warns system near 'collapse'; Information confirmed by Association of Judges and Magistrates in the context of the country visit to Malta.

²⁸ Written contribution from Chamber of Advocates (p. 1) and Daphne Caruana Galizia Foundation (pp. 1-2) in the context of the country visit to Malta; Contribution from Aditus Foundation (p. 13), Repubblika (p. 14) and Courts of Justice of Malta (p. 12) for the 2024 Rule of Law Report.

²⁹ The total expenditure on law courts per inhabitant has increased from EUR 65 in 2018 to EUR 136 in 2022 (figure 32, 2024 EU Justice Scoreboard); moreover, in terms of percentage of GDP, the expenditure has increased from 0.24% in 2018 to 0.41% in 2022 (figure 33, 2024 EU Justice Scoreboard).

³⁰ 2023 Rule of Law Report, Country Chapter on the rule of law situation in Malta, pp. 6-7.

the Digital Justice Strategy (2022-2027), which sets out a roadmap towards the transition to a fully digitalised justice system. In this context, ongoing investments³¹ include the process-mapping and redesign of judicial procedures to implement digital processes and develop a Court Information Management System³². Although various legislative acts have been approved, with a view to fully digitalise both the criminal³³ and the civil trial system³⁴, stakeholders underlined that the level of digitalisation still needs to be considerably improved³⁵. This position is in line with data in the 2024 EU Justice Scoreboard, where Malta ranks low in most categories concerning the use of electronic tools in the justice sector³⁶.

The regulation of the activities of lawyers is still under discussion. As indicated in the 2023 Rule of Law Report³⁷, a working group, comprising relevant government services and representatives from the Chamber of Advocates³⁸, has been established to draft a Lawyers Act, namely an act aimed at streamlining the existing regulatory framework for the activities of lawyers in Malta³⁹. The discussions are still ongoing⁴⁰.

³¹ The investments are partly financed by RRP C6.II, milestone 6.38.

³² The following are the main functionalities of the online Court Management Information System laying out the basis for an online court system. i) E-filing and Document Scanning: the system will accept electronic/online filing of documents from the general public, lawyers, parties, court experts and other stakeholders; ii) A referenced repository of electronic media and documents: it will cater for the storage, retrieval and sharing of documents electronically, and will provide tools for managing case information; iii) Collection of Statistics and Reports: the system will provide comprehensive reporting functionalities which will allow customisation for authorised users, and the extraction of any related data; iv) Electronic service to support the national and cross-border service of court documents, court hearings, videoconferencing dates, decrees to concerned parties and legal professionals electronically; v) Electronic signatures; vi) Electronic payment for court fees or fines; vii) Remote Access to documents and by the parties and other stakeholders; viii) Remote participation during hearings. Written contribution from the Maltese Government in the context of the country visit to Malta, pp. 1-2.

³³ The Maltese authorities clarified that: i) all criminal acts can now be filed online; ii) committal proceedings, juries and criminal appeals are being scanned in machine readable formats so that they can be utilised for search facilities and data collection; iii) all documents, decrees, judgements, transcriptions of evidence, minutes of the case, adjournments, judicial sales by auctions, insolvency registers are available on the court's website. Written contribution from the Maltese Government in the context of the country visit to Malta, p. 6.

³⁴ The Maltese authorities clarified that the civil trial is in a more advanced stage of digitalisation than the criminal trial, since most acts can be filed online, the parties can follow their case through an online application (My Acts) which is accessible through e-courts.gov.mt, and the current case management system is incorporated in all civil courts that facilitates retrieval of case data. Written contribution from the Maltese Government in the context of the country visit to Malta, pp. 6-7.

³⁵ Information received in the context of the country visit to Malta from Chamber of Advocates and Aditus Foundation; Written contribution of Chamber of Advocates in the context of the country visit to Malta, p. 2.

³⁶ According to the 2024 EU Justice Scoreboard, this applies to a) availability of online information about the judicial system for the general public (figure 42), b) the use of digital technology by courts and prosecution service (figure 44), c) electronic communication tools by courts and prosecution service (figures 45-46), and d) arrangements for producing machine-readable judicial decisions (figure 50).

³⁷ 2023 Rule of Law Report, Country Chapter on the rule of law situation in Malta, pp. 5-6. See also 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, pp. 5-6.

³⁸ The new Council of the Chamber of Advocates was appointed on 23 August 2023 for a period of three years (input from Malta for the 2024 Rule of Law Report, p. 17) and is continuing the discussions with the Government (information received in the context of the country visit to Malta from Chamber of Advocates).

³⁹ The legal profession is already regulated by virtue of the Code of Organization and Civil Procedure (Chapter 12 of the Laws of Malta) and Subsidiary Legislation thereunder, the Commission for the Administration of Justice Act (Chapter 369 of the Laws of Malta), the Police Act (Chapter 10 of the Laws of Malta) and the Code of Ethics and Conduct for Advocates.

⁴⁰ Written contribution from Chamber of Advocates in the context of the country visit to Malta, p. 2.

Efficiency

Despite some improvements, the length of proceedings remains a concern. According to data in the 2024 EU Justice Scoreboard, in 2022, the disposition time for first instance civil and commercial cases, even though it decreased by 38 days compared to 2021, remained among the lengthiest in the EU, as in 2022, it still took 491 days to resolve such cases⁴¹. According to the Council of Europe European Commission for the efficiency of justice (CEPEJ), in 2022, the disposition time for first instance criminal cases recorded a decrease, being equal to 527 days against 566 days in 2021⁴². Administrative justice has recorded an improvement (the estimated time needed to resolve first instance administrative cases in 2022 fell by 275 days compared to 2021, namely 1 081 against 1 356 days)⁴³, while still remaining the lengthiest in the EU. Stakeholders reiterated their concerns as regards the length of court proceedings⁴⁴. Also, the backlog of pending cases has continued to deteriorate. According to data in the 2024 EU Justice Scoreboard, Malta's rate of resolving civil, commercial, administrative and other cases (first instance) in 2022 was equal to 87% (against 89% in 2021)⁴⁵. In 2022, the clearance rate has improved with regard to criminal cases (first instance) amounting to 92.8% (against 87.7% in 2021)⁴⁶. These percentages indicate that, on an annual basis, the number of resolved cases is less than the number of new cases. In 2022, the number of pending first instance cases per 100 000 inhabitants further increased: in particular, it was equal to 2.4 for civil and commercial cases (against 2.1 in 2021)⁴⁷ and 3.17 for criminal cases (against 3.06 in 2021)⁴⁸.

There has been some further progress in pursuing efforts to improve the efficiency of the justice system. The 2023 Rule of Law Report recommended to Malta to '[f]urther strengthen efforts to improve the efficiency of justice, particularly to reduce the length of proceedings'⁴⁹. A recent revision of the procedural rules before the Courts of Appeal, which enables cases to progress to judgement through a written procedure, led to a significant improvement of the efficiency of the Courts of Appeal⁵⁰. The Government is also working on both the legal and the administrative aspects to set up a fully-fledged Commercial Court⁵¹.

⁴¹ Figure 6, 2024 EU Justice Scoreboard. In this regard, it is worth noting that the number of incoming first instance civil and commercial cases per 100 inhabitants has been stable between 2021 and 2022 (2.0 in 2022 against 1.9 in 2021; figure 3, 2024 EU Justice Scoreboard).

⁴² See CEPEJ (2024), Study on the functioning of the judicial systems in the EU Member States.

⁴³ Figure 8, 2024 EU Justice Scoreboard.

⁴⁴ Written contribution from Chamber of Advocates in the context of the country visit to Malta, p. 1.

⁴⁵ Figure 10, 2024 EU Justice Scoreboard.

⁴⁶ See CEPEJ (2024), Study on the functioning of the judicial systems in the EU Member States.

⁴⁷ Figure 14, 2024 EU Justice Scoreboard. The number of pending administrative cases is stable at 0.1 (Figure 15, 2024 EU Justice Scoreboard).

⁴⁸ See CEPEJ (2024), Study on the functioning of the judicial systems in the EU Member States.

⁴⁹ 2023 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 2. In 2023, the Commission concluded that 'some progress' had been made on this recommendation already included in the 2022 Rule of Law Report.

⁵⁰ Input from Malta for the 2024 Rule of Law Report, p. 8. See also written contribution from Chamber of Advocates in the context of the country visit to Malta, p. 1.

⁵¹ The Commercial Courts will act as a Court of first instance on commercial cases. The Maltese authorities clarified that their intention is to have two judges presiding over the Commercial Court (although it is the prerogative of the Chief Justice to assign the members of the judiciary to this Court). The Court will also have its own staff, which include the Court Attorney, deputy registrar, judicial assistant, clerk and a court messenger. The Court will also have its own registry for filing of judicial acts. Written contribution from the Maltese Government in the context of the country visit to Malta, pp. 9-10.

The relevant draft law will be presented to the Cabinet of Ministers and subsequently tabled to Parliament, with an expected adoption by the end of 2024⁵². The reform aims at strengthening the specialisation of judges, which – as confirmed by stakeholders⁵³ – is key to improve the efficiency of the justice system, even though other stakeholders are of the view that the reform would not produce tangible effects, since the judges of the Commercial Court are already judges in the civil courts dealing with commercial cases⁵⁴. The Government also launched a public consultation on the reform of the compilation of evidence, which envisages that i) the committal proceedings⁵⁵ will rely more on documents than on oral evidence⁵⁶, ii) the compilation of evidence must be finalised within one year, or the case will either go to trial or be dismissed⁵⁷, and iii) the prosecution must disclose its case within 40 days (extendable by 30 days) from when the accused appears in court⁵⁸. Moreover, there will be a graded incentive for an Early Guilty Plea (EGP) at pre-trial⁵⁹, while constitutional references will not stop the committal proceedings. The Government has evaluated the outcome of the public consultation on the above-mentioned reform and plans to present a draft legislation to the Cabinet of Ministers and then to the House of Representatives, with a view to have it adopted by the end of 2024. As concerns the ongoing review of the procedures of the Family Courts, the relevant working group established by the Government is in the process of issuing a public consultation containing a number of recommendations having the stated objective of increasing the efficiency of justice in family law cases⁶⁰. In 2023, a Fourth Section of the Civil Court of Appeal was established, with a positive impact on the number of resolved

⁵² Information received in the context of the country visit to Malta from Ministry of Justice. Plans are also underway to designate a building to be equipped with cutting-edge technology, a minimum of two courtrooms, a reception area, a commercial registry, and chambers for judges as well as offices for support staff. Input from Malta for the 2024 Rule of Law Report, pp. 10-11.

⁵³ Information received in the context of the country visit to Malta from Chief Justice and Chamber of Advocates.

⁵⁴ Information received in the context of the country visit to Malta from Association of Judges and Magistrates.

⁵⁵ During committal (compilation) proceedings the Court of Magistrates (as a court of criminal inquiry) collects the evidence brought by the prosecution service against a person charged. At the end of this inquiry, it must be decided whether there is sufficient evidence for the case to be pursued before the court.

⁵⁶ This will apply to cases attracting an imprisonment sentence longer than two years unless the prosecution and the defence agree otherwise. In this context, witnesses can be cross-examined or submit affidavits. The pre-trial stage will only verify whether there is enough evidence for trial. It will no longer be mandatory for all the evidence to be collected orally and for all the witnesses to be heard for the procedure to be concluded. Supporting evidence can continue to be collected up to the trial stage as long as it has been declared during the compilation stage.

⁵⁷ This is longer than the current one-month period, but without the *rinviji* system (this is when evidence presented in court by the prosecution is referred to the Office of the Attorney General). This grants more discretion to the Court, especially for experts or foreign witnesses.

⁵⁸ The defence will then decide if it wishes to produce evidence at the compilation stage. If not, the stage is closed. If yes, the same rules and time limits as for the prosecution apply.

⁵⁹ An immediate EGP can reduce the punishment by up to two degrees, and an EGP during trial by one degree. For life imprisonment cases, the maximum reduction is by one degree.

⁶⁰ Written contribution from the Maltese Government in the context of the country visit to Malta, p. 11. The authorities also reported that an additional courtroom is being allocated to the Family Court, to which another magistrate has been assigned. Input from Malta for the 2024 Rule of Law Report, p. 11. The Maltese authorities also informed that a national conference was held on 20 April 2024, to gather ideas and proposals from the general public. The Prime Minister, the Minister for Justice and the Reform of the Construction Sector, and the Minister for Social Policy and Children's Rights participated in the conference.

cases⁶¹. In 2024, the construction of a second Hall for trials by jury has been completed, with expected benefits on the disposition of jury trials⁶². According to the authorities, these measures should contribute to a further improvement of the efficiency of the justice system, even though in most cases they still require an implementation. Overall, considering the reported developments, including the ones on the length of proceedings, some further progress has been made on the recommendation made in the 2023 Rule of Law Report.

II. ANTI-CORRUPTION FRAMEWORK

The institutional anti-corruption framework comprises several authorities. The Permanent Commission Against Corruption (PCAC) is responsible for corruption prevention and for carrying out administrative investigations into corrupt practices. The Commissioner for Standards in Public Life monitors the ethics of ministers, parliamentary secretaries, and members of Parliament. Investigation and prosecution of economic crime, including corruption offences and money laundering, fall under the competence of the Police (the Financial Crimes Investigation Department) and the Attorney General, respectively. The latter continues to take over the prosecution of all offences carrying a conviction of more than 2 years imprisonment, including corruption. Other bodies involved in the fight against corruption are the Ombudsman office⁶³, the Financial Intelligence Analysis Unit (FIAU) and the Internal Audit and Investigations Department (IAID)⁶⁴. The Public Service Commission (PSC) is responsible for the discipline of civil servants. Malta is not a signatory party to the OECD Anti-Bribery Convention⁶⁵.

The perception among experts and business executives is that the level of corruption in the public sector remains relatively high. In the 2023 Corruption Perceptions Index by Transparency International, Malta scores 51/100 and ranks 22nd in the European Union and 55th globally⁶⁶. This perception has been relatively stable over the past five years⁶⁷. The 2024 Special Eurobarometer on Corruption shows that 95% of respondents consider corruption widespread in Malta (EU average 68%) and 56% of respondents feel personally affected by

⁶¹ Written contribution from the Maltese Government in the context of the country visit to Malta, pp. 4-5. In particular, according to the Maltese authorities, over a period of 10 months (March to December 2023), the resolved cases of the Civil Court of Appeal increased by 79% if compared to the same period of 2019.

⁶² Written contribution from the Maltese Government in the context of the country visit to Malta, pp. 5-6. According to the Maltese authorities, the Hall will contribute to reducing backlog of cases, since two juries can be convened simultaneously, thereby increasing the number of jury trials. The construction should be completed by end 2024. The Maltese authorities further explained that in 2024 a number of calls for tenders have been published aimed at finding companies to contract for the restoration, renovation and conservation of courthouses, and at identifying possible venues to be used by the Courts. Written contribution from the Maltese Government in the context of the country visit to Malta, pp. 7-8.

⁶³ As per Part 2 of Act XLII of 2020 the Office of the Ombudsman in Malta deals with complaints of maladministration against public authorities.

⁶⁴ It conducts internal inspections within governmental departments and agencies.

⁶⁵ OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Ratification Status.

⁶⁶ Transparency International, Corruption Perceptions Index 2023. The level of perceived corruption is categorized as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

⁶⁷ In 2019 the score was 54, while, in 2023, the score is 51. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last five years.

corruption in their daily lives (EU average 27%)⁶⁸. As regards businesses, 71% of companies consider that corruption is widespread (EU average 65%) and 55% consider that corruption is a problem when doing business (EU average 36%)⁶⁹. Furthermore, 22% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 32%)⁷⁰, while 36% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 31%)⁷¹.

The anti-corruption recommendations issued following the public inquiry into the assassination of journalist Daphne Caruana Galizia have not yet been implemented. The public inquiry into the assassination of journalist Daphne Caruana Galizia issued anti-corruption recommendations⁷². According to the Government, the project on integrity in public life concluded by the OECD in October 2023⁷³ is a first step into the implementation of the anti-corruption recommendations issued following that public inquiry. So far, the Government has not adopted any measures to implement these recommendations, nor initiated the actions suggested by the OECD⁷⁴. The European Parliament has expressed deep concerns over the deterioration of the anti-corruption elements linked to this case⁷⁵, which are also echoed by civil society organisations⁷⁶.

The monitoring of the implementation of the National Anti-Fraud and Corruption Strategy encountered some delays. The implementation of the National Anti-Fraud and Corruption Strategy (NAFCS) is monitored by a Co-ordinating Committee⁷⁷ (led by the IAID), through a series of meetings between the IAID and the relevant national authorities⁷⁸. Due to changes in the Co-ordinating Committee⁷⁹, the monitoring of the implementation of

⁶⁸ Special Eurobarometer 548 on Citizens' attitudes towards corruption in the EU (2024). The Eurobarometer data on citizens' corruption perception and experience is updated every year. The previous data set is the Special Eurobarometer 534 (2023).

⁶⁹ Flash Eurobarometer 543 on Businesses' attitudes towards corruption in the EU (2024). The Eurobarometer data on businesses' attitudes towards corruption as is updated every year. The previous data set is the Flash Eurobarometer 524 (2023).

⁷⁰ Special Eurobarometer 548 on Citizens' attitudes towards corruption in the EU (2024).

⁷¹ Flash Eurobarometer 543 on Businesses' attitudes towards corruption in the EU (2024).

⁷² The anticorruption recommendations included the adoption of legislative measures to improve the asset declaration mechanism aimed at avoiding and detecting unexplained wealth; the strengthening of the codes of ethics for public officials to further prevent improper conduct of public officials in the execution of their duties; and actions to improve the protection of whistleblowers. Board of Inquiry (2021), Public Inquiry Report Daphne Caruana Galizia; 2022 and 2023 Rule of Law Report, Country Chapter on the rule of law situation in Malta, pp. 14 and 9, respectively.

⁷³ See below p. [16].

⁷⁴ *Ibidem*.

⁷⁵ European Parliament resolution of 19 October 2023 on the rule of law in Malta: six years after the assassination of Daphne Caruana Galizia, and the need to protect journalists.

⁷⁶ Civil society organizations deplore a deterioration in the national anti-corruption framework in Malta, with no tangible impact. Written contribution from Repubblika and Daphne Caruana Galizia Foundation in the context of the country visit to Malta.

⁷⁷ The coordinating committee is established in accordance with Article 23 of the Internal Audit and Financial Investigations Act (as per Cap 461 of the Laws of Malta).

⁷⁸ 2023 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 9.

⁷⁹ After the resignation of the Director General of IAID, a new Director General was appointed in January 2024. Input from Malta for the 2024 Rule of Law Report, p. 31. A new Chair of the Coordinating Committee started its mandate in January 2024. In addition, the Co-ordinating Committee has appointed a Deputy Chair and a Secretary. The Deputy Chair's role is to ensure continuity in the absence of the Chair, while the

the NAFCS encountered some delays, as the meetings of the Co-ordinating Committee did not occur in the second half of 2023 as planned⁸⁰.

Organisational and legislative measures, including amendments to the criminal code and hiring of additional prosecutors, were adopted in 2023 to improve the capacity of investigative authorities and the Attorney General office. The 2023 Rule of Law Report recommended to Malta to ‘step up measures to address challenges related to the length of investigations of high-level corruption cases, including by establishing a robust track record of final judgments’⁸¹. In 2023, the Financial Crimes Investigation Department (FCID) relied on 96 officials in total (compared to 88 in 2022), with a total budget of around EUR 6 474 000 (i.e. a reduction of about 5% compared to 2022), with an increase for its staff emoluments⁸². The EPPO investigated 6 corruption cases, which accounts for around 21% of the total number of EPPO cases (in Malta)⁸³. To improve the capacity of investigative authorities⁸⁴ and the Attorney General office⁸⁵, additional prosecutors were hired⁸⁶, some amendments to the criminal code were adopted with the aim to improve the operational cooperation among the members of the Financial Crime Task Force (FCTF)⁸⁷, and some criminal legislation reforms are planned⁸⁸. In 2023, the FCID initiated 24 investigations on

Secretary is responsible for all administrative matters related to the Committee. Information received in the context of the country visit to Malta from IAID.

- ⁸⁰ Action continued in relation to NAFCS action points 6 (training), 13 and 14 (Central Documentary Repository System Strategy). Written contribution from the Ministry of Justice in the context of the country visit to Malta. Regular monitoring, evaluating and reporting are essential if a national anti-corruption strategy is to have its desired effect. Monitoring provides data on the strategy’s progress over time in achieving its objectives. UNODC National Anti-Corruption Strategies, A Practical Guide for Development and Implementation (2015). Also, regular monitoring and reporting allows authorities to gauge progress in implementation and achieving results in curbing corruption (as per the UNODC/UNDP supported Kuala Lumpur Statement on Anti-Corruption Strategies, 2013).
- ⁸¹ 2023 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 2. In 2023 Malta has made some progress on addressing challenges related to the length of investigations of high-level corruption cases; and no progress on establishing a robust track record of final judgments recommendation made in 2022 Rule of Law Report.
- ⁸² The total budget for the FCID in 2022 was EUR 6 826 380, with staff emoluments of EUR 3 455 982 (compared to EUR 4 147 910 for 2022). Written contribution from the Maltese Government in the context of the country visit to Malta.
- ⁸³ EPPO, Annual Report 2023, p. 45.
- ⁸⁴ According to the EPPO, officers seem overwhelmed with national investigations, which take priority (contribution from EPPO for the 2024 Rule of Law Report, Annex, p. 39).
- ⁸⁵ As mentioned above, from July 2023 to February 2024, 8 new prosecutors joined the Attorney General Office (reaching 69 prosecutors in total); an office reorganisation was completed, and a 2-year project was initiated to improve the capacity and effectiveness of the Attorney General office in investigating and adjudicating corruption cases. Input from Malta for the 2024 Rule of Law Report, p. 20.
- ⁸⁶ Other measures were the following: a new FCID investigative team; a further transfer of cases from the Police force to the Attorney General office; the reorganisation of the Attorney General office; and a project to improve effectiveness to the Attorney General office. Information received in the context of the country visit to Malta.
- ⁸⁷ The Financial Crime Task Force (FCTF) was set up in 2020 to facilitate the joint investigation, to pursue and prosecute high-profile and complex money laundering cases, including those connected with serious criminal (predicate) offences such as corruption and bribery. The FCTF is composed of representatives from the FIAU, the Malta Police and the Malta Security Services, and other authorities (such as the Office of the Attorney General, the Commissioner for Revenue and Customs), assist the FCTF in its work. Input from Malta for the 2024 Rule of Law Report, p. 30.
- ⁸⁸ A public consultation was launched to address reforms in criminal committal proceedings, which are planned to be submitted to the Cabinet of Ministers before the summer, aiming to enhance the efficiency and fairness

corruption; and 2 cases were adjudicated. In 2023, scandals involving senior executive officers relating to alleged corruption in three separate cases (related to the issuing of driving licenses; the exchange of social benefits for votes; and hospitals concessions), were widely reported in the press and charges have been pressed in all three cases⁸⁹. In May 2024, in the latter hospitals case, following the conclusion and recommendations of a magisterial inquiry, the Attorney General pressed charges for financial crimes and corruption against 39 individuals, legal persons and senior public officials (including former Ministers, the former Prime Minister and his Chief of Staff)⁹⁰; and the case is pending in front of the judicial authorities⁹¹. For 2023, the length of investigations remained problematic⁹², and there has been no progress on delivering final judgements on high-level cases of corruption⁹³. Therefore, in view of the actions taken to improve the capacity of the investigative and prosecution authorities, some progress has been made on the recommendation made in the 2023 Rule of Law Report related to the length of investigations of high-level corruption cases, whereas no progress has been made on establishing a robust track record of final judgments.

Human and financial resources to the Permanent Commission Against Corruption have been increased, although the impact on its capacity to achieve tangible results is still to be seen⁹⁴. The PCAC operates with three Commissioners (engaged on a part-time basis

of the criminal committal proceedings. In tandem, the Government is working on drafting legislation intended to reform the system of inquests procedures and have the magisterial inquiries absorbed into the functions of the Attorney General office. Written contributions from the Ministry of Justice in the context of the country visit to Malta.

⁸⁹ Media reports appeared in the course of 2023 and 2024 on The Malta Independent (Criminal charges filed in connection with hospitals inquiry), Times of Malta (Who's who: The people and businesses facing charges linked to hospitals deal It's a long list of people with a long list of alleged crimes), Lovin Malta (Transport Malta Driving License Whistleblower Allegedly Deported After Permit Gets Revoked; At Least €60 Million: Here's How Much The Key Vitals Players Siphoned Off From Concession) and Organized Crime and Corruption Reporting Project (Emails Show How Millions Flowed to 'Political Consultants' in Malta Hospital Corruption Case; Malta Charges Ex PM and His Top Officials with Corruption).

⁹⁰ Input from Malta for the 2024 Rule of Law Report, p. 38. The State Advocate office indicates that no national civil action was taken yet to recover the public funds involved in these cases, and that arbitration proceedings have been instituted before the International Chamber of Commerce (whose proceedings are governed by confidentiality), where the Government has claimed reimbursement of funds, among other claims. Information received from Attorney General and State Advocate in the context of the country visit to Malta. Among other media outlets, Times of Malta (Vitals inquiry: AG files charges against Muscat, Mizzi, Schembri and others), The Malta Independent (Muscat to be charged with bribery, corruption and money laundering) and Malta Today (Muscat to be charged with money laundering, bribery and corruption). Civil society expressed serious concerns over these cases. See written contributions from Daphne Caruana Galizia Foundation in the context of the country visit to Malta.

⁹¹ The Court of Magistrates (Criminal Inquiries) held sittings for the compilation of evidence against the accused individuals on 28 and 29 May. Follow up sittings were held in June and will continue throughout July. Written contribution from the Ministry of Justice in the context of the country visit to Malta.

⁹² Several NGOs deplore also that, despite powers vested by the law, the Attorney General office does not take up cases under long-lasting magisterial inquiry, with the inability for the victims to file a fast-track motion or appeal. Information received from Repubblika and Daphne Caruana Galizia Foundation in the context of the country visit to Malta. In April 2023, the Minister of Justice declared that the number of pending magisterial inquiries stands at 1 698 and one of those inquiries goes back to 1979; see Times of Malta (2023), Nearly 1,700 magisterial inquiries are pending, one since 1979.

⁹³ There is no information on final judgements on high-level cases of corruption.

⁹⁴ NGOs criticised the ineffectiveness of the PCAC in the context of the country visit to Malta.

only)⁹⁵ supported by one administrative officer (with a plan to hire four additional administrative officials in 2024)⁹⁶, although international standards require anti-corruption agencies to have adequate and reliable specialised staff⁹⁷. The case-management system is not in place yet, and a standard operating procedure is under preparation⁹⁸. For 2024, the PCAC estimates costs of EUR 180 000 (compared to 150 000 for 2023)⁹⁹, with a commitment to further increase its financial and human resources¹⁰⁰. While the PCAC presents its annual activity report to the President of Malta, there is no other oversight mechanism in place¹⁰¹. The PCAC did not receive any reports of corruption in 2023¹⁰². Regarding the two cases received in 2022, the first case remains pending due to shortage of specialised staff¹⁰³, and the second was terminated for lack of evidence¹⁰⁴. The PCAC has not so far transmitted any case to the Attorney General office for prosecution¹⁰⁵.

Resources improved and the implementation of integrity measures in the public service continues, including for police officers and judges, despite some criticism. In 2023, the Public Service Commission (PSC) increased its staff¹⁰⁶, and budget¹⁰⁷, and some integrity measures and procedures for public officers were improved¹⁰⁸. Integrity training continues to be provided to public officials¹⁰⁹. In 2023, the Public Service Commission issued disciplinary sanctions in 59 cases (a 60% increase compared to 2022), while 63 new cases were treated at

⁹⁵ 2 PCAC Commissioners were reappointed in 2023 (until 2028), and the mandate of the third Commissioner ends in September 2024. Written contribution from PCAC in the context of the country visit to Malta.

⁹⁶ The 4 new officers will be tasked with administrative, digital or outreach tasks. PCAC has no in-house investigators or data analysts. Written contribution from PCAC in the context of the country visit to Malta.

⁹⁷ See UNDP/UNODC, Jakarta Statement on Principles for Anti-Corruption Agencies, as well as UNODC, United Nations convention against corruption.

⁹⁸ In line with the RRP, a budgetary and human resources plan, as well as a number of operational reforms, are expected to be implemented by the end of 2024.

⁹⁹ The estimated total budget for 2024 is EUR 500 000 (written contribution from PCAC in the context of the country visit to Malta).

¹⁰⁰ The Ministry for Finance plans to increase the PCAC budget up to EUR 500 000 during 2024, as to cover operational costs, including the recruitment of additional staff (notably a senior manager, a manager, and 2 assistant managers). Written contribution from PCAC in the context of the country visit to Malta.

¹⁰¹ In accordance with the UNDP/UNODC supported Jakarta Statement on Principles for Anti-Corruption Agencies (ACAs), it is essential that ACAs comply with auditing standards, which strengthen the accountability of top ACA managers.

¹⁰² Written contribution from PCAC in the context of the country visit to Malta.

¹⁰³ The case is paused due to a transcriber illness, which shows the low level of resources available to the PCAC (written contribution from PCAC in the context of the country visit to Malta).

¹⁰⁴ Closed cases continue to be sent for information to the Minister of Justice. Information received from PCAC in the context of the country visit to Malta.

¹⁰⁵ PCAC has never challenged any decision by the Attorney General not to prosecute a case of corruption. In March 2024, GRECO recommended to reform criminal investigation and prosecution of top-level officials. GRECO, Fifth Evaluation Round Second Compliance Report.

¹⁰⁶ Total personnel of 16 officers.

¹⁰⁷ Total budget for 2023 is EUR 728 000 (written contribution from PSC in the context of the country visit to Malta).

¹⁰⁸ The PSC Disciplinary Regulation and the Directive 16 entered into force between October 2023 and February 2024, and the Manual on discipline for Public Service was updated in 2023. Written contribution from PSC in the context of the country visit to Malta, and input from Malta for the 2024 Rule of Law Report, p. 33.

¹⁰⁹ In 2023, integrity training was provided to public officials. Input from Malta for the 2024 Rule of Law Report, pp. 31 and 33.

local department level¹¹⁰. The Police Evaluation Board treated 116 demands for outside activities in 2023 (compared to 95 in 2022¹¹¹), and integrity measures continue to be implemented¹¹², despite some criticism raised¹¹³. Members of the judiciary follow training on ethics¹¹⁴, and are bound to a code of ethics¹¹⁵.

Ethics rules continue to apply to members of Parliament, while those for high-ranking officials were reviewed, and concerns remain regarding the extent of integrity measures applied to persons of trust. In October 2023, the OECD adopted a fifth and last report with recommendations on improving the integrity and transparency framework for elected and appointed officials. These recommendations come in addition to those issued by the OECD for strengthening the office of the Commissioner for Standards in Public Life and the standards in public life act; the codes of ethics for Ministers and members of Parliament; asset and interest declarations; and the lobbying measures¹¹⁶. So far, the actions suggested by the OECD have not yet been implemented¹¹⁷. In 2023, the Commissioner for Standards in Public Life office examined five cases of ethical misconduct involving MPs and Ministers¹¹⁸. Although in 2023 the Government revised some measures applied to high-ranking officials¹¹⁹, including to extend conflict of interest rules to cover persons of trust, concerns

¹¹⁰ According to the PSC, the compliance checks showed on hiring procedures a positive improvement, and the PSC is supporting public institutions to solve remaining shortcomings (written contribution from PSC in the context of the country visit to Malta).

¹¹¹ 2023 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 13.

¹¹² In 2023, 9 complaints on corruption were filed against police officers. A corruption prevention training is available to police officers, as well as an internal channel to report professional misconduct. The Professional Standards Office investigated 175 cases (3 cases remained pending before local courts; 1 case was referred to the PSC; 38 cases resulted in minor disciplinary actions; 2 cases resulted in suspension, and 2 cases resulted in resignations following investigation), and the Police Disciplinary Appeals Board issued 97 decisions (compared to 156 in 2022), and held 10 hearings (compared to 15 in 2022). Input from Malta for the 2024 Rule of Law Report, pp. 25 and 35.

¹¹³ Written contribution from Malta Police in the context of the country visit to Malta. In its Report of March 2024, GRECO concluded that previous recommendations were only partly implemented (namely on the anti-corruption strategy for the police; selection procedures based on merit; stricter rules on outside activities; a Police Complaints Board adequately equipped; improve the internal whistleblowing mechanism). GRECO, Fifth Evaluation Round, Second Compliance Report.

¹¹⁴ In 2023, the Judicial Studies Committee (JSC) organized 10 training sessions to the members of the judiciary. Input from Malta for the 2024 Rule of Law Report, p. 18.

¹¹⁵ Impartiality, integrity, and independence are key principles enshrined in the Code of Ethics for Members of the Judiciary (of 2010).

¹¹⁶ The 5 reports issued by the OECD provided recommendations for reforming the office of the Commissioner for Standards in Public Life, the standards in public life act; the codes of ethics for Ministers, parliamentary Secretaries and MPs; the asset and interest declarations for elected and appointed officials; and lobbying measures. According to the Government, the project is linked to the anticorruption recommendations issued following the public inquiry into the assassination of journalist Daphne Caruana Galizia. See above p. [10]. Information received from Ministry of Justice in the context of the country visit to Malta.

¹¹⁷ Information received from Ministry of Justice in the context of the country visit to Malta. NGOs remain attentive on the issue (contribution from Repubblika for the 2024 Rule of Law Report, p. 18; written contribution from Daphne Caruana Galizia Foundation in the context of the country visit to Malta, p. 15).

¹¹⁸ One case was not retained; another was referred to the Standards Committee for its consideration (which remains pending), and three cases were closed based on the apology from the MP or Minister involved. Reports are published on the Commissioner's webpage.

¹¹⁹ According to the Manual on Resourcing Policies and Procedures (revised in March 2023), all employees' outside activities must be approved in writing. With the term 'person of trust' is generally understood as referring to political appointees. See also Commissioner for Standards in Public Life, 'Who Are Persons of Trust? A Guidance Note' (revised 28 April 2021).

remain as regards the extent of integrity measures applied to them¹²⁰. The Commissioner for Standards in Public Life's office expects all members of Parliament to file their asset declarations by mid-2024¹²¹. Although concerns remain in terms of limited inclusivity of the modified procedure to appoint the Commissioner for Standards in Public Life¹²², also in light of relevant international standards¹²³, the Government does not intend to change it¹²⁴.

Public authorities comply with audit recommendations, while some concerns remain regarding the transparency of public funds by political parties. In 2023, the National Audit Office (NAO) continued to audit the use of public funds by institutions¹²⁵. In December 2023, the NAO published its five-year strategy, focusing on enhancing accountability and transparency in Government¹²⁶. Despite some minor delays in obtaining relevant documentation from audited entities¹²⁷, the NAO activity report shows that public authorities comply with NAO recommendations in about 72% of the cases¹²⁸. For 2023, the Internal Audit and Investigations Department (IAID) continued to conduct internal inspections of ministerial departments, with some additional human resources¹²⁹ although, due to lack of staff, IAID subcontracts some audits to private firms¹³⁰. While the financial

¹²⁰ In its Report of March 2024, GRECO concluded that its previous 5 recommendations remained only partly implemented (namely to limit the number of persons of trust; submit them to standards of integrity, considering conflict of interests, with clear solutions) and 8 recommendations remained non-implemented (to reform the Commissioner on Standards in Public Life; to improve measures on lobbying; increase limits to outside activities; submit persons of trust to declaration of assets, with sanctions; improve use of evidence in adjudicating corruption cases). GRECO, Fifth Evaluation Round, Second Compliance Report. Compulsory training on integrity continued to be given to public employees throughout 2024. Point 1.4.1 (c) of Directive No. 16 includes all persons on a contract of employment within the Public Administration under the definition of ‘public employees’. Written contribution from the Ministry of Justice in the context of the country visit to Malta.

¹²¹ Information received from Commissioner for Standards in Public Life in the context of the country visit to Malta.

¹²² Several NGOs raised concerns on the independence and effectiveness of the Commissioner’s office. Contribution from Repubblika for the 2024 Rule of Law Report, p. 19.

¹²³ Good practice suggests that the anti-corruption agency head should be recommended and/or endorsed by both the ruling and opposition parties. The involvement of the opposition in selecting the head of an anti-corruption agency reinforces its objectivity and impartiality, as the agency will not exercise bias in favour of the ruling majority. See *mutatis mutandis* UNDP/UNODC, Jakarta Statement on Principles for Anti-Corruption Agencies (2012), and Venice Commission opinion (CDL-AD(2019)015-e). 2023 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 13.

¹²⁴ Information received from Ministry of Justice in the context of the country visit to Malta.

¹²⁵ In 2023, NAO completed 28 audits (compared to 63 in 2022), with no detection of corruption. It has a budget of around EUR 4 200 000. The results of inspections by the NAO are published on its webpage.

¹²⁶ The 5-year strategy launched by NAO in 2023 aims at improving the impact of audits, through technology-driven inspections and actionable recommendations. Information received from NAO in the context of the country visit to Malta, and input from Malta for the 2024 Rule of Law Report, p. 28.

¹²⁷ NAO, Annual Audit Report Public Accounts 2022, p. 4. Relevant international standards indicate that supreme audit institutions should have ‘unfettered access to all the necessary information’ (see International Organization of Supreme Audit Institutions - INTOSAI, Lima declaration on Guidelines on Auditing Precepts, and Mexico declaration on Supreme Audit Institutions Independence).

¹²⁸ NAO, 2023 annual activity report.

¹²⁹ 9 new officers joined IAID in early 2024 (reaching a total of 32 officials). IAID performed 4 internal audits, and 6 investigations (including one report transmitted to OLAF and one to EPPO). Input from Malta for the 2024 Rule of Law Report and information received from IAID in the context of the country visit to Malta.

¹³⁰ Information received from IAID in the context of the country visit to Malta.

reports submitted by political parties are published¹³¹, in light of relevant international standards NGOs raised concerns on the lack of publication by the Electoral Commission of the audit reports on the funds of political parties since 2019¹³², and there is still no information available on the examination of allegations of mismanagement of funds by political parties¹³³.

New tools for whistleblowing are under preparation, though there is no data available on the functioning of the existing mechanism, and some concerns were raised as regards its effectiveness. Work is ongoing to develop a new database and tools to process whistleblowing reports¹³⁴. As for existing tools, there is no information available yet on the number or types of whistleblowing reports on corruption received or investigated by the public authorities, nor data on the use of the infoline that was launched in 2022¹³⁵. The PCAC has never issued a whistleblower protection order¹³⁶. Civil society organisations raised concerns over the lack of acceptance by competent authorities of anonymous reporting¹³⁷.

Although preventive measures exist, National Audit Office reports indicate that public procurement procedure is a sector at high risk of corruption. Businesses' attitudes towards corruption in the EU show that 26% of companies in Malta (EU average 27%) think that corruption has prevented them from winning a public tender or a public procurement contract in practice in the last three years¹³⁸. In its 2023 activity reports, relative to activities occurred in 2022, the NAO indicated the lack of compliance with public procurement

¹³¹ The financial reports filed by political parties are published on the website of the Electoral Commission of Malta.

¹³² Electoral Commission of Malta webpage. 2023 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 15. Written contribution from Daphne Caruana Galizia Foundation in the context of the country visit to Malta, p. 21. According to relevant international standards, States should require political parties regularly to make public the accounts (see Recommendation Rec(2003)4 of the Committee of Ministers of the Council of Europe). The financial reports filed by political parties are forwarded to the Electoral Commission's appointed financial advisers, for their review and remarks. Issues or discrepancies which are flagged by the financial advisers are referred to the respective political parties for their comments and possible further necessary remedial action. The explanations and, where relevant, any updated reports given by the political parties, are referred back to the financial advisers for their consideration. If the advisers consider the explanations given by the political parties to be satisfactory, the matter is considered as settled. If any Financial Statements or Donations Reports have been updated and are considered acceptable by the financial advisers, the said statements and reports are uploaded on the website of the Electoral Commission in replacement of the statements or reports published originally. Written contribution from the Ministry of Justice in the context of the country visit to Malta.

¹³³ 2023 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 15.

¹³⁴ The database is expected for the end of 2024 (as per the RRP) and the tools from 2025. Information received from Ministry of Justice in the context of the country visit to Malta and input from Malta for the 2024 Rule of Law Report, p. 34.

¹³⁵ 2023 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 15. Information received in the context of the country visit from Daphne Caruana Galizia Foundation, Repubblika and Aditus Foundation.

¹³⁶ Information received from PCAC in the context of the country visit to Malta.

¹³⁷ Information received from Daphne Caruana Galizia Foundation, Repubblika and Aditus Foundation in the context of the country visit to Malta. This is not a requirement under the Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law. According to the UNODC Technical Guide to the United Nations Convention Against Corruption (2009), States may bear in mind the importance of promoting the willingness of the public to report on corruption.

¹³⁸ Flash Eurobarometer 543 on Businesses' attitudes towards corruption in the EU (2024). This is one percentage point below the EU average.

regulations among the five main weaknesses encountered during the audits and that deviations were pervasive¹³⁹ and, according to the NAO, public procurement departments use direct order procedures too frequently¹⁴⁰. In 2023, the department of public procurement developed an internal database of conflict of interests' declarations¹⁴¹. Public officials continue to follow training on the anti-corruption strategy, and on integrity standards in public procurement¹⁴².

Malta's investor citizenship scheme continues to raise serious concerns. Investor citizenship schemes present inherent risks of corruption¹⁴³. In March 2023, the European Commission referred Malta to the Court of Justice of the European Union for its investor citizenship scheme in light of the scheme's incompatibility with EU law on EU citizenship and the principle of sincere cooperation. The case is currently pending before the Court of Justice¹⁴⁴.

III. MEDIA PLURALISM AND MEDIA FREEDOM

Freedom of expression is enshrined in the Constitution of Malta¹⁴⁵ and in the European Convention Act. The Media and Defamation Act regulates defamation and the protection of journalistic sources. The Constitution sets out the composition, appointment and removal procedures and independence of the Broadcasting Authority and lays down its basic functions¹⁴⁶. The Freedom of Information Act establishes the legal framework for access to information held by public authorities¹⁴⁷.

The Committee of Experts on Media delivered its final report in July 2023 recommending several measures to improve the media landscape and safety of journalists. The 2023 Rule of Law Report recommended to Malta to 'adopt legislative and other safeguards to improve the working environment of journalists, taking into account European standards on the protection of journalists'¹⁴⁸. The Committee of Experts on Media¹⁴⁹ delivered its final report in July 2023¹⁵⁰. The Government tabled the Committee's report in Parliament in October 2023, simultaneously announcing that it would publish a

¹³⁹ NAO, 2023 annual audit report, relative to activities occurred in 2022, pp. 5 and 57.

¹⁴⁰ Information received from NAO in the context of the country visit to Malta. In its 2023 audit report, relative to activities occurred in 2022, NAO indicates that in 2022 four direct orders were not duly approved by the relevant Ministry, and that in one particular instance, the purchase was split in three parts within the same month. Follow-up Audits Report 2023, relative to activities occurred in 2022, Volume I, p. 17.

¹⁴¹ The database aims to track and verify the declarations filed by procurers officers. Input from Malta for the 2024 Rule of Law Report.

¹⁴² Information received from NAO in the context of the country visit to Malta.

¹⁴³ See European Commission, Report on Investor Citizenship and Residence Schemes in the EU, where the Commission has been monitoring wider issues of compliance with EU law raised by investor citizenship schemes.

¹⁴⁴ The Commission referred Malta to the Court of Justice of the European Union on 21 March 2023, *European Commission v Republic of Malta*, Case C-181/23.

¹⁴⁵ Constitution of Malta, Article 41.

¹⁴⁶ Constitution of Malta, Articles 118 and 119.

¹⁴⁷ Malta ranks 73rd in the 2024 Reporters without Borders World Press Freedom Index compared to 84th the previous year.

¹⁴⁸ 2023 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 2.

¹⁴⁹ Maltese Government, Establishment of a Committee of Experts on Media, 3 January 2022. The publication of the Committee's final report occurred after several delays.

¹⁵⁰ Committee of Experts on the Media Sector, Final Report of 24 July 2023.

White Paper on media issues to ensure widespread consultation¹⁵¹. In tandem, the Government announced to publish the national measures transposing the anti-SLAPP Directive¹⁵² by the end of July¹⁵³. The report of the Committee of Experts proposed a number of amendments to the bills previously tabled and subsequently put on hold by the Government, including amendments to the Constitution of Malta, the Criminal Code, the Code of Organisation and Criminal Procedure and the Media and Defamation Act¹⁵⁴. The report also made several other recommendations related to aspects of the media landscape in Malta, such as establishing a system to ensure transparent public funding of media houses and state advertising, reforming the framework regulating access to public information, enshrining the protection of journalistic sources in the Constitution, and appointing an *ad hoc* committee to prepare concrete reforms of public service broadcasting. Moreover, the report made a number of observations in relation to the numerous financial challenges facing the media. Civil society organisations have continued to point out that the process has not involved proper public consultation¹⁵⁵ and underlined that the Committee of Experts' report did not propose tangible solutions to certain critical issues¹⁵⁶. The Media Pluralism Monitor 2024 considers that the overall risk level for the fundamental protection area has increased from low risk to medium risk, highlighting the stalled legislative process, the high incidence of SLAPP cases and frequent smear campaigns¹⁵⁷. Therefore, some progress has been made on the recommendations made in the previous years.

There have been no developments to secure transparent criteria for the allocation of public funding for media outlets nor for the allocation of state advertising. The legal standing of the guidelines on government advertising and promotional material adopted by the office of the Commissioner for Standards in Public Life¹⁵⁸ has been contested by Parliament's Standards Committee¹⁵⁹. The allocation of public funds to certain media outlets continues to be based on *ad hoc* support schemes designed to limit the impact of rising costs¹⁶⁰. The lack of a legal framework stipulating the criteria used for these schemes and for the distribution of state advertising provides room for abuse while certain media outlets, in particular more recent ones, appear to be entirely excluded from such schemes¹⁶¹. In December 2023, the Association of Media Owners, the first-ever official lobby group in the Maltese market for print and digital media organisations, was established by the six largest

¹⁵¹ The White Paper had not been published at the time of publication of this report.

¹⁵² Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings.

¹⁵³ Written contribution from the Maltese Government in the context of the country visit to Malta.

¹⁵⁴ See 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 16.

¹⁵⁵ 2023 Rule of Law Report, Country Chapter on the rule of law situation in Malta, pp. 16-17.

¹⁵⁶ Written contribution from Daphne Caruana Galizia Foundation in the context of the country visit to Malta, p. 7, and contribution from Repubblika for the 2024 Rule of Law Report, which point out that, among others, the Committee's final report fell short of proposing tangible measures in relation to public service broadcasting, the Freedom of Information Act and public funding to media.

¹⁵⁷ Media Pluralism Monitor 2024 report on Malta, pp. 11-13.

¹⁵⁸ See 2021, 2022 and 2023 Rule of Law Report, Country Chapter on the rule of law situation in Malta.

¹⁵⁹ Written contribution from the Commissioner for Standards in Public Life in the context of the country visit to Malta, p. 10. The Commissioner recommended the recasting of the guidelines as rules to be incorporated in the Ministerial Code of Ethics but no decision has been taken on the matter by the Standards Committee.

¹⁶⁰ The two existing schemes distributed around EUR 500 000 per year over two years and EUR 150 000 to the owners of Malta's six newspaper publishers.

¹⁶¹ Written contribution from Daphne Caruana Galizia Foundation in the context of the country visit to Malta, p. 9, and contribution from Repubblika for the 2024 Rule of Law Report; Information received from Reporters Without Borders (Malta) and the Institute of Maltese Journalists in the context of the country visit to Malta.

media companies, two of which are owned by the two largest political parties. MPM 2024 points out that ‘there is no single or easily accessible source to scrutinize government spending on advertising in the media … [and that] most editors added that public advertising money was distributed and granted or withheld in an arbitrary and abusive way’, maintaining an unchanged medium risk score for this area¹⁶². Furthermore, there have been no developments with regard to the Broadcasting Authority¹⁶³ and media ownership transparency¹⁶⁴. There is no legislation in Malta pertaining specifically to concentration or mergers in the media market and neither the Broadcasting Authority nor the responsible minister may overrule mergers and acquisitions in this domain. Given the nature of the Maltese media market¹⁶⁵, the lack of cross-ownership rules and the general lack of available data relating to revenue market share, the MPM considers market plurality to be an area of high risk¹⁶⁶.

There has been no progress with regard to adopting safeguards to improve access to official documents. The 2023 Rule of Law Report recommended to Malta to ‘adopt legislative and other safeguards to improve … access to official documents, taking into account European standards on access to official documents’¹⁶⁷. An external study commissioned by the Government to review the issue has recommended the creation of an integrated e-management system¹⁶⁸. However, no steps have been taken and there appear to be no plans to adopt safeguards to improve access to documents either via a review of the Freedom of Information Act itself or via an analysis of its implementation in practice. NGOs and organisations representing journalists confirm that civil society and journalists continue to face numerous obstacles and delays when requesting public information¹⁶⁹. For these reasons MPM 2024 has reviewed its risk score from medium risk to high-risk score for this area referring to the absence of reform, arbitrary delays and the tendency by government to ignore critical media¹⁷⁰. Therefore, no progress has been made on this part of the recommendations made in the previous years.

There has been no progress to enhance the independent governance and editorial independence of public service media. The 2023 Rule of Law Report recommended to Malta to ‘strengthen the rules and mechanisms to enhance the independent governance and editorial independence of public service media taking into account European standards on public service media’¹⁷¹. The final report of the Committee of Media Experts recommended the appointment of an *ad hoc* committee to analyse the current situation and to propose reforms to strengthen public broadcasting in a way to ensure its objectivity, independence, impartiality, and accountability but no steps have been taken by the Government in this

¹⁶² Media Pluralism Monitor 2024 report on Malta, p. 22.

¹⁶³ See 2020, 2021, 2022 and 2023 Rule of Law Reports, Country Chapter on the rule of law situation in Malta.

¹⁶⁴ *Ibidem*.

¹⁶⁵ *Ibidem*.

¹⁶⁶ Media Pluralism Monitor 2024 report on Malta, p. 15.

¹⁶⁷ 2023 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 2.

¹⁶⁸ The Final Report of the Committee of Experts on the Media Sector of 24 July 2023 makes reference to this external study. Also, information received from the Information and Data Protection Commissioner in the context of the country visit to Malta. The study itself, however, has not been made available.

¹⁶⁹ Information received from Reporters Without Borders (Malta), the Institute of Maltese Journalists and Repubblika in the context of the country visit to Malta.

¹⁷⁰ Media Pluralism Monitor 2024 report on Malta, p. 12.

¹⁷¹ 2023 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 2. See also 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 2.

regard¹⁷². The MPM has consistently considered the lack of independence of public service governance and its funding to be an area presenting very high risk in Malta, a state of affairs it confirms again this year¹⁷³. Therefore, no progress has been made on the recommendations made in the previous years¹⁷⁴.

Journalists continue to face challenges in the exercise of their profession. Journalists, the Institute of Maltese Journalists, the Association of Media Owners as well as civil society organisations underline that economic constraints are now seriously exacerbating problems highlighted in previous reports¹⁷⁵. Civil society organisations consider that the absence of convictions, to date, for the mastermind or masterminds behind the assassination of Daphne Caruana Galizia and for the high-level corruption which Daphne Caruana Galizia was reporting on in the years prior to her assassination constitutes a chilling effect for investigative journalists¹⁷⁶. MPM 2024 has very slightly decreased its risk score within the medium risk band for this area, as it points out that the Institute for Maltese Journalists always responds, by way of statements, to direct attacks against journalists¹⁷⁷. The Council of Europe Platform to promote the protection of journalism and the safety of journalists reported no new alerts relating to the safety of journalists since the publication of the last rule of law report¹⁷⁸.

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

Malta is a Parliamentary Republic where legislative power is vested in the House of Representatives, a unicameral Parliament elected for a five-year term. The executive authority is vested in the President elected by Parliament, and in the Cabinet headed by the Prime Minister. All Government ministers, including the Prime Minister, must be members of Parliament. The Constitutional Court carries out *ex post* constitutional review as it hears appeals from decisions of other courts on questions relating to the interpretation of the Constitution and on the validity of laws, as well as appeals from decisions on alleged breaches of fundamental rights. The Constitution establishes a number of independent authorities, including the Office of the Ombudsperson¹⁷⁹.

While there have been some public consultations in the legislative process, there is no framework in place. The 2023 Rule of Law Report recommended to Malta to '[i]ntroduce a framework for public participation in the legislative process'¹⁸⁰. As indicated in previous Rule of Law Reports, there are no established rules or guidelines regarding public

¹⁷² Committee of Experts on the Media Sector, Final Report of 24 July 2023, p. 15.

¹⁷³ Media Pluralism Monitor 2024 report on Malta, p. 22.

¹⁷⁴ According to the European Parliament's Flash Eurobarometer: News & Media Survey 2023, 39% of respondents in Malta stated that they trust public TV and radio stations, below the EU average of 48%.

¹⁷⁵ Written contributions from Daphne Caruana Galizia Foundation (pp. 8-9), Repubblika and Association of Media Owners in the context of the country visit to Malta. Information received from Reporters Without Borders (Malta) and Institute of Maltese Journalists in the context of the country visit to Malta.

¹⁷⁶ *Ibidem*.

¹⁷⁷ Media Pluralism Monitor 2024 report on Malta, p. 12.

¹⁷⁸ Council of Europe, Platform to promote the protection of journalism and safety of journalists.

¹⁷⁹ Constitution of Malta, art. 64.

¹⁸⁰ 2023 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 2.

engagement in the drafting of legislation¹⁸¹. Consultations take place occasionally and on an *ad hoc* basis. There is no transparency or information shared publicly about how the information gathered during a public consultation process is actually used¹⁸². This applies to the legislative initiatives of both government and Parliament¹⁸³. The authorities explained that, in 2023, 62 public consultations were published and that the relevant website¹⁸⁴ has been updated to render it more accessible and user-friendly, to enhance the public consultation process¹⁸⁵. However, the Maltese authorities and the stakeholders pointed out that there are no established rules or guidelines for public participation in the legislative process and that no steps have been taken to introduce them¹⁸⁶. Stakeholders also reiterated that key laws on matters of justice and law and order are rarely released for public consultation before their adoption¹⁸⁷. As a structured procedure for public involvement in the legislative process is still lacking, only some progress has been made on the recommendation made in the 2023 Rule of Law Report.

There has been no progress yet on establishing a National Human Rights Institution. The 2023 Rule of Law Report recommended to Malta to ‘[t]ake measures to establish a National Human Rights Institution taking into account the UN Paris Principles’¹⁸⁸. As

¹⁸¹ 2020 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 15; 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 19; 2023 Rule of Law Report, Country Chapter on the rule of law situation in Malta, pp. 19-20.

¹⁸² Written contribution from Daphne Caruana Galizia Foundation in the context of the country visit to Malta, p. 12.

¹⁸³ As mentioned in 2023 Rule of Law Report, Country Chapter on the rule of law situation in Malta, pp. 20-21, consultations of stakeholders by the government are subject to the discretion of the Ministry in charge and are inconsistent between Ministries as regards timing, format, and involvement of stakeholders; consultation of stakeholders by Parliament committees are subject to a decision by each Committee and is not systematic nor governed by clear rules.

¹⁸⁴ <https://www.gov.mt/en/publicconsultation/Pages/default.aspx>.

¹⁸⁵ Input from Malta for the 2024 Rule of Law Report, pp. 45-46. In particular, in 2023, the website underwent the following main enhancements: i) Ministries’ representatives can now communicate with the public directly from the portal’s CRM (Customer Relationship Management)/backend system; ii) Statistics are managed entirely through the portal; iii) The entire system of the new portal has been made more user-friendly; iv) Submissions made by the general public through alternative means (other than digitally – for instance through postal services or via email) can be easily integrated into the CRM/backend system. See written contribution from the Maltese Government in the context of the country visit to Malta, pp. 3-4.

¹⁸⁶ Contributions from Aditus Foundation (p. 27) and Repubblika (p. 26) for the 2024 Rule of Law Report; Written contributions from the Chambers of Advocates (p. 3) and Daphne Caruana Galizia Foundation (p. 12) in the context of the country visit to Malta.

¹⁸⁷ Contribution from Repubblika for the 2024 Rule of Law Report, p. 31. Aditus Foundation reiterated that the lack of stakeholder consultations persists and is exacerbated by the short timeframes given to stakeholders to respond to published consultations and by the extensive use of regulations and legal notices, *i.e.* subsidiary laws drafted and brought into force by the relevant Minister in accordance with the enabling powers vested in the primary legislation. For legal notices to become law, no parliamentary debates or motions are required for their enactment (see contribution from Aditus Foundations for the 2024 Rule of Law Report, p. 28). In this regard, see also 2023 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 21. On the other hand, it is worth noting that, in Malta, only 7% of the surveyed companies perceive the frequent changes in legislation or concerns about quality of law-making process as a reason for the lack of confidence in the investment protection. Figure 56, 2024 EU Justice Scoreboard.

¹⁸⁸ See 2023 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 2. In 2023, the Commission concluded that ‘no progress’ had been made on this recommendation already included in the 2022 Rule of Law Report, p. 2.

confirmed by stakeholders¹⁸⁹, since July 2023, no steps have been taken to establish a national human rights institution (NHRI). The Government explained that two bills presented at Parliament in 2019¹⁹⁰, aiming at establishing a NHRI in line with the UN Paris Principles, are currently under revision and committed to publish the revised version for public consultation in July 2024, prior to being tabled in Parliament in October 2024, after having taken into account the feedback received from the stakeholders¹⁹¹. Overall, there has been no progress yet on the recommendation made in the 2023 Rule of Law Report.

The Constitutional Convention, announced in 2019 to help address issues concerning the appointment of constitutional bodies and the role of Parliament, remains stalled. As indicated in previous Rule of Law Reports¹⁹², in 2019, the President of the Republic announced his intention to launch a Constitutional Convention to address issues regarding the appointment procedures of bodies¹⁹³ and the role of Parliament¹⁹⁴. In December 2023, the former President of the Republic admitted that the process of launching a Convention was stalled¹⁹⁵. It will be up to the newly elected President¹⁹⁶ to decide whether to reactivate it¹⁹⁷.

On 1 January 2024, Malta had 15 leading judgments of the European Court of Human Rights pending implementation, the same number as the previous year. At that time, Malta's rate of leading judgments from the past 10 years that remained pending was at 57% (compared to 45% in 2023) and the average time that the judgments had been pending implementation was 6 years (compared to 5 years and 4 months in 2023)¹⁹⁸. The oldest leading judgment, pending implementation for 16 years, concerns disproportionate restrictions to property rights¹⁹⁹. As regards the respect of payment deadlines, on 31 December 2023 there were 6 cases in total awaiting confirmation of payments (compared to 1 in 2022)²⁰⁰. On 1 July 2024, the number of leading judgments pending implementation had decreased to 14²⁰¹.

¹⁸⁹ Contribution from Aditus Foundation for the 2024 Rule of Law Report, p. 27; Written contribution from Daphne Caruana Galizia Foundation (p. 12) and Office of the Parliamentary Ombudsman (p. 2) in the context of the country visit to Malta.

¹⁹⁰ Bills No. 97 – Human Rights and Equality Commission Bill, and 96 – Equality Bill, both presented on 19 July 2019. The Bill No. 97 has been last discussed in November 2019, the Bill No. 96 in November 2020.

¹⁹¹ Written contribution from the Maltese Government in the context of the country visit to Malta, p. 29.

¹⁹² 2023 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 21; 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 20; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 17.

¹⁹³ Such as the Electoral Commission, the Public Service Commission, the Broadcasting Authority, the Central Bank of Malta and the Information and Data Protection Commissioner.

¹⁹⁴ With particular reference to its ability to exert an effective check on governments.

¹⁹⁵ Times of Malta (2023), President was ‘prevented’ from furthering work on Constitutional reform.

¹⁹⁶ Ms Myriam Spiteri Debono was elected to the position of President of Malta on 27 March 2024 and assumed the office on 4 April 2024.

¹⁹⁷ Information received from the Maltese Government and from the Secretariat of the Parliament in the context of the country visit to Malta.

¹⁹⁸ 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 2024. See Contribution from the European Implementation Network for the 2024 Rule of Law Report, p. 6.

¹⁹⁹ Judgment of the European Court of Human Rights of 26 September 2006, *Ghigo v. Malta*, 31122/05, pending implementation since 2006.

²⁰⁰ Council of Europe (2024), Supervision of the execution of judgments decisions of the European Court of Human Rights – 17th Annual Report of the Committee of Ministers – 2023, p. 137.

²⁰¹ Data according to the online database of the Council of Europe (HUDOC).

Uncertainty persists as to the *erga omnes* effect of judgements of the Constitutional Court, as it is up to Parliament to repeal or amend laws found unconstitutional. As indicated in previous Rule of Law Reports²⁰², according to the constitutional framework, judgments of the Constitutional Court lack universal applicability, allowing unconstitutional laws to remain valid until Parliament repeals them²⁰³. The Venice Commission has highlighted concerns over Parliament's inconsistency in adhering to Constitutional Court rulings²⁰⁴. The authorities confirmed that no steps have been taken address this issue²⁰⁵.

Efforts are ongoing to establish a supportive regulatory framework for the civil society sector. The civic space continues to be assessed as 'narrowed'²⁰⁶. The Office of the Commissioner for Voluntary Organisations continues to be engaged in consultations with key stakeholders to assess the status of the voluntary sector, including civil society, with a view to establish a regulatory framework for CSOs. A report presenting conclusions and recommendations is expected to be published in the next months²⁰⁷. In general, stakeholders report that funding is an ongoing problem for CSOs, which are called to operate with scant resources and unreliable revenue streams²⁰⁸. Moreover, they raise challenges regarding the Government's overall lack of transparency and lack of positive engagement with CSOs²⁰⁹. It is also reported that the public narrative surrounding some CSOs tends to create an atmosphere of distrust in those organisations²¹⁰.

²⁰² 2020 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 5; 2021 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 17; 2022 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 20; 2023 Rule of Law Report, Country Chapter on the rule of law situation in Malta, p. 22.

²⁰³ According to the Maltese authorities, this would not be an issue for two main reasons. First, judgments which find laws to be unconstitutional or in violation of the European Charter of Human Rights are sent by the Court Registrar to the Speaker of Parliament in order for Parliament to determine whether an amendment of the law is necessary. If it is considered necessary, the amendment of the law must be effected within 6 months from when the judgment became final. Second, because even though the Courts are not bound by precedent Courts do not arbitrarily put aside principles and considerations made in previous judgments. Written contribution from the Maltese Government in the context of the country visit to Malta, pp. 32-33.

²⁰⁴ Venice Commission opinion CDL-AD(2020)006, para. 80-84.

²⁰⁵ Information received from the Maltese Government in the context of the country visit to Malta.

²⁰⁶ See the rating given by CIVICUS. Ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

²⁰⁷ Information received from the Office of the Commissioner for Voluntary Organisations in the context of the country visit to Malta.

²⁰⁸ Written contribution from Daphne Caruana Galizia Foundation in the context of the country visit to Malta, p. 10; Contribution from Repubblika (p. 35) and Aditus Foundation (p. 33) for the 2024 Rule of Law Report; Information received from the Office of the Commissioner for Voluntary Organisations in the context of the country visit to Malta.

²⁰⁹ Written contribution from Daphne Caruana Galizia Foundation in the context of the country visit to Malta, pp. 10-11.

²¹⁰ Cases of rhetorical attacks on social media against representatives of NGOs have been reported. Written contribution from Daphne Caruana Galizia Foundation in the context of the country visit to Malta, p. 11.

Annex I: List of sources in alphabetical order*

* The list of contributions received in the context of the consultation for the 2024 Rule of Law report can be found at https://commission.europa.eu/publications/2024-rule-law-report-targeted-stakeholder-consultation_en.

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Annex II: Country visit to Malta

The Commission services held virtual meetings in March 2024 with:

- Association of Judges and Magistrates of Malta
- Association of Media Owners
- Auditor General
- Aditus Foundation
- Broadcasting authority
- Chamber of Advocates
- Chief Justice
- Commissioner for Standards in Public Life
- Commissioner for Voluntary Organisations
- Daphne Caruana Galizia Foundation
- Information and Data Protection Commissioner
- Internal Audit and Investigations Department
- Institute of Maltese Journalists
- Malta Business Bureau
- Malta Chamber of Commerce
- Ministry for Foreign and European Affairs and Trade
- Ministry for Justice and Reforms for the Construction Sector
- Ministry for Home Affairs, Security, Reforms and Equality
- Office of Parliamentary Ombudsman
- Office of the Attorney General
- Office of the State Advocate
- Permanent Commission against Corruption
- Police: Financial Crimes Investigations Department
- Public Service Commission
- Reporters without Borders
- Repubblika
- Secretariat of the Parliament

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

- Amnesty International EU
- Centre for Democracy and Technology Europe
- Centre for European Volunteering
- Civil Liberties Union for Europe
- Civil Rights Defenders
- Civil Society Europe
- Culture Action Europe
- Democracy Reporting International
- European Centre for Non-Profit Law
- European Civic Forum
- European Federation of Journalists

- European Partnership for Democracy
- European Youth Forum
- Free Press Unlimited
- International Federation for Human Rights
- International Planned Parenthood Federation
- International Press Institute
- Irish Council for Civil Liberties
- JEF Europe
- Open Society Foundations
- Philanthropy Europe Association
- PICUM
- Reporters Without Borders
- SOLIDAR
- Transparency International