

# EUROPEAN **RULE OF LAW** MECHANISM

MALTA'S INPUT FOR THE 2020  
ANNUAL REPORT

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**MAY 2020**

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EU COORDINATION  
DEPARTMENT

**MINISTRY FOR FOREIGN AND  
EUROPEAN AFFAIRS**

32A, TRIQ MARSAMXETT,  
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## Foreword by the Minister for Foreign and European Affairs

Evarist Bartolo



Malta's intent is to work in partnership with the Commission to make the EU Rule of law mechanism an indispensable instrument in our Union's toolbox. In a year that started with an unprecedented challenge of the COVID-19 pandemic, the Maltese Government remains committed to maintain the pace of reforms and continued engagement with stakeholders and the general public. In this regard, the socio-political context is key to understand the significance of the ongoing reforms.

The context revolves around the subject: society. There is no sole definition of Rule of Law, but I believe that it would be fair to say that a common understanding is based on the authority and influence of law in society; hence the principle whereby all members of a society, including those in government, are equally considered as subject to publicly disclosed legal codes and processes.

Consequently, there is an interplay between the legal fiction of codes, practices, and institutions, vis-a-vis, the reality of society. When analysing this interaction, it is highly evident that there is no single society in Europe as much as there is no single legal system, and hence no single set of checks and balances. It is equally true that while there can be a society without codified laws, there can be no codified laws without society. These are inter-dependable.

If one were to identify an Achilles heel for the European Rule of Law Mechanism, my belief is that this may lay in its missing pillar: society in its various forms and realities. The value-added of the societal context should not be underestimated.

For instance, authoritative studies on the personalisation of politics illustrate the differentiated impact of the same checks and balances on different societies. A best practice in one country may therefore be a challenge or not contextual in another; and vice-versa. By way of example, in a micro-state such as Malta, direct, unfettered, and reciprocal contacts between citizens and politicians, are more likely to emerge and persist due to its size and unique close-knit communities. This contrasts with formal institutionalised hierarchical approach with an intricate broker network in larger societies. Combined with the increased significance of individual votes, the personalisation of politics in a small country provides critical checks and balances for the citizen which may otherwise lead to instability and frail governance in larger jurisdictions.

Maltese society has evolved in many ways, not least in the last 7 years. Hence, it stands to reason that the significance and pace of reforms match the magnitude of societal changes and its needs. Major developments have taken place with economic reforms which lead to record growth were counter-balanced by the launch of a holistic reform of the justice sector along unparalleled civil liberties reforms that caught up with the pace of a fast-evolving society.

Having said this, Malta remains committed to a fair, evidence and fact-based approach which factors-in the specific legal, societal, and political context of each Member State - one that drives positive reform.

I look forward to further updates and discussions within the General Affairs Council, with stakeholders and mostly with civil society in general.

A handwritten signature in blue ink that reads "Evarist Bartolo". The signature is written in a cursive, slightly slanted style.

## Foreword by the Minister for Justice, Equality and Governance

Dr Edward Zammit Lewis



Upon taking the oath of office as Minister for Justice, Equality and Governance, and since the first few days of its tenure, this administration's resolve to effect change to ensure that Malta abides by the highest rule of law standards has been unparalleled. Our resolve to deliver, unmatched.

And whilst the challenges were significant, our commitment since the very first days in office to implement reforms was coupled with a lot of planning, consultations and work, to implement the recommendations made by the European Commission for democracy through law (also known as the Venice Commission) in December 2018, as well as by the European Commission in its Country Specific Recommendations as part of the European Semester process.

In this regard, during the first Cabinet of Ministers meeting, a Cabinet Committee on Good Governance was established. This was tasked to oversee and coordinate necessary reforms, prepare laws and assess whether legal amendments were necessary. We were and are prepared to take all necessary steps to strengthen further our institutions, where necessary taking courageous decisions.

Against this background, and as already acknowledged by the European Commission, the Government embarked on a process to undertake various reforms. In particular, emphasis was made on reforms dealing with the judiciary, judicial independence and other reforms such as those related to prosecution. These reforms needed to effectively address concerns, whilst taking into account of the specificities of our system, mostly emanating from our long-standing legal traditions and constitutional arrangements.

The process started with a reform on the appointment of the police commissioner and the provision of renewed impetus on processes which were already ongoing, such as, the separation between the prosecution service and the newly established state advocate, which assumed the role of Government's chief legal advisor. Also key to this reform is the tried and tested new appointment procedure for each of these positions involving a public call issued by an Appointment Commission. Other significant reforms were implemented over the past years, including within the context of the holistic justice reform, removal of the time-barring by prescription over corruption offences committed by politicians, the introduction of a Whistleblower Act, and a new Media and Defamation Act.

More recently however, further significant reforms were announced as regards the appointment of the Chief Justice. However, what is perhaps more important is the way the current new Chief Justice was appointed that is more significant – that is, through an unprecedented agreement between the Government and Opposition putting previous practice that gave the Prime Minister Constitutional prerogative to select the Chief Justice without the need for consulting the Opposition aside. This is a feat which should not be underestimated and shows promise that there's goodwill from all to deliver on these important reforms.

In the days to come, our target is to continue to openly engage and discuss in a constructive manner our ideas for further reforms with all interested parties at both technical and political level. I also look forward to this new platform created by the European Commission on a European Rule of Law Mechanism to serve as basis to intensify such engagement to exchange views in a manner which is evidence and fact-based. This will ultimately instill great trust, transparency and credibility not only in the process itself but also in the reforms we have set out to deliver.

A handwritten signature in blue ink, appearing to be 'E. Zammit Lewis', written in a cursive style.

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# I. Justice System

## I.1 Independence

### Overview of the legal and institutional framework

The independence of the judiciary is guaranteed principally by the provisions of the 1964 Constitution of Malta (as subsequently amended). Certain other provisions contained in the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta) and subsidiary legislation made under that Code further underscore the “institutional” as opposed to the merely “constitutional” independence of the Judiciary from the two other organs of the State: the Executive and the Legislature. The Constitution guarantees the security of tenure of judges and magistrates and their salaries, and also provides for the allocation of judges and magistrates to particular courts; the Code of Organisation and Civil Procedure and subsidiary legislation guarantee a wide measure of self-regulation in the way judges and magistrates are subrogated to sit in a particular court whenever there is an abstention or challenge (recusal) according to law, and in the distribution of cases as between judges or magistrates sitting in the same court.

### Appointment and selection of Judges and Prosecutors

The legal framework concerning the judiciary is set out in Chapter VIII of the Constitution (Articles 95-101A). Following the promulgation by Parliament in 2016 of the Constitutional Reforms (Justice Sector) Act (Act 44 of 2016), members of the Judiciary are appointed by the President of Malta acting in accordance with the advice of the Prime Minister, following consideration of the evaluation by the Judicial Appointments Committee. A person shall not be qualified to be appointed to or to act in the office of magistrate of the Inferior Courts unless he has practised as an advocate in Malta for a period of, or periods amounting in the aggregate to, not less than seven years. A person shall not be qualified to be appointed a judge of the Superior Courts unless for a period of, or periods amounting in the aggregate to, not less than twelve years he has either practised as an advocate in Malta or served as a magistrate in Malta, or has partly so practised and partly so served. A major reform is underway, on the basis of recommendations made by the Venice Commission, as further explained in the next section.

The Chief Justice is appointed by the President of Malta acting on the advice of the Prime Minister. The Chief Justice may be appointed either from among practising advocates or Magistrates having the qualifications required by law to be appointed as Judges, or from among serving Judges. The appointment procedure for the Office of Chief Justice is one of the key elements of the ongoing Constitutional reform process, that is further explained below.

Judges and Magistrates enjoy the same security of tenure, with their salary being likewise a charge on the Consolidated Fund and which may not be reduced.

The Attorney General is the primary State prosecutor and no longer carries out the functions as the Chief Legal Advisor to the Government following a major reform in 2019 as further explained in the next section. The appointment of the Attorney General is made by the President on the advice of the Prime Minister after the latter has given due consideration to the views of an Appointment Commission which would have issued an open call for the post, in accordance to the Attorney General Ordinance (Chapter 90 of the Laws of Malta) as amended by the State Advocate Act (Act XXV of 2019). For a person to be eligible for appointment as Attorney General that person must meet the eligibility requirements as a Judge of the Superior Courts.

Article 4 of the said Ordinance provides for the appointment of a Deputy Attorney General and other Officers of the Attorney General, who shall exercise and perform such powers, functions and duties as may be delegated or assigned to them by the Attorney General. Recruitment of legal officers takes place by way of a public call.

### Independence / autonomy of the Prosecution Service

The relevant legal framework providing for the independence of the Prosecution Service is set out in Article 91, and sub-articles (2) and (3) of Article 97 of the Constitution of Malta. These provisions provide that the tenure of the Attorney General Office is similarly secured as the tenure of office of judges both in terms of retirement and removal from Office.

In addition, Article 91(3) of the Constitution of Malta provides that the exercise of the Attorney General’s powers to institute, undertake and discontinue criminal proceedings and of any other powers conferred on him by any law in terms which authorise him to exercise that power in his individual judgment the Attorney General shall not be subject to the direction or control of any other person or authority. The legal framework was subject to a major reform as explained in the next section.

In terms of the Attorney General Ordinance, the Deputy Attorney General and other Officers of the Attorney General, enjoy the same obligations and enjoy the same protection and privileges as are by law imposed on or given to the Attorney General, unless the contrary intention appears.

## Irremovability of judges, including transfer of judges and dismissal

The independence of the judiciary is guaranteed by security of tenure, and protection of salary (that does not require any yearly intervention by the legislature to be paid).

Subject to Article 97(1) of the Constitution of Malta, a judge of the Superior Court shall vacate his office upon attaining sixty-five years of age. Article 97(2) further provides that members of the judiciary can only be removed from office for mental and physical infirmities which impede them from fulfilling their duties, or proved misbehaviour.

Any motion for removal from office proposed by any member of Parliament is, under confidential cover, sent to the Commission for the Administration of Justice.<sup>1</sup> Only if the Committee, the majority of whose members form part of the Judiciary, find that there is a prima facie case for such removal,<sup>2</sup> is the matter referred to the House of Representatives, which will petition the President to remove the judge; this is subject to a vote of not less than two-thirds majority of the House of Representatives.

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

Article 101A of the Constitution of Malta provides for the Commission for the Administration of Justice which consists of the President of the Republic, who is the Chairman, and nine other members. The President of the Republic only has a casting vote; and removal proceedings regarding a member of the judiciary are chaired by the Deputy Chairperson, that is the Chief Justice.<sup>3</sup> The election of the respective members of the judiciary takes place by their peers.<sup>4</sup> Article 101A further states that a member of the Commission is not subject to the direction or control of any person or authority.

## Accountability of judges and prosecutors, including disciplinary regime and ethical rules

Prosecutors, including the Attorney General, are accountable to the Committee for Advocates and Legal Procurators of the Commission for the Administration of Justice like all other advocates.<sup>5</sup> Prosecutors other than the Attorney General are also accountable for breach of discipline within the Office of the Attorney General as a condition inherent in their employment relationship like all employees.

Moreover, the functions of the Commission for the Administration of Justice include inter alia: drawing up of a code or codes of ethics regulating the conduct of members of the judiciary; to draw the attention of any judge or magistrate on any matter, in any court in which he sits, which may not be conducive to an efficient and proper functioning of such court; and exercising, in accordance with any law, discipline over advocates and legal procurators practising their profession.

The Code of Ethics for the Members of the Judiciary may be found [here](#).

The law does not provide for the possibility of transferring judges as a result of disciplinary proceedings.

## Promotion of Judges and Prosecutors

### Prosecution

The promotion of prosecutors is subject to a credible performance and to internal calls for application and interviews before each promotion. A prosecutor in the Attorney General's Office progresses in the following manner:

- A Trainee Lawyer (usually a lawyer who has graduated and obtained a warrant at a time very close to his joining the Office) becomes eligible to be appointed as a Lawyer (Scale 7) after one year working at the Office;
- After three years as a Lawyer (Scale 7) the prosecutor becomes eligible to be promoted to Lawyer (Scale 6) and after three years as a Lawyer (Scale 6) the prosecutor would become eligible to be promoted to Lawyer (Scale 5).
- After ten years of warranted practice the prosecutor becomes eligible to be appointed Senior Lawyer (Scale 4).
- Further promotions are to the grade of Assistant Attorney General (by call but requiring a minimum of 10 years warranted practice) and Deputy Attorney General (normally by direct appointment of a prosecutor previously occupying the post of Assistant Attorney General).

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<sup>1</sup> Article 101 B of the Constitution provides for a Committee for Judges and Magistrates (hereinafter referred to as "the Committee") which shall be a subcommittee of the Commission for the Administration of Justice and which shall consist of three members of the judiciary who are not members of the Commission for the Administration of Justice and who shall be elected from amongst judges and magistrates according to regulations issued by the Commission for the Administration of Justice. [Article 101B was introduced in 2016](#) as part of the ongoing Justice Reform.

<sup>2</sup> Article 9(5) of the Commission for the Administration of Justice Act (Chapter 369)

<sup>3</sup> Article 101B(12)(e) of the Constitution.

<sup>4</sup> Commission for the Administration of Justice (Election of Members) Rules ([LN 52 of 1994](#))

<sup>5</sup> See also [the Commission for the Administration of Justice Act \(Chapter 369 of the Laws of Malta\)](#).



## Judiciary

Judges, on the other hand, do not automatically get promoted but shall be appointed according to the Constitution (outlined above). As also explained, an appointment procedure applies to the Chief Justice.

According to Article 7(2) of the Code of Organisation and Civil Procedure, the Chief Justice may designate one of the Magistrates as Senior Magistrate. The person so designated, who does not have to be the person who is most senior in terms of appointment to the Bench of Magistrates, is to perform such duties and functions as may be assigned to him by the Chief Justice or as may be provided by any law for the time being in force.

Moreover, in accordance with Article 11(11) of the Code of Organisation and Civil Procedure, the Chief Justice may designate a Senior Administrative Judge.<sup>6</sup>

## Allocation of court cases

The assignment of cases to the judiciary is regulated by [Article 11\(3\)](#) of the Code of Organisation and Civil Procedure. The registrar assigns cases as directed by the Chief Justice. This is a relatively recent development, whereby amendments to the Code of Organisation and Civil Procedure transferred powers formerly exercised by the President of Malta acting on the advice of the Minister for Justice to the Chief Justice, thereby highlighting the “institutional”, as opposed to merely “constitutional” independence of the judiciary from the executive.

A case-weighting system categorises cases according to subject matter and effort needed to resolve such cases. With a view to increase court specialisation and efficiency, cases are distributed among judges according to the weighting given to each case and assigned according to the subject matter. The system is under review as explained further below.

## Remuneration of the Judiciary and Prosecution

The [Judges and Magistrates \(Salaries\) Act \(Chapter 175 of the Laws of Malta\)](#) prescribe the salaries of Judges and Magistrates. A Judge’s salary is a charge on the Consolidated Fund and may not be reduced. Judges in Malta have always been paid on the same level as the highest paid public officials and Prosecutors have always been paid slightly less.

Regarding the Office of the Attorney General, the salaries are in line with the [Schedule of Grades](#) published each year with the Budget Financial Estimates. In addition, the Office of the Attorney General operates a system which involves the payment of a ‘Performance Bonus’ up to the grade of Senior Lawyer. This bonus can reach up to 15% of the annual basic salary and is granted on the basis of a performance assessment made by the Attorney General and the Deputy Attorney General. In general, such a bonus ranges between 8-12 % depending on the tasks which the prosecutor has undertaken, and the prosecutor’s efficiency based on statistics. No such system applies to Judges or to the higher grades at the Office of the Attorney General.

## Independence of the Bar

According to Article 30 of the [Code of Organisation and Civil Procedure \(Chapter 12 of the Laws of Malta\)](#), the advocate is an officer of the court when the person appears in a court and, therefore, his loyalty – first and foremost – is to the court. As an officer of the court, he also enjoys the court’s protection. The advocate remains a member of a liberal profession and, as such, has a right not to accept a brief from a client. In accordance with its [statute](#), a key objective of the Chamber of Advocates is to encourage an independent, strong, diverse and effective legal profession. The [Code of Ethics and Conduct for Advocates](#) adopted by the Commission for the Administration of Justice, defines the requirements of professional conduct for advocates, including in terms of adhering to the value of independence and integrity.

The [Maltese Chamber of Advocates](#) is a private entity, of which membership is not compulsory according to law. The first statute of the Chamber of Advocates was approved on 18 January 1877 It is a self-regulatory body representing all warranted advocates in Malta; and acts on behalf of its members when lobbying and negotiating with the Government and other regulatory authorities. It also seeks to provide a structure ensuring that advocates act within the required standards of ethics and professionalism both with clients as well as with their peers.

## Significant developments

In May 2020, the Government sent a formal submission to the European Commission for Democracy through Law within the Council of Europe (also known as the Venice Commission) on the subject of the implementation of the recommendations made by the Venice Commission in its Opinion of 17 December 2018. This communication is intended to give a detailed explanation with regards to the adoption of the relative recommendations in a manner

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<sup>6</sup> Where the Chief Justice may be challenged or may abstain from taking cognizance of a case for any of the reasons mentioned in this Code, the assignment of a judge to take cognizance of that case shall be made by the Senior Administrative Judge.

which “would not abandon Malta’s legal traditions, but would constitute an evolution that would provide more effective checks and balances than those in place today.”<sup>7</sup> The same information was sent to the European Commission.

The Government requested the Venice Commission to expedite the process as much as possible in order to obtain approval from the House of Representatives on all legislative changes before the summer recess, i.e. by mid-July.

It must be emphasised that given ongoing consultations with the Venice Commission, the European Commission and other stakeholders, concepts may evolve. This Government contribution includes developments until 12 May 2020.

This information applies to all the Venice Commission recommendations referred-to in this document.

## 1. Appointment and selection of judges and prosecutors

### Judicial appointments

Section A of Part III of the Opinion focuses on Judicial Appointments and for ease of reference, we are reproducing the recommendations made by the Venice Commission for the improvement of judicial appointments:

- “1. Judicial vacancies should be published and candidates from inside and from outside the judiciary should apply to the JAC for a specific vacancy.
2. The JAC should have a composition of at least half of judges elected by their peers from all levels of the judiciary.
3. The JAC should rank the candidates, upon merit on pre-existing, clear and transparent criteria for appointment, taking also into account the goal of achieving a gender balance.
4. The JAC should propose a candidate or candidates directly to the President of Malta for appointment. Its proposals should be binding on the President.
5. There should be no exceptions from this procedure for the appointment of the Chief Justice.”.

In order to implement the recommendations made by the Venice Commission as faithfully as possible, whilst respecting the legal traditions of the Maltese system, the Maltese authorities are of the view that a system of a rolling public call, which has consistently proven to be the most effective method for attracting the most suitable candidates to the post of judge or magistrate locally, should be retained. In line with the Venice Commission’s recommendations, such system ensures publication of judicial vacancies and will be open for candidates both from inside as well from outside the judiciary.

In so far as the composition of the Judicial Appointments Committee is concerned, the Maltese authorities shall likewise implement the recommendation of the Commission. The composition of the Judicial Appointments Committee will be revised so that two additional judges and a magistrate, elected by their peers, will be added to the Committee. This will effectively address the recommendation of the Commission directed at the composition of the Committee, given that as a result of this change, half of the members of the Committee will be members of the judiciary, with all levels of the judiciary being thus represented and with the two judges and the magistrate elected by their peers.

Another change in the composition will be that the public prosecutor will no longer be involved in the appointment of members of the judiciary and will be substituted by the State Advocate with the latter having no prosecutorial functions. Moreover, the Chief Justice will be given a casting vote in addition to his original vote. The Maltese authorities are of the view that the fact that the Chief Justice presides over Committee is essential and meaningful given that the Chief Justice presides over all the appellate courts, whether civil, constitutional or criminal courts. Thus, the Chief Justice is in practice aware of the standard, integrity and compliance with ethical rules of all legal professionals who appear before these courts and who are most likely to be potential candidates for the post of judge or magistrate. This visibility on the part of the Chief Justice will certainly be an asset to the Committee. The Maltese authorities are also of the view that having the Chief Justice presiding over the Committee is likely to inspire greater public confidence in the said Committee. It is therefore of great importance that the Chief Justice will continue to preside over the Committee in order to boost confidence in, and overall effectiveness of, the system.

Under the new system, when a judicial vacancy arises the Judicial Appointments Committee will propose the three most suitable candidates for appointment to the judiciary directly to the President of Malta. The President will make the selection from amongst those candidates. The proposal of the Judicial Appointments Committee will be accompanied with a detailed report expressing the Committee’s views on the suitability of each of the proposed candidates. The final choice will rest with the President. The Maltese authorities are of the view that ranking candidates would have an undesired and demeaning effect not only vis-à-vis the candidates between them, but also in so far as

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<sup>7</sup> Para. 146 of the Opinion No. 940/2018

their individual professional reputation is concerned, possibly discouraging potential candidates from applying. Nonetheless, the scope behind the recommended ranking of candidates will still be attained, by means of the aforementioned accompanying report in respect of each individual eligible candidate, which will be sent to the President. The said report, as the Venice Commission recommends, would examine the eligibility of each respective candidate on the basis of pre-existing, clear and transparent criteria for appointment. The Maltese authorities submit that the Committee enjoys full and unrestricted discretion, without being subject to any external influence or direction, to establish its own procedure and draw up objective and clear eligibility requirements.

This proposed system will ensure that the decision of the Committee will be respected at all times given that there is no possibility of referral of candidates back to the Committee, nor is there the possibility not to abide by the decision of the Committee. The new system will eliminate the possibility of having candidates appointed directly by the Government or of the Government vetoing a proposed candidate.

Currently, there is a pending preliminary reference to the Court of Justice of the EU from the First Hall, Civil Court (Constitutional jurisdiction) in the proceedings *Repubblika Vs Prime Minister*, regarding the appointment of the Maltese judiciary – Case C-896/19 *Repubblika*.

### The Chief Justice

As regards the appointment of the Chief Justice, the Maltese Authorities insist that the procedure should differ from the appointment of the other members of the judiciary. Malta is a very small nation where current number of judiciary complement is of 44 members (Judges and Magistrates).

In such a context given the role played by the chief Justice, the proposal is that the appointment for this Office is made through the support of two-thirds of the members of Parliament. In practice, this means broad support of the main political parties (that is, the two main political parties given that Malta has had a bi-party system) and would therefore increase the legitimacy of this decision-making stage by the executive organ.

On this point there is already agreement between the Government and the Opposition after a motion in Parliament was jointly presented by the Prime Minister and the Leader of the Opposition for the appointment of the new Chief Justice (in view of the retirement of the former Chief Justice). This agreement on the method of appointment was further enabled through a unanimously approved Parliamentary Resolution passed on 1 April 2020 in favour of the appointment of the new Chief Justice. This procedure was adopted given strict deadlines that were in place due to the fact that the previous Chief Justice reached the statutory retirement age of 65 on 8 April 2020. Thus, the need and expediency to appoint the new Chief Justice (Judge Mark Chetcuti).

Malta acknowledges the fact that this deviates from one point mentioned in the Venice Commission's Opinion, this respect; however, the socio-political national context must be acknowledged and hence why Malta will respectfully defend this methodology.

It is pertinent to note that this bi-partisan agreement is historically unprecedented. Moreover, Civil Society has publicly praised the appointment of the Chief Justice. Besides this, the two-thirds majority system is also the method for the appointments of the Auditor-General and Ombudsman and the system has proved to work efficiently.

Moreover, it is in practice inefficient to have the process for the appointment of the Chief Justice to be conducted by the Judicial Appointments Committee where now the majority of the Committee will be members of the judiciary as peers who naturally could or would have a personal interest in holding such Office and therefore giving rise to potential conflict of interest.

Finally, it is pertinent to clarify that, with respect to judicial discipline, the same method explained hereunder will equally apply to the Chief Justice.

### Prosecution

Regarding the appointment of the Chief prosecutor, which, as referred to previously, is known as the Attorney General, the recently enacted and above-mentioned *ACT No. XXV of 2019*, which amended inter alia the *Attorney General Ordinance*, provides for a new appointment procedure and added checks and balances.

The Ordinance also provides for the appointment of a Deputy Attorney General.

Important opinions in this regard include the following:

- European Commission for Democracy through law (Venice Commission), *Opinion no 940/2018* of 17 December 2018 on constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement;
- *Greco Report* – fifth evaluation;

- Report of the Commission for Holistic Reform in the Field of Justice;
- Report by the Commissioner for standards in public life: Proposals to Modernise the Provisions of the Constitution on Parliament, the Judiciary and Public Administration;
- 2019 Country Specific Recommendations for Malta.

## 2. Irremovability of judges, including transfer of judges and dismissal

No changes are being considered apart from those related to disciplinary procedures covered further below.

## 3. Promotion of judges and prosecutors

As mentioned above, judiciary in Malta are not promoted but rather appointed to a post. The changes regarding the judicial appointment committee, mentioned above, will have an impact here too.

There are no developments to report concerning prosecutors, apart from the appointment procedure for the Attorney General, which has already been explained in previous sections.

## 4. Allocation of cases in courts

Throughout 2018, Malta started reviewing its case-weighting system with a view to establish a new system that reliably reflects the complexity of the cases being registered in our courts. This will result in a better distribution of the caseload, increase the levels of efficiency according to case complexity and ultimately lead to a better understanding and subsequent allocation of judicial resources to continue investing in the efficiency and quality of the justice system. In February 2018, a specialised workshop organised by the Council of Europe was held in Malta in order to establish a framework for the setting-up of such a system. This system is also aimed at helping address the issue of backlogs.

Moreover, developments on the organisation of the Courts also have an impact on the assignment of cases, to a practicable extent, according to specialisation. Recent examples include the introduction of a new legal framework which established the Court of Appeal (third Chamber)<sup>8</sup>, and a new Commercial Section to the Civil Court.<sup>9</sup>

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

Refer to the changes concerning the Judicial Appointments Committee and the Commission for the Administration of Justice mentioned in other sections.

## 6. Accountability of judges and prosecutors, including disciplinary regime and ethical rules

### Judiciary

As part of the ongoing Justice reforms, in 2016, amendments were carried out to Articles 101A (11) (on the functions of the Commission for the Administration of Justice), including a cross reference to a new Article 101B (Discipline of Judges and Magistrates) of the Constitution. Article 101B established, for the first time, a mechanism exercising discipline over members of the judiciary which include sanctions such as warnings, pecuniary penalties and temporary suspension. Moreover, pending a decision on removal, the member of the judiciary concerned may be suspended on half-pay.

Section B of Part III the Venice Commission Opinion focuses on Judicial Discipline and recommends the following improvements:

“The removal of a judge or magistrate from office should not be imposed by a political body;

There should be an appeal to a court against disciplinary decisions directly imposed by the Commission for the Administration of Justice”.

In order to fully implement these recommendations, the Maltese authorities will remove the public prosecutor from the composition of the Commission for the Administration of Justice so that the prosecutor will not be involved in the removal of any member of the judiciary. The Attorney General will be substituted by the State Advocate as already stated above

Moreover, judicial discipline, short of removal of a member of the judiciary, will be the prerogative of the Commission for the Administration of Justice and any such decision will be subject to appeal before the Constitutional Court. Thus, the Maltese authorities will be fully implementing the Venice Commission’s recommendations in this regard.

The Maltese Authorities acknowledge that there may be room for change in the sphere of the removal of judges or magistrates, but such change should not extend to the impeachment proceedings. The proposal of the Maltese

<sup>8</sup> <https://www.gov.mt/en/Government/DOI/Press%20Releases/Pages/2019/April/09/pr190734.aspx>

<sup>9</sup> Article 36(7) of Chapter 12

Authorities is to the effect that were the Commission for the Administration of Justice recommends that a member of the judiciary be removed by Parliament, the said member of the judiciary will have the right of an appeal from such recommendation to the Constitutional Court. This mechanism will respect the principle that a member of the judiciary is judged by his own peers given that the adoption of this model will give the last word by way of review to the Judicial Organ.

The Maltese Authorities also believe that any final decision on its part as to the most appropriate and best way forward to provide for the removal of a judge or magistrate is after a consultation process is conducted, in particular involving the Association of the Members of the Judiciary which holds firm views on the matter, together with other interested parties and civil society.

## Prosecution

A more recent Code of Ethics for Advocates and Legal Procurators at the Office of the Attorney General have been published in the Government Gazette of the 27 December 2019.

### 7. Remuneration / bonuses of judges and prosecutors

The salary for judges and magistrates has been increased by 25 percent. The latest increment is provided for by way of the Judges and Magistrates (Revisions of Salaries) Order (LN 21/2020).

Reforms to the pensions were carried out in 2018.

These changes follow recommendations made in the Final Report of the Commission for the holistic reform of justice sector.

### 8. Independence/autonomy of the prosecution service

Section C of Part III of the Venice Commission Opinion focuses on Prosecution where the following recommendations were made in paragraph 73:

- “1. An office of an independent Director of Public Prosecutions or Prosecutor General or Public Prosecutor should be established in Malta.
2. The office of the independent DPP would be responsible for all public prosecutions (institution, suspension or termination of criminal proceedings, including corruption).
3. The powers of the new DPP should be subject to judicial review, notably as concerns non-prosecution, upon request by the victims.
4. The AG would [not] remain the legal advisor to the Government.
5. The Police remain responsible for investigative work”.

In the same vein, the 2019 Country Specific Recommendations called for a separate prosecution service.

With a view of implementing the above recommendations, on 18 December 2019, the Office of the State Advocate, which was established in terms of Article 91A of the Constitution as the principal advisor to Government in matters of law and legal opinion, started to function. This emanates from the ‘Act to continue implementing reform in the Justice Sector (Attorney General) (Act XXV of 2019)’. The State Advocate is tasked to act in the public interest and to safeguard the legality of State action and also perform any such other duties and functions as may be conferred by the Constitution or by any law. The State Advocate enjoys constitutional independence and is not subject to the direction or control of any other person or authority in the performance of the functions conferred. Following the establishment of the Office of the State Advocate, the functions of the public prosecutor remained vested with the Attorney General whose Office already enjoys constitutional independence in terms of Article 91 of the Constitution. The Offices of the State Advocate and of the Attorney General are separate offices which operate from different premises.

Amendments have been introduced in the Attorney General Ordinance (Chapter 90) by way of Act XXV of 2019, which amendments have not yet come into force, in order to provide for the taking over by the Office of the Attorney General of prosecutions of those offences that carry a punishment of more than two years (therefore including corruption related offences) whilst the police will remain responsible for investigative work. A public call was issued by the Office of the Attorney General in order to recruit legal officers to act as prosecutors before the inferior and superior courts. It is envisaged that by the end of 2020 the office of the Attorney General will be responsible for the public prosecutions of the most serious offences. With the coming into force of the amendments to the Attorney General Ordinance, recommendations 2 and 5 of the Commission will be fully implemented whilst recommendations 1 and 4 have already been implemented by the Maltese authorities.

In so far as recommendation 3 is concerned, the Maltese authorities are proposing the introduction of legal amendments that allow for the possibility of:

- a. judicial review of decisions not to prosecute and other decisions taken by the Attorney General on the grounds of illegality or unreasonableness; and
- b. judicial review of decisions to prosecute before a particular court.

In practice, the proposed amendments would provide for the possibility of review of the decision not to prosecute, whereby the injured party would have the right to request the Attorney General to reconsider the decision taken. This request must be made by the injured party within a period of one month from when the injured party knew or could have known of the decision, whichever is the earlier. In the event that the Attorney General informs the injured party that the request was not acceded to or if no reply is issued by the Attorney General within one month, then the injured party may institute an action for judicial review before the civil courts. Such an action shall be filed by the injured party within two months from the date when the injured party becomes aware or could have become aware of the decision, whichever is the earlier. The civil courts would have the authority and jurisdiction to annul the decision of the Attorney General not to prosecute.

#### 9. Independence of the Bar (chamber/association of lawyers)

The Maltese Chamber of Advocates is a private self-regulated independent entity.

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

Ongoing reforms and the support of key stakeholders have an important bearing on the perception of the general public.

Malta is constantly evaluating the situation as we partake / provide information for the Justice Scoreboard (which has improved in 2019) and for the Eurobarometer perception of the general public 2013-2019.

#### 11. Other – Importance given to ‘Governance’

The Maltese Government for the first time has a Minister whose portfolio specifically includes governance, which emphasises a renewed mind frame of giving unprecedented priority to this matter. Moreover, a Cabinet Committee on Governance has been proposed by the new Prime Minister when he presided over his first Cabinet meeting in January 2020<sup>10</sup>. This Cabinet Committee was set up tasked with overseeing and coordinating necessary reforms and preparing the necessary laws and legal amendments necessary in line with the recommendation made by the Venice Commission and GRECO. The Government initiated consultations with stakeholders and the public. Discussions are also underway with the Venice Commission in the light of these new reforms.

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<sup>10</sup> <https://www.gov.mt/en/Government/DOI/Press%20Releases/Pages/2020/January/16/pr200054.aspx>



## I.II Quality of Justice

### Overview of the legal and institutional framework

#### Accessibility of courts

The right to a fair hearing is guaranteed under Article 39 of the Constitution of Malta. There are several elements that impact accessibility of the courts. Due to the limitations in length of this report, a comprehensive overview of such elements is not possible; instead the report will focus on certain key features.

Apart from the Courts of Justice, there are a number of statutory specialised tribunals which deal with administrative justice. Given their quasi-judicial nature in determining the violation of the rights of individuals or otherwise, they follow the principle of fair trial and the principles of natural justice. The particular advantage of these tribunals, and the factor contributing to their expansion, is their flexibility or rather informality. Tribunals have a profound impact on the accessibility of justice as they are efficient, speedy, and cost-efficient. Further information can be found under the fourth pillar. Decisions of the Administrative Review Tribunal are subject to appeal.

#### Courts of Justice – Citizens’ Charter

The Charter was adopted by the Courts’ administration in June 2016 as part of the ongoing Justice Reform. It consists of a written declaration about the level of service that citizens should expect to receive from the court administration.”

#### Court fees

Regarding court fees please refer to the Code of Organization and Civil Procedure, Schedule A (Articles 75, 179, 666, 967 and 1004) for Tariffs.

#### Digitalisation

The site [www.ecourts.gov.mt](http://www.ecourts.gov.mt) was developed to provide an online portal for courts services to be used by the General Public and Legal Practitioners, current services include:

- myCases – provides access through the National eID authentication to Civil Cases;
- myActs - provides access through the National eID authentication to Acts filed in your name;
- Online Information about Judgements;
- Online information about Judicial Sales;
- Hall Usage featuring a calendar showing the Judge who will be presiding which Court/Hall.
- An online Insolvency Register
- The ability to Get Mobile Notifications by SMS about upcoming sittings and deferred sittings amongst others;
- Ability to process Online Payments of Court Fines
- Ability to process Online Payments of Court Registry Fees

Legal Professionals have extended access rights through eCourts and have access to Acts, Warrants, availability of pre-filling Civil Forms and access to Interdiction and Incapacitation Register.

Other important ICT-related initiatives have been undertaken over the past years in order to improve the efficiency of justice as well as promote access to justice. For example, E-filing and the electronic payment of fees have been extended to more civil courts, thereby improving the penetration of the service across most civil courts.

#### Legal aid and assistance

Article 39(6) of the Constitution of Malta guarantees the rights to a legal representative and to free legal assistance to those who cannot afford to pay.

Access to a lawyer is also found in the Criminal Code (Chapter 9 of the Laws of Malta), more specifically under Article 355AUA.

Legal Aid Malta (also known as the Legal Aid Agency) was established by Legal Notice 414 of 2014. The function of the Agency is to give operational and administrative support to the Advocate of Legal Aid who heads the Agency. Legal Aid Agency (Procedures) Order (Legal Notice 64 of 2016), lays down the procedure to be adopted by the Agency for civil legal aid applications. It also spells out the functions and duties of the administration staff within the Agency.

Legal Aid Malta is composed of an Advocate for Legal Aid who directs the work of the legal aid lawyers and legal procurators. The legal procurators assist the legal aid lawyers in the day to day running. Lawyers and Legal Procurators are assigned civil and criminal cases on two different rosters.

In Civil Cases, the legal aid decision to process a recourse to the Court is based on a means and merits tests. In Criminal Cases, all persons are eligible for legal aid and no means test is required by law. A request for legal aid can be made either to the Court presiding the case or by application or orally to the Advocate for Legal Aid.

The right to legal aid throughout interrogations or when placed under arrest came into effect as of 28 November 2016.

Malta has transposed the Legal Aid Directive through Act 18 of 2020.

The Cottonera Resource Centre in collaboration with the Faculty of Laws host a legal clinic in order to help families and individuals from the Cottonera area and beyond. Students in their fifth year of study are offering legal consultation, under the supervision of senior lawyers.

Sector-specific NGOs also play an important role. NGOs like Victims Support Malta and Women's Rights Foundation offer targeted free legal assistance and initial legal representations to victims of domestic violence, sexual assault and human trafficking as well as to victims of discrimination due to gender.

### Resources of the Judiciary

**Financial resources:** The budget for the Judicial Studies Committee increased from €9,000 a year to €20,000 in line with the financial estimates of 2019 (for economic year 2020). This will enable the Judicial Studies Committee to expand the breadth and quality of training services it offers to the judiciary.

The Court Services (Establishment as an Agency) Order, 2019 (Legal Notice 197 of 2019) sets out the Court Service Agency's many functions and duties of public administration which in turn helps the judiciary function more smoothly (as can be seen from Article 3 of this Legal Notice).

**Human Resources:** It is pertinent to mention court attorneys and judicial assistants:

- Court Attorneys: Towards the end of 2015, the Department of Court Services, now Court Services Agency, introduced the position of Court Attorney in order to assist the judges in the drafting of the judgments. Court Attorneys have to be warranted lawyers and are chosen on a basis of trust by the judge himself. To date, there are approximately 20 Court Attorneys serving the judiciary in both the civil and the criminal courts.
- Judicial assistants: Judicial Assistants are expected to assist the Judge or Magistrate in the performance of his duties in accordance with Chapter 12.

### Use of Assessment tools

A judgments database, as well as a legislation database (main and subsidiary) are available for public access. The judgments database is accessible on <https://ecourts.gov.mt/onlineservices/Judgements> whereas the legislation database is accessible on <https://legislation.mt>.

The Legal Case Management System (LECAM) is used by Court registrars to manage information about Cases and the publication of Judgements. Any judge or magistrate may also access the LECAM system, where all minutes of civil court cases are available online, as well as lists of pending cases, adjournment dates and other information necessary for case management purposes. LECAM is being replaced by a modern web-based system – digiCourts – this serves as Internal Courts system. digiCourts will bring together and inter-link with other sub-system such as intranet and court citations systems to offer a seamless experience to users. [www.eCourts.gov.mt](http://www.eCourts.gov.mt) on the other hand services as the public facing portal allowing the General Public and Legal Professionals to make use of Courts Services online.

Since 2015, Malta has been carrying out Court User Satisfaction Surveys on the lines suggested by CEPEJ, CoE and adopted by the European Justice Scoreboard. These surveys target different user populations, and measure the respondents' level of importance allocated to, and satisfaction experienced by, a pre-identified set of variables. User populations that have been administered the survey so far include the court staff, lawyers, Police Inspectors and Superintendents, The Office of the Attorney General (when still incorporating the State Advocate role), the general population, and more recently the Judiciary and the Court Attorneys. The analysis of the results provides important indications for policy making.

Every month, the Department of Justice carries out a statistical analysis of the efficiency of the civil and criminal courts comparing current performance to previous years. This analysis helps uncover strongholds and weaknesses in efficiency and allows the authorities to take remedial action, when possible. This data also informs which projects are undertaken in order to carry out reform. For example, the persistent backlog within the Civil Court of Appeal, Superior Jurisdiction and the excessive length of procedures in compilation of evidence cases, inspired the SRSS 2 project entitled 'Supporting the efficiency of justice in Malta' whereby CEPEJ and the Legal Co-Operation Unit, both within the Council of Europe, offered recommendations on how to address these 2 areas of inefficiency.

Furthermore, this data forms the basis of the information submitted to CEPEJ every 2 years for the Evaluation of Justice Systems, and every year for the European Justice Scoreboard.

Courts statistics are available online.



Throughout 2019, Malta benefitted from a project funded by the Commission's Structural Reform Support Service (SRSS), with the aim to strengthen the efficiency of the Maltese justice system. This is explained in further detail below.

## Significant developments

### 12. Accessibility of courts (e.g. court fees, legal aid)

Malta fully transposed the Legal Aid Directive (Directive 2016/1919 of 26 October 2016) into its Criminal Code (Chapter 9 of the Laws of Malta), through Act 18 of 2020, thereby continuing to further improve its legal aid framework.

Moreover, Malta has successfully secured expert assistance from CEPEJ (Council of Europe) under the Structural Reform Support Services (SRSS) to launch a project aimed at drafting the first national digital strategy for the justice sector, in order to inter alia render the justice system, including the Law Courts, more accessible. The project aims to prepare the justice sector to embrace digitisation and explore AI applications in an effort to also improve the overall efficiency and quality of the justice system. During the project's lifetime, the international experts and local stakeholders will seek to: (i) carry out an analysis of the current state of play of ICT initiatives in Malta; (ii) assess the application of digital strategies abroad; (iii) carry out horizontal discussions with all stakeholder in the justice and digital sector in order to delineate the parameters of the justice strategy; and (iv) draft an overall digital strategy, and specific action plans.

### 13. Resources of the judiciary (human / financial)

The increase of judicial assistants in the years 2018-2019 in order to assist the judiciary in the drafting of judgments, has been found to reap positive effects on the efficiency of the case management process. By the end of this exercise, all the Magistrates serving in the civil and criminal courts were assigned a judicial assistant, thereby completing furthermore the judicial team.

### 14. Use of assessment tools and standards<sup>11</sup>

Throughout 2019, Malta benefitted from a project funded by the Commission's Structural Reform Support Service (SRSS), with the aim to strengthen the efficiency of the Maltese justice system. The project objectives included:

- Component 1: Reviewing the Committal proceedings with a view to making the system more efficient;
- Component 2: Addressing the efficiency of the Civil Court of Appeal, Superior Jurisdiction;
- Component 3: Supporting the development of a Human Resource Strategy for the Court personnel.

The project lasted for 1 year with the final conference being held in November 2019 during which a document outlining the recommendations for each objective was presented to the Ministry. An extension to the project was subsequently requested in order to test the piloting of a triage office (Component 2), as well as to assist in a more practical way the setting up of a HR strategy within the CSA (Component 3).

SRSS 3: "Establishing a Digital Strategy for the Maltese Justice Sector". This project is ear-marked to start in 2020 in collaboration with the Council of Europe with a timeframe of one (1) year. Through this project, Malta is requesting assistance to draft the first digital strategy for justice that:

- unifies all entities working within the justice sector in such a way that ICT initiatives are better coordinated and follow a pre-established action plan;
- identifies lacunae in ICT provision that will enhance inter-agency collaboration and improve the overall efficiency of the justice system;
- introduce AI as an aid to professionals and citizens using the justice system through structured and unstructured data analysis.

Following the termination of the project, a public consultation is planned to be launched in order to ensure that the ensuing digital strategy takes into account all sectors operating within the justice sphere.

### 15. Other

Nothing else to add.

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<sup>11</sup> (e.g. ICT systems for case management, court statistics, monitoring, evaluation, surveys)

## I.III Efficiency of the justice system

### Overview of the legal and institutional framework

#### Length of proceedings

Malta has many different time frames from one phase to another in criminal and civil cases: for instance the term of service of summons as provided for in Article 361 of the Criminal Code stipulates that except in urgent cases, the summons shall be served on the person summoned at least two working days previous to the day fixed for his appearance; and for instance the term for conclusion of inquiry as provided for in Article 401 of the Criminal Code stipulates that the inquiry shall be concluded within the term of one month which may, upon good cause being shown, be extended by the President of Malta for further periods each of one month, each such extension being made upon a demand in writing by the court: Provided that the said term shall not in the aggregate be so extended to more than three months: Provided further that unless bail has been granted, the accused shall be brought before the court at least once every fifteen days in order that the court may decide whether he should again be remanded in custody.

Also for instance, Article 144 (2) of the Code of Organization and Civil Procedure (COCP) (Chapter 12 of the Laws of Malta) provides that in the case of a cross appeal in terms of article 240, the party against whom the cross appeal is directed shall within the said time of twenty days file a reply rebutting the allegations included in the cross appeal.

Article 195 (3) and (4) of the Code of Organization and Civil Procedure also provides that all causes shall be appointed for hearing within two months and sittings shall be held on a bi-monthly basis, provided that the court may decide, either where it deems to be appropriate or after consultation with the advocates of the parties or in any other case where the cause is to be heard with urgency, to fix an earlier date, and where such date and time has been so fixed, no adjournment of the hearing shall be granted except for grave and exceptional reasons to be stated in the records of the case.

Moreover, Article 195 (5) (a) of the COCP (Chapter 12 of the Laws of Malta) holds that where a cause has been pending before a particular court for three or more years, any party to the case may, personally, and without the need of representation by any advocate, present an application, to the Chief Justice requesting that, for the simple reason that the cause has taken so long, the presiding member of the court be changed and the case assigned to another member of the judiciary; the decision of the Chief Justice, which shall be taken in camera, shall be final and conclusive; and where such assignment takes place there shall be no need for any notification of such assignment.

Furthermore, where a cause has been pending for judgment before a particular court for eighteen months or more, any party to the case may, personally, and without the need of representation by any advocate, present an application, to the Chief Justice for this purpose, and the Chief Justice may, for the simple reason that the judgment has taken so long to be delivered, allow the request for the presiding member of the court to be changed and for the case for judgment to be assigned to another member of the judiciary; the decision of the Chief Justice, which shall be taken in camera, shall be final and conclusive; and where such assignment takes place there shall be no need for any notification of such assignment.

Notwithstanding all this, it is important to point out that Malta does not have 'timeframes' as understood by the EU Justice Scoreboard, meaning a system that pre-defines the proportion of cases to be disposed of within a certain time period.

#### Enforcement of judgment

Title VII of the Code of Organization and Civil Procedure is entitled 'Of the enforcement of judgements and other executive titles. Articles 252- 281 provide modes of enforcement of judgements and executive titles. For instance, Article 255 provides that the following can be enforced after the lapse of twenty-four hours from delivery:

- a) any judgment on any collateral issue or any interlocutory decree, provided the time for enforcement is not stated in the judgment or decree itself;
- b) any judgment rescinding a warrant of impediment of departure of any ship, or rescinding any warrant of seizure or any garnishee order relating to ships or merchandise;
- c) any judgment ordering the supply of maintenance;
- d) any award of an arbitrator in accordance with the Arbitration Act.

Any other definitive judgment which does not contain any suspensive condition, and which condemns a debtor to pay a liquidated sum, or to deliver up or surrender a specific thing, or to perform or fulfil any specific act or obligation whatsoever, may be enforced after two days from the day of its delivery. The enforcement of any other executive title may only take place after the lapse of at least two days from the service of an intimation for payment made by means of a judicial act. The court may, on grounds of urgency, order the enforcement of any judgment even before the expiration of the times referred to above. The order for such enforcement may be made in the judgment itself.

## Significant developments

### 16. Length of proceedings

Malta, like every other Member States, participates in the EU Justice Scoreboard and submits all required information on an annual basis. The data collected and analysed on a monthly basis, referred to above, reflects the efficiency parameters normally requested by CEPEJ and the Justice Scoreboard.

We are constantly collecting data on incoming cases, pending cases, age of cases, length of procedures (Disposition Time) and clearance rate.

As stated above, Malta is benefiting from a project funded by the Commission's Structural Reform Support Service (SRSS), with the aim to strengthen the efficiency of the Maltese justice system. In this regard, it is pertinent to mention the SRSS 2 project: "Supporting the Efficiency of Justice in Malta". This project commenced in December 2018 and was finalised and a report adopted in November 2019. This being said and considering that we still have current pending funds a six (6) month extension has been granted in order to assist with the implementation of some of the recommendations that were given to Malta by the Council of Europe.

### 17. Enforcement of judgments

There are no specific developments to report.

### 18. Other – please specify

Nothing else to add.

## II. Anti-corruption framework

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

### Overview of the legal and institutional framework

The relevant authorities in charge of the anti-corruption institutional framework are various, reflecting the vastness of the area. The following are the institutions tasked with this role:

- The Permanent Commission Against Corruption as established by the Permanent Commission against Corruption (PCAC) Act (Chapter 326 of the Laws of Malta).
- The Executive Police's powers and role are defined in the Police Act (Chapter 164 of the Laws of Malta) and the Criminal Code, (Chapter 9 of the Laws of Malta). The Executive Police has the role to prevent the commission of offences and to enforce the observance of laws. It also has the power to ask the Attorney General for certain investigative tools, such as attachment and investigation orders (Article 4 et seq of Chapter 373 of the Laws of Malta). Currently, the commencement of prosecution rests on the Executive Police, on advice from the Attorney General. However, this is due to change as explained in the first pillar of this report, once the relevant Article enters into force.
- The Attorney General as per the Attorney General Ordinance (Chapter 90 of the Laws of Malta). Articles 2 and 3 of the Attorney General Ordinance (Chapter 90 of the Laws of Malta) lay down the Attorney General's powers. A number of lawyers within the Office of the Attorney General work on such matters. Information on reforms concerning the Attorney General are covered under the first pillar of this report.
- The Committee for Standards in Public Life as per the Standards in Public Life Act (Chapter 570 of the Laws of Malta). The Standards Commissioner can consider whether Ministers, Parliamentary Secretaries or Members of Parliament have acted in ways that are illegal, or in breach of any ethical duty set by law or are in abuse of power. The Commissioner can also consider whether persons of trust have breached their ethical obligations.
- The Internal Audit and Financial Investigations Department (IAID) as per the Internal Audit and Financial Investigations Act (Chapter 461 of the Laws of Malta)<sup>12</sup>. IAID and its staff is independent from the auditee. This is necessary so that it ensures objective judgment which is essential to its proper conduct and impartial advice to Government. It has 32 staff members (including 5 staff members in Administration) and is headed by a Director General. The IAID comprises four Directorates: Internal Audit & Risk Management Directorate; Central Harmonisation Directorate; Financial Investigations Directorate and EU Funds Audits Directorate. This Act also created the Internal Audit and Investigations Board (Article 6). Amongst others, this Board will independently and objectively monitor public internal financial control function as well as to carry out financial investigations.
- The Co-ordinating Committee set up in terms of Article 23 of the Internal Audit and Financial Investigations Act (Chapter 461 of the Laws of Malta). This Co-ordinating Committee was set up for the purposes of aiding the Internal Audit and Investigations Board in serving as an independent and objective body (Article 9(a) of Chapter 461), so as to co-ordinate and facilitate the exchange of information between the various entities responsible for protection of public funds.
- The Auditor General as per the Constitution of Malta and the Auditor General and National Audit Office Act (Chapter 396 of the Laws of Malta). One of the sections forming part of this Office carries out special audit assignments as requested by the Public Accounts Committee or by the Minister responsible for Finance. Generally, such requests focus on alleged irregularities involving the use of public funds. Most of NAO's resources, around 50 members of staff, perform audit work which essentially focuses on the enhancement of good practice across the public sector.
- External Whistleblowing Disclosure Unit as per the Protection of the Whistleblower Act (Chapter 527 of the Laws of Malta).
- The Department of Contracts within the Ministry for Finance and Financial Services was established via the Public Procurement Regulations (Subsidiary Legislation 601.03) and is headed by the Director of Contracts (Regulation 10). After having received any form of reporting denoting fraudulent activities in public procurement, the Director of Contracts, after conducting his investigations, can forward his findings to the Executive Police and the IAID.

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<sup>12</sup> It should be noted that prosecuting corruption is not within IAID's remit. If there is suspicion of a criminal offence, the Attorney General is to be informed.

In 2008, Malta adopted a National Anti-Fraud and Corruption Strategy, aiming to set up a normative, institutional and operational framework, reflecting local requirements and international obligations.

Apart from the abovementioned, the Prevention of Corruption in Sport Act (Chapter 593 of the Laws of Malta). Prosecution is the responsibility of the Executive Police which may be assisted by the Sports Integrity Unit established by the same Act.

## Significant developments

In 2019, the Council of Europe's GRECO adopted the 'Fifth Evaluation Round - Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies Evaluation Report'. This report carried out an evaluation of the anti-corruption framework specifically with regard to Ministers, senior government officials and members of the Police Force. GRECO also made twenty-three recommendations in connection to central governments (top executive functions) and law enforcement agencies. The implementation of the recommendations will be assessed by GRECO in the beginning of 2021 through its specific compliance procedure. Most of the recommendations made by GRECO are along the same lines as those made by the Venice Commission in its Opinion, published in December 2018 and which are already being addressed by the Government, as outlined above.

Implementation of the recommendations made by GRECO is therefore currently underway.

### 19. Relevant authorities in charge of prevention, detection, investigation, and prosecution of corruption.

#### National Anti-Fraud and Corruption Strategy (NAFCS)

IAID is in the process of coordinating the update of the Maltese National Anti-Fraud and Corruption Strategy (NAFCS) of 2008. The IAID disseminated working documents developed by a working group of Member States' experts, directed and coordinated with OLAF. Topics include the identification of conflicts of interest, fraud prevention and detection etc. IAID has also delivered a number of training sessions on "Anti-Fraud and Corruption for Public Officers".

#### Permanent Commission Against Corruption

The Venice Commission identifies, in paragraph 72 of its Opinion, two structural shortcomings in the set up and operation of the Permanent Commission Against Corruption (PCAC) being:

- the appointment of the members by the Prime Minister; and
- the reports with the findings of the PCAC are sent to the Minister responsible for justice.

In order to address these shortcomings, legal amendments are being proposed which provide for the chairperson of the PCAC to be appointed by the President acting in accordance with the resolution of the House of Representatives supported by the votes of no less than two-thirds of all the members of the House; whilst the two remaining members of the PCAC will be appointed by the President acting in accordance with the advice of the Cabinet given after consulting the Leader of the Opposition.

An amendment is also being proposed for those reports which contain a finding of corrupt conduct in the opinion of the PCAC, to be transmitted directly to the Attorney General.

#### Malta Police Force - Investigation

##### Commissioner of Police

The Maltese Parliament, on 1 April 2020, agreed on a Bill which changes the selection and appointment process for the Police Commissioner. Now, the Public Service Commission (the PSC) as an independent organ enshrined in the Constitution (and composed of individuals nominated by both the Prime Minister and the Leader of the Opposition), is tasked with issuing a public call for the post. The PSC will be required to conduct this public call in a fully independent and autonomous manner and will then propose two candidates before the Cabinet. The Cabinet is then obliged to select a single candidate out of the two short-listed candidates. The newly proposed method also envisaged that the eventual short-listed nominee would go before the Parliaments' Public Appointments Committee in order to undergo parliamentary scrutiny.

This scrutiny session would also be open to the media (including a public live-streaming session).

##### Economic Crimes Unit

The Economic Crimes Squad within the Malta Police Force has been very active in investigating several cases involving corruption. It has even worked in conjunction with the Anti-Money Laundering Squad and other Government authorities such as the Internal Audit and Investigations Department in this area. Apart from pursuing charges directly related to corruption, the Economic Crimes Squad actively persists to find any other illegal activity emanating from such investigations and proceeds to arraign such persons even on alternative charges.

The reform of the Financial Crimes Investigations Department is on track with ongoing developments related to training, blockchain analysis capabilities, enhancement of the intelligence analysis tool, increase resources, access to additional databases, increases in the number of Investigation and Attachment Orders, and a positive trend in the number of outgoing requests for assistance from foreign jurisdictions. Two Superintendents have been assigned to the Department to give specific focus on both the Economic Crimes and the Anti-Money Laundering Squads. The department is currently up and running and there is an ongoing process to recruit more financial analysts. In 2020, the Financial Crimes Investigations Department will also be moving in new premises. These premises will be equipped with modern investigative tools and upgraded equipment. The Department's personnel is also being increased, with nine new prospective investigators currently undergoing their training programme.

The Malta Police Force is in the process of purchasing i2 software, a project financed by the Hercule III European Funding. This software will be able to cross check different data into a centralised database and will also make it easier for the Force to coordinate with other Maltese entities in order to facilitate financial crime investigations and reduce criminal activity such as fraud and money laundering, among others. This project is expected to be finalised within 18 months and will also include four types of training, which will be given to 30 Police Officers. The training will be related to the use of the software and other areas within this sector.

### National Coordinating Committee on Combating Money Laundering and Funding of Terrorism

The National Coordinating Committee on Combating Money Laundering and Funding of Terrorism (NCC) was established in 2018 within the Ministry for Finance via the [National Coordinating Committee on Combating Money Laundering and Funding of Terrorism Regulations \(S.L. 373.02\)](#). The NCC is the governing body responsible for the general oversight of Anti-Money Laundering and Combatting the Financing of Terrorism (AML/CFT) policy as well as the promotion of effective collaboration between the relevant entities. Several sub-committees (involving technical officials from competent authorities such as FIAU, MFSA, the Police Force, the AGO, Sanctions Monitoring Board, Office of the Commissioner for Voluntary Organisations and the Malta Gaming Authority) have been created under its auspices. The purpose of these meetings is to coordinate and support the various actions, identified in the National Strategy Action Plan as being necessary in order to address the problem of Money Laundering and Terrorism Financing.

The NCC has recently just finished coordinating submissions to the Commission on the effectiveness of the implemented fifth AMLD. The Maltese Government has made all the necessary amendments to the Civil Code, the Companies Act, the Trusts and Trustees Act, and the Prevention of Money Laundering Act and has fully transposed Directive (EU) 2018/843.

The NCC has also taken on an active role in preparing and coordinating the Moneyval evaluation. The NCC has coordinated with the relevant departments involved or mentioned in the Moneyval evaluation report (MER), in order to highlight the deficiencies, establish the required action, as well as coordinate the drafting and submissions of any required feedback. The NCC Secretariat has prepared three sectoral risk assessments on terrorism financing, legal entities, legal arrangements and voluntary organisations and virtual financial assets, which were then endorsed by NCC Members. Key results as well as Action Plans related to these risk assessments have been finalised. All these are published on the NCC's [website](#).

The NCC has also worked on identifying the local risks and vulnerabilities with regard to organised crime groups. It is also planned that the NCC will be updating the National Risk assessment by the end of 2020. This update will be based on the feedback the NCC will be receiving from all concerned entities. The NCC is also promoting and financing AML/CFT training for officials from the competent authorities, given that this was an MER recommendation. The NCC in collaboration with the U.S.A. Embassy has provided a one-week period of training in Financial Investigative Techniques for 40 officials from different competent authorities, whilst in February 2020, it collaborated with the UK Embassy on training relating to combatting terrorism financing. The NCC is currently working on training in Forensic Accounting and Due Diligence. It is also working on providing training sessions for the judiciary so that they are exposed as to how the foreign courts tackle AML and CFT cases and to share ideas with their foreign counterparts.

### Financial Intelligence Analysis Unit (FIAU)

The FIAU's Legal and International Affairs Team has been heavily involved in drafting a series of amendments to both the Prevent of Money Laundering Act (PMLA) and the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR). The said amendments were published through [Act I of 2020](#) and [Legal Notice 26 of 2020](#) respectively. Whilst the greater bulk of the said amendments form part of the transposition of Directive (EU) 2018/843, they also addressed issues that had been highlighted by Moneyval assessors in the Fifth Round Mutual Evaluation Report and in the Venice Commission report. Some examples of amendments to the PMLA addressing MONEYVAL's and the Venice Commission's recommendations, include:

- setting clear timelines within which an appeal against an administrative sanction imposed by the FIAU is to be heard and decided;
- rendering supervision efforts to be more efficient and hence more effective;
- changes in the way the publication of penalties takes place;
- making the publications regime more effective, whilst at the same time respecting the principle of proportionality;
- introducing new authorities that sit on the FIAU Board of Governors – the Malta Gaming Authority and the Commissioner for Revenue. The Office of the Attorney General is no longer represented on the FIAU Board of Governors.

The FIAU has now initiated the second phase of this exercise addressing Moneyval’s recommendations made in relation to the legal provisions found under the PMLFTR. In April 2020 the FIAU issued a consultation paper on the revised version of the PMLFTR (consultation closed on 17 April). Following this process, the FIAU is to propose a Legal Notice.

#### Prosecution

Please refer to the changes related to the prosecution service under the first pillar of this national contribution.

#### Auditor General and National Audit Office

As is further explained under the fourth pillar of this report, the Auditor General has presented the President with various proposals for amendments intended to strengthen the National Audit Office in the context of the public consultation process on the reform of the Constitution.

#### Other information concerning the Fight Against Fraud

Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law was fully transposed into Maltese law by means of the ‘Criminal Code (Amendment No. 2) Act, 2020’ (Act XVIII of 2020), which was published in the Government Gazette of Malta on 7 April 2020. This led to amendments to the Criminal Code.



## II.II Prevention

### Overview of the legal and institutional framework

Integrity framework: asset disclosure rules, lobbying, revolving doors and general transparency of public decision-making [including public access to information]

#### Asset disclosure rules

The Commissioner of Standards in Public Life can examine and verify the declarations of assets and interests made by Members of Parliament and Ministers (Article 13(1)(a) of the Standards in Public Life Act (Chapter 570 of the Laws of Malta).

Clause 5 of the Code of Ethics of the House of Representatives (First Schedule) found in the House of Representatives (Privileges and Powers) Ordinance (Chapter 113 of the Laws of Malta), provides that members of the House of Representatives are to disclose annually, in a register kept by the Speaker of the House various information, including immovable property owned by such members and their spouses and children; shares in commercial companies investments; directorships or other official positions in commercial companies; etc. This register is open to public inspection.

Clause 7.3 of the Code of Ethics for Ministers and Parliamentary Secretaries (Second Schedule) found in the abovementioned Standards in Public Life Act (Chapter 570 of the Laws of Malta) holds that once appointed, a Minister or Parliamentary Secretary is to immediately provide a declaration of assets and interests to the Cabinet Secretary.

Any perception of a conflict of interest is to be indicated to the Cabinet Secretary. This shall be done on an annual basis.

#### Lobbying

According to Clause 10.4 of the Code of Ethics for Ministers and Parliamentary Secretaries (found in the Second Schedule to Chapter 570 of the Laws of Malta), Ministers are to ensure that they have open communication with social partners (such as the Malta Council for Economic and Social Development), the media, NGOs, professional associations and the public. Article 13(1)(f) of the Standards in Public Life Act states that amongst the Commissioner for Standards in Public life's functions there is the identification of lobbying activities and issuing guidelines and recommendations in connection to those lobbying activities.

In Clause 5 (i) of the Code of Ethics of the House of Representatives found in the House of Representatives (Privileges and Powers) Ordinance, members of the House of Representatives are to report to the Speaker and the competent authorities any attempts at corruption, pressure or undue influence. This is also connected to the Code of Ethics for Ministers and Parliamentary Secretaries found in the Standards in Public Life Act, specifically Clause 5.2. This particular clause guides Ministers and Parliamentary Secretaries to 'not put themselves in a position of being influenced by a financial obligation or otherwise of persons or organisations that try to do so, or make improper use of information that comes to their knowledge because of their office in order to give undue advantage to someone whilst disadvantaging others.'

#### Revolving doors

In terms of revolving doors, public employees holding posts that involve regulatory and inspectorate functions may be required to sign an undertaking to the effect that, for a period of two years after resigning from public employment, he will not take up employment with any of those firms, as per Article 4(5)(a) of the Public Administration Act (Chapter 595 of the Laws of Malta). Clause 12 of the Code of Ethics for Public Employees and Board Members holds that former public employees bound by an undertaking shall not, for a period of two years after leaving their public post entering into a profitable relationship with either a private enterprise or a non-government body, with which that former employee dealt with in his official capacity for a period up to five years prior his leaving public employment.

#### General transparency of public decision-making (including public access to information)

The Freedom of Information Act (Chapter 496 of the Laws of Malta) establishes the right to the general public to information held by public authorities in order to promote added transparency and accountability in government.

The general public may request documents held by Public Authorities. The Public Authority shall decide the request within 20 working days. The Freedom of Information Act empowers an applicant to escalate their request to the Information and Data Protection Commissioner, if they are not satisfied with the way the Public Authority handled their request.

Every Public Authority has appointed an FOI Officer who handles requests for documents submitted by the public and represent the Public Authority in all matters related to the FOI Act.

Information on who to contact and how is found on their website.

## Rules on preventing conflict of interest in the public sector

Public employees and board members shall ensure that there is no conflict of interest between their duties and other interests. This is dealt with in the Code of Ethics for Public Employees and Board Members – Schedule 1 of the Public Administration Act (Chapter 595 of the Laws of Malta).

The Prevention of Money laundering Act (Chapter 373 of the Laws of Malta) takes an all crime approach, and is thus applicable to all types of crimes, even those committed abroad. Therefore, it is also applicable in the context of anti-corruption.

## Measures in place to ensure Whistle-blower protection and encourage report of corruption

The Protection of the Whistleblower Act (Chapter 527 of the Laws of Malta), which came into force in 2013, makes provision for procedures in terms of which employees in both the private sector and in the public administration may disclose information regarding improper practices by their employers and other employees in the employ of their employers, thereby protecting employees who make said disclosures from detrimental action. This enhances confidence in the place of work through enhanced transparency and accountability. Every employer, including all Ministries, must identify a whistleblowing reporting officer detailed to receive reports from employees who would like to make a protected disclosure of an improper practice. In turn, the whistleblowing reporting officer is to take action or else – in the case of actions amounting to criminal offences – report to the Police within reasonable time.

In the absence of a whistleblowing reporting officer, an employee can make a protected disclosure to his/her head (who in turn becomes a whistleblowing reporting officer by default).

If no action has been taken and reported back to the whistle-blower by the whistleblowing reporting officer, or if the head of the organisation is or may be involved in the alleged improper practice, then the whistle-blower can disclose the alleged improper practice to one of the following authorities, by way of an external disclosure: Auditor General; Commissioner for Revenue; Commissioner for Voluntary Organisations; Financial Intelligence Analysis Unit; Malta Financial Services Authority; Ombudsman; or the Permanent Commission Against Corruption. The whistleblowing can be exercised on facts which happened both before and after the law entered into force. This legislation gives full protection to all those who act in good faith. At the same time, it also serves as an incentive to all those who did any wrongdoing to reveal their actions.

## List the sectors with high risks of corruption in your Member State and list the relevant measures

The European Semester 2020 Country Report for Malta makes reference to several sectors, namely, the public procurement as well as the citizenship-by-investment scheme (Individual Investor Programme) and the residence scheme (Malta Residence Visa Programme). Some information concerning public procurement and the citizenship by investment scheme have been included below.

### Public Procurement

Public procurement is one of the government activities which is most vulnerable to corruption. In addition to the volume of transactions and the financial interests at stake, corruption risks are exacerbated by the complexity of the process, the close interaction between public officials and businesses, and the multitude of stakeholders. Accordingly, the following are the measures, through the resources available, that have been adopted by the Department of Contracts:

- raising awareness of the new public procurement regulations among all public procurement officials (Training)
- overhauling the organisation of the public sector (Ministerial Procurement Units);
- promoting a culture of integrity in the public service and among businesses (Compliance and Monitoring Unit);
- ensuring better collection and analysis of data on procurement, both for above and below EU thresholds, to improve public procurement governance (Compliance and Monitoring Unit);
- establishing public procurement irregularities databases based on remedies and audits; (through regular audits);
- ensuring better interaction and cooperation between public procurement units, the public, and all stakeholders (Compliance and Monitoring Unit).

There are also seven<sup>13</sup> Ministerial Procurement Units that process, publish, administer and recommend the award of a call for tenders published under the open procedure, where the estimated value of this call for tenders exceeds ten thousand euro (€10,000) but does not exceed two hundred and fifty thousand euro (€250,000).

In 2015, the Department of Contracts established the Compliance and Monitoring Unit. The role of this unit is to monitor the compliance and performance of public procurement systems. Monitoring allows for early identification and

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<sup>13</sup> Ministry for Education and Employment (MEDE); Ministry for Justice, Equality and Government (MJEG); Ministry for the Family, Children's Rights and Social Solidarity (MFCS); Ministry for Home Affairs, National Security and Law Enforcement (MHSE); Ministry for Gozo (MGOZ); Ministry for Transport, Infrastructure and Capital Projects (MTIP); Ministry for Environment, Climate Change and Planning (MECP)

correction before a problem festers and causes the Contracting Authority (CA) to be in non-compliance. Possible fraud and corruption can be identified during monitoring activities.

The area of public procurement is regulated by the following regulations (the regulations specifically referring to anti-corruption are also outlined):

- Regulations 103, 187 and 192 of the Public Procurement Regulations (S.L.601.03);
- Regulations 160 of the Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations (S.L.601.05);
- Regulations 12 and 14 of the Concession Contracts Regulations (S.L. 601.09);
- Emergency Procurement Regulations (S.L. 601.08).

Part IV of the Public Procurement Regulations (S.L 601.03) deals with the Exclusion and Blacklisting of Economic Operators.

#### Direct Orders

The Ministry for Finance Circular 3 of 2013 qualifies Regulation 103 of the Public Procurement Regulations. This Circular specifies that the least preferred procurement procedure is that related to direct orders. Procurement Policy note 32 clarifies the above circular.

In 2018, the requests database was standardised, and a report is submitted quarterly to the Ministry for Finance. A yearly report is also produced.

Citizenship-by-investment scheme (Individual Investor Programme) and the residence scheme (Malta Residence Visa Programme)

The Individual Investor Programme of the Republic of Malta is regulated by the Maltese Citizenship Act (Chapter 188 of the Laws of Malta) and the Individual Investor Programme of the Republic of Malta Regulations, 2014 (L.N. 47 of 2014). Successful applicants who meet all the required criteria are granted citizenship by a certificate of naturalization for them and their families in return for the contribution to the economic development of Malta, as provided in these regulations. The Malta IIP has a four-tier due diligence process, which involves local and international law enforcement agencies, and also works closely with FIAU to ensure adherence to AML/CFT. Malta's programme is considered the most stringent, and of the highest standard, in the industry and is also scrutinised by a dedicated regulator to ensure a fair and just process.

The Individual Investor Programme is under continuous scrutiny from the Regulator – an independent body who monitors the programme and ensures that the right processes and procedures are stringently implemented in all areas of the Agency's operations at all times. The Regulator tables an annual report to the House of Representatives highlighting what was carried out during the previous 12 months whilst also putting forward suggestions on how to improve the programme. The report is first discussed during a dedicated bi-partisan Monitoring Committee that meets at least once a year. This Committee is composed of the Prime Minister, the Opposition Leader and the Minister responsible for Citizenship. The latest report of this sort was published in 2019.

The Malta Residence and Visa Programme falls under the Immigration Act. By virtue of Legal Notice 288 of 2015, as amended by Legal Notice 189 of 2017, Successful applicants (third country nationals) who meet the eligibility criteria may be issued with a certificate in terms of these Regulations. The third country national is entitled to the right to reside, settle or stay indefinitely in Malta together with one's registered dependants.

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

The below mentioned legislation is relevant in the prevention of corruption in the public and private sector:

- Article 17A of the Central Bank of Malta Act (Chapter 204 of the Laws of Malta) is concerned with Macro-prudential policy, including co-operation with the European Systemic Risk Board and other International Organisations. Parts IV, V and IX are also applicable;
- Article 3 of the Inquiries Act (Chapter 273 of the Laws of Malta) states that this Act is applicable to any Board appointed or authorised by or under any law, to carry out any inquiry into matters concerning (a) the conduct of public (and similar); (b) the conduct or management of any department of Government or of any statutory body; (c) any matter falling within the functions or responsibility of any such department or body, or otherwise concerning or affecting a service of the Government, with particular (but not exclusive focus on Boards or other authorities concerned with public officer discipline);
- Articles 12 and 15 of the Accountancy Profession Act (Chapter 281 of the Laws of Malta) regulate breaches in professional duties as an accountant or auditor, including acts or omissions amounting to dishonesty or serious

misconduct. Article 18 deals with the publication of a transparency report in the case of audits of public-interest entities;

- The Commissioners for Justice Act (Chapter 291 of the Laws of Malta) in its generality;
- The Commission for the Administration of Justice Act (Chapter 369 of the Laws of Malta) which deals with the regulation of the ethical conduct of members of the legal profession(s);
- Article 121 of the Social Security Act (Chapter 318 of the Laws of Malta);
- The Ministers (Delegation of Functions) Act (Chapter 324 of the Laws of Malta) in its generality;
- The Inferior Courts (Re-Designation) Act (Chapter 340 of the Laws of Malta) in its generality;
- The Tribunal for the Investigation of Injustices Act (Chapter 394 of the Laws of Malta) in its generality and more specifically Article 6;
- The Fiscal Responsibility Act (Chapter 394 of the Laws of Malta) in its generality and more specifically Article 57;
- Financing of Political Parties Act (Chapter 544 of the Laws of Malta) in its generality;
- Article 7 of the Gaming Act (Chapter 583 of the Laws of Malta of the Laws of Malta), and the act in its generality;
- Prevention of Corruption in Sports Act (Chapter 593 of the Laws of Malta) in its generality;
- Public Finance Management Act (Chapter 601 of the Laws of Malta) in its generality and also specifically Article 8.

## Significant developments

### 20. Integrity framework: asset disclosure rules, lobbying, revolving doors and general transparency of public decision-making (including public access to information)

As already explained, the Maltese Government is currently working on addressing GRECO's recommendations, most of which are being addressed through the implementation of the Venice Commission recommendations (given the overlap).

#### Asset Disclosure rules

In their respective Codes of Ethics for Ministers, Parliamentary Secretaries and Parliamentarians, the Standards in Public Life Act (Chapter 570 of the Laws of Malta) introduced rules regarding asset disclosure as mentioned above.

#### Lobbying

In February 2020, the Commissioner for Standards in Public Life published a consultation paper titled 'Towards the Regulation of Lobbying in Malta'. In this consultation paper, the Commissioner for Standards in Public Life proposed that lobbying in Malta be governed by a new law. Amongst others, it was proposed for a register of Lobbyists is created and this register be maintained by the Commissioner, that lobbyists be governed by a code of conduct and that Ministers, Parliamentary Secretaries and Heads and Deputy Heads of Secretariats should register all relevant communication in a Transparency Register. It was also proposed that Ministers, Parliamentary Secretaries and other designated public officials be barred from acting as lobbyists for a specific time frame and that the Commissioner would be able to impose sanctions. The public consultation period ends in May 2020. The Commissioner is to present the revised proposal as formal recommendations to the Maltese Government.

The Ministry for the Environment, Climate Change and Planning has established a transparency register platform, which will act as a pilot project.

#### Revolving doors

The Public Administration Act (Chapter 497 of the Laws of Malta) was repealed by Act III of 2019 and a new Public Administration Act (Chapter 595 of the Laws of Malta) came into force in 2019. The specific legislation on revolving doors (Articles 4(5)(a) and (6)) were included in this new act and Clause 12 of the Code of Ethics for Public Employees and Board Members, as referred further above under the overview section. The Competent Authority is the Revolving Door Policy Governing Board established by the same provisions. Conflict of Interest is regulated via Article 5 of the Public Administration Act (Chapter 595 of the Laws of Malta). Clause 10 of the Code of Ethics for Public Employees and Board Members specifically deals with Conflicts of Interest.

#### General transparency of public decision-making (public access to information)

The Freedom of Information Act of 2008 is in place and adequately addresses the requirements of general transparency of public decision-making.

Also, an assessment on the way forward in eliminating the narrow interpretation given to public interest disclosure is currently underway. This is in line with the GRECO recommendations made in its Fifth Round Evaluation Report.

### 21. Rules on preventing conflict of interests in the public sector

In Case K/002, the Commissioner for Standards in Public Life dealt with the potential conflict of interest of backbench members on both sides of the House of Representatives, who hold positions within or provide contractual services to the public sector.

The Commissioner concluded that this practice is in itself wrong.

### 22. Measures in place to ensure Whistle-blower protection and encourage reporting of corruption

Work is currently ongoing on the transposition of the Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law. The Maltese Government is currently assessing the necessary administrative arrangements that need to be made in order to transpose the Directives in the most effective manner possible.

### 23. List the sectors with high risks of corruption in your Member State and list the relevant measures taken /envisaged for preventing corruption in these sectors. (e.g. public procurement, healthcare, other).

#### Public Procurement

The Public Procurement Directives exclude from the remit of the directives 'public service contracts for the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon'. The Government is seeking to regulate this by an ad hoc legal notice called 'Procurement of Property Regulations'.

Between 2018 and 2019, the OECD worked with the Maltese Government in the overhauling of the Department of Contracts. Following this, in 2019, the OECD published a report titled 'Public Procurement in Malta: Re-engineering the department of contracts'. Following the OECD's recommendations, the Department of Contracts is drafting a Legal Notice on the reform of the Department of Contracts. The aim is to enhance the department's regulatory role as well as further address and support the decentralisation process. The Department of Contracts is also working on the implementation of a professionalisation strategy. This strategy would include active participation in the Commission's Working Group on the European Competency Framework on Public Procurement. Also, in line with the OECD recommendations, a Dynamic Purchasing Systems (DPS) for the procurement of printers, scanners, work centres and consumables were published in April 2020. Two related SRSP Projects, named Towards Professionalisation and Capacity Building of the National Procurement Workforce and Implementing the plan for decentralisation in public procurement were submitted by the Office of the Prime Minister via the Finance and Procurement Office.

#### Citizenship-by-investment scheme (Individual Investor Programme) and the residence scheme (Malta Residence Visa Programme)

The Maltese Government is planning to carry out changes to the IIP taking into account both the recommendations of the Office of the Regulator (Individual Investor Programme) and also the recommendations being discussed within the Expert Group on Investor Citizenship and Residence Schemes set up by the European Commission.

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

#### Removal of prescription on offences of corruption committed by politicians

The removal of prescription on offences of corruption committed by politicians – Article 115(2) of the Criminal Code (Chapter 9 of the Laws of Malta) is a relevant measure instituted in the fight of anti-corruption processes.

Another relevant measure, albeit an indirect one, is the introduction of the Media and Defamation Act (Chapter 579 of the Laws of Malta). Article 25 of this Act repealed the Press Act (Chapter 248 of the Laws of Malta). The Media and Defamation Act repealed criminal libel and various other criminal crimes which were a burden on freedom of expression for journalists and the citizen journalist.

An amendment to increase the period applicable for an attachment order (to be extended to six months and a further six months) is in the final stages before Parliament. This amendment will bring forth amendments in the following laws:

- (a) Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta);
- (b) Criminal Code (Chapter 9 of the Laws of Malta);
- (c) Prevention of Money Laundering Act (Chapter 373 of the Laws of Malta);
- (d) Medical and Kindred Professions Ordinance (Chapter 31 of the Laws of Malta);
- (e) Malta Financial Services Authority Act (Chapter 330 of the Laws of Malta).

## Corruption prevention in central Governments (top executive function) Powers to appoint members to independent commissions

Section B of Part V of the Venice Commission Opinion focuses on the powers vested in the Prime Minister where the Commission recommends that the power of the Prime Minister to appoint members to independent commissions should be shifted from the Prime Minister to the Cabinet of Ministers.

In order to implement this recommendation, legal amendments are being proposed in order to ensure that the appointment of other high-ranking officials; including (i) the members of the Employment Commission; (ii) the Governor, Deputy Governor and the directors of the Central Bank of Malta; (iii) the Chairman of the Malta Financial Services Authority; and (iv) the members of the Board of the Arbitration Centre; is effected by the Cabinet of Ministers and not the Prime Minister.

An amendment is also being proposed to provide for the appointment of the Information and Data Protection Commissioner by the Cabinet of Ministers after consulting the Leader of the Opposition.

### Permanent Secretaries

Section 1 of Part C of the Venice Commission Opinion deals with Permanent Secretaries and the recommendation provides that Permanent Secretaries should be selected upon merit by an independent Civil Service Commission and not by the Prime Minister.

In order to implement this recommendation, legal amendments are being proposed in order to ensure that the Public Service Commission, which is an independent constitutional body, will make recommendations to President of the Republic, for the appointment and removal of Permanent Secretaries on the basis of clear and pre-established requirements and after giving due consideration to any recommendation that the Principal Permanent Secretary may make.

The proposed amendments will provide that the appointment of the Principal Permanent Secretary shall be made by the President acting on the advice of the Cabinet of Ministers after having consulted with the Public Service Commission.

### Persons of Trust

Section 2 of Part C of the Venice Commission Opinion deals with Positions and Persons of Trust. The thrust of the recommendation is to introduce a real and clear legal basis which strictly limits the appointments of persons of trust.

In order to address this recommendation, amendments will be introduced in the Public Administration Act (Chapter 595 of the Laws of Malta) establishing a clear legal basis for the appointment of persons of trust. These provisions will limit these engagements to consultants to Ministers or Parliamentary Secretaries, staff in the Secretariats of Ministers or Parliamentary Secretaries and appointments of a temporary nature whenever a post remains vacant after repetitive public calls are issued.

The amendment will also establish the maximum number of persons that may be engaged as persons of trust in the Secretariats of Ministers and Parliamentary Secretaries as well as the conditions and duration of such engagements. A consequential amendment will also be introduced in the Standards in Public Life Act (Chapter 570 of the Laws of Malta) to reflect the changes made in the Public Administration Act in so far as the definition of the term 'person of trust' is concerned.

### The President of Malta

In its Opinion, the Venice Commission stresses on the importance of a qualified majority in the House of Representatives for the appointment and removal of the President and the granting of more powers to the President in order to serve as a player for more checks and balances on the power of the Executive.

It is pertinent to note that for recent appointments of the President of Malta, although the nomination was always put forward by the Prime Minister, there was agreement with the Leader of the Opposition. Therefore, given this, to a certain extent there was already a degree of agreement between both sides of Parliament in place.

Secondly, there is already alignment, for such proposals made by the Venice Commission to be discussed within the parameters of the Constitutional Convention. Such discussions will be open to ensure public participation by the President of Malta. It is only after this process is concluded that the required decisions be taken.



## II.III Repressive measures

### Overview of the legal and institutional framework

#### Criminalisation of corruption and related offences

The criminalisation of corruption and its related offences is dealt with in various pieces of legislation. The bulk of the offences are found in the Criminal Code (Chapter 9 of the Laws of Malta), namely in Articles 41<sup>14</sup> and 42<sup>15</sup>, 115 – 121E, 124 -127, 138. Other offences are found in Articles 5 – 7 of the Permanent Commission Against Corruption Act (Chapter 326 of the Laws of Malta); Article 24 of the Internal Audit and Investigations Act (Chapter 461 of the Laws of Malta), Regulation 216 of the Public Procurement Regulations and Article 3 of the Prevention of Money Laundering Act (Chapter 373 of the Laws of Malta).

#### Overview of application of sanctions (criminal and non-criminal) for corruption offences (including for legal persons)

Vide:

- Articles 115; 116; 117, 118, 119, 120, 121, 121A, 121B, 121D, 124, 125, 126, 127, 138, 190C and 190D<sup>16</sup> of the Criminal Code (Chapter 9 of the Laws of Malta);
- Regulations 192 and 216 of the Public Procurement Regulations (SL.601.03) and Article 24 of the Internal Audit and Investigations Act (Chapter 461 of the Laws of Malta);
- Article 3 of the Prevention of Money Laundering Act.

#### Potential obstacles to investigation and prosecution of high-level and complex corruption cases (e.g. political immunity regulation)

Under Maltese law no distinction is drawn between high level corruption and corruption. Therefore, the above-mentioned sections dealing with corruption apply across the board.

Whilst Malta has some form of immunity regime, this is very restricted. Article 65 of the Constitution of Malta lays down the form of immunity applicable with regard to Members of the House of Representatives. These powers are in themselves limited. The proviso of Article 5 of the Criminal Code (Chapter 9 of the Laws of Malta) establishes that the President of the Republic of Malta is exempted from criminal prosecution with respect of acts done in the exercise of his office.

### Significant developments

#### 25. Criminalisation of corruption and related offences

Given that Malta is one of the participating Member States in the European Public Prosecutor's Office (the EPPO), work is being undertaken to ensure that the necessary amendments will be in place in carrying out its work in fighting fraud against EU budget.

#### 26. Overview of application of sanctions (criminal and non-criminal) for corruption offences (including for legal persons)

Malta has fully transposed the so-called Protection of the Union's Financial Instruments (PIF) Directive through Act 18 of 2020 as stated above. The amendment provides for the respective sanctions.

#### 27. Potential obstacles to investigation and prosecution of high-level and complex corruption cases (e.g. political immunity regulation)

There have been no significant recent developments in this area.

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<sup>14</sup> Article on Attempted Crimes

<sup>15</sup> Articles on Complicity in Crimes

<sup>16</sup> Article 109C and 190D were introduced by way of Act XVIII of 2020, to transpose the Protection of the EU Financial Instruments (PIF) Directive.

# III. Media pluralism



## III.I Media regulatory authorities and bodies<sup>17</sup>

### Overview of the legal and institutional framework

#### Independence, enforcement powers and adequacy of resources of media authorities and bodies

Articles 118 and 119 of the Constitution of Malta establish the Broadcasting Authority and lay out its functions. This authority monitors and regulates all radio and television broadcasts emanating from the Maltese Islands. Article 118(8) specifically states that in the exercise of the Authority's functions under Article 119(1) of the Constitution, it shall not be subject to the direction or control of any other person or authority.

There are also other provisions in the Broadcasting Act (Chapter 350 of the Laws of Malta) regarding the independence and effectiveness of the Broadcasting Authority. Article 4 of the Broadcasting Act deals with the status of the Authority. The legal personality and representation of the Authority fall on the Chairman. Article 5 of the same act details the appointment of the Broadcasting Authority's Chief Executive. This appointment takes place following a public call for applications. Article 7 of the Broadcasting Act refers to the remuneration of the Board members and the Chairman. It states that each of its members are paid out of funds made available to the Authority under Article 24. This remuneration is as the President of Malta, on the advice of the Prime Minister may from time to time determine. Article 8 of the Broadcasting Act refers to the proceedings of the meetings of the Authority and are called by the Chairman either on his own initiative or at the request of any two of the other members. This Article also consists of provisions with regards to the voting procedures within the board and rules regulating the members, such as, no member of the Authority shall regularly take part in broadcasting or be a shareholder in any broadcasting operator, licensee or contractor nor may he be involved in the management of any broadcasting service.

Another important piece of legislation is the Media and Defamation Act (Chapter 579 of the Laws of Malta). The aim underpinning this Act is the commitment to ensure that journalists can work unhindered, in accordance with the core values of a democratic society.

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

Article 118 of the Constitution states that the Broadcasting Authority shall consist of a Chairman and a number of members, which shall not be less than four. The members of the Broadcasting Authority are appointed by the President of the Republic of Malta, in accordance with the advice of the Prime Minister, given after he has consulted the Leader of the Opposition.

Article 118(6) states that a member of the Broadcasting Authority may be removed from office by the President of the Republic of Malta, acting in accordance with the advice of the Prime Minister. This removal must be because of the member's inability to discharge the functions of his office or for misbehaviour.

### Significant developments

#### 28. Independence, enforcement powers and adequacy of resources of media authorities and bodies

The Media and Defamation Act (Chapter 579 of the Laws of Malta) was enacted in May 2018. The Media and Defamation Act repealed criminal libel and various other criminal crimes which were a burden on freedom of expression for journalists and the citizen journalist.

The transposition and consultation process of the revised Audio-visual Media Services Directive are currently ongoing.

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

There have been no significant recent developments in this area.

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<sup>17</sup> Cf. Article 30 of Directive 2018/1808

## III.II Transparency of media ownership and government interface

### Overview of the legal and institutional framework

The transparent allocation of state advertising (including any rules regulating the matter)

Allocation of state advertising is not centralised but delegated to individual line ministries. Every effort is made to ensure equal allocation of adverts on media outlets.

Political advertising is prohibited by the Broadcasting Act. Given that the Broadcasting Act (Chapter 350 of the Laws of Malta) specifically refers to radio and television, other media is excluded.

Public information campaigns on rule of law issues (e.g. on judges and prosecutors, journalists, civil society)

Reforms are announced via press conferences, most recently by the Prime Minister, as well as the Minister for Justice, Equality and Governance. Announcements of reforms in this area garner a fair share of media attention. Since his appointment, the Prime Minister has made reforms in the area of rule of law a priority and for the first time, there is a Minister whose portfolio specifically includes Governance. Given the pace of reforms, there are regular announcements, press conferences, and press releases.

Currently, there is no dedicated and structured public information campaign.

Rules governing transparency of media ownership

The applicable law on media ownership is Article 10 of the Broadcasting Act. Malta does not have provisions restricting private companies from owning media companies.

### Significant developments

30. The transparent allocation of state advertising (including any rules regulating the matter)

There have been no recent significant developments in this area.

31. Public information campaigns on rule of law issues (e.g. on judges and prosecutors, journalists, civil society)

As explained above, regular announcements are made with regard to ongoing reforms.

32. Rules governing transparency of media ownership

There have been no recent significant developments in this area.

### Other – Financial assistance – COVID 19

On 3 April 2020, the Government announced that a number of meetings were held with the media houses during which it was communicated that the Government will provide assistance, including financial assistance, so that during this difficult period of Covid-19, media such as television, radio, newspapers, and news portals continue to operate. This is being done in the firm belief that the media are an integral part of Malta's democracy and an important tool in enhancing freedom of expression.

## III.III Framework for journalist's protection

### Overview of the legal and institutional framework

Rules and practices guaranteeing journalist's independence and safety and protecting journalistic and other media activity from interference by state authorities

The main piece of legislation protecting journalists' independence is the Media and Defamation Act (Chapter 579 of the Laws of Malta). This act lays down the defences that may be used in an action for libel or defamation. Article 4 states that the truth is a defence in such a case. Article 5 holds that another defence is when the publication is on matters in the public interest. Article 7 lists privileged publications, whilst Article 8 refers to a qualified privilege in the case of public statements and that it may be a defence if what was published or broadcast was an accurate report of the statement. Article 12 specifies a defence for website editors. Article 22 holds that an editor, author, publisher or operator of a website may not be made to disclose their source unless it is established before the Court or Tribunal that such disclosure is necessary in a democratic society.<sup>18</sup> Moreover, under Article 23, no person who has a privileged source as per Article 22 shall be guilty of contempt of court for refusing to disclose, unless that disclosure is deemed necessary in a democratic society by a Court or Tribunal. Article 25 repealed the Press Act; and namely, any criminal proceedings instituted under this Act and which were still pending on the coming into force of the Media and Defamation Act were discontinued. Prior to this act coming into being, the Maltese Government held consultations with the Special Rapporteur and the views of the OSCE were taken into account.

There is no particular legislation giving specific protection to journalists. The relevant provisions in the Criminal Code (Chapter 9 of the Laws of Malta) would apply.

### Law enforcement capacity to ensure journalist's safety and to investigate attacks on journalists

Article 4(a) of the Police Act (Chapter 164 of the Laws of Malta) may apply in the case of journalists. Article 412C of the Criminal Code (Chapter 9 of the Laws of Malta) provides for the possibility of a protection order. This Article was introduced in 2005 and amended in 2018.

### Access to information and public documents

The Freedom of Information Act (Chapter 496 of the Laws of Malta) does not make a specific reference to journalists, but it provides access to documents held by the Government. It enables eligible applicants to submit requests to public authorities for access to documents. The disclosure depends on the exemptions included within the Act with the possibility of partial disclosures should parts of the documents requested be considered as exempt.

## Significant developments

### 33. Rules and practices guaranteeing journalist's independence and safety and protecting journalistic and other media activity from interference by state authorities

The Media and Defamation Act (Chapter 579 of the Laws of Malta) referred-to above was introduced in 2018.

Public Inquiries may also take place. An independent and transparent Public Inquiry was established late last year by the Maltese Government to determine whether the State has fulfilled and is fulfilling its positive obligation to take preventive operational measures to protect individuals whose lives are at risk from criminal acts in particular in the case of journalists and hence to investigate all the circumstances surrounding the death of Ms Caruana Galizia.

Work is well underway, and the Board of the Independent Public Inquiry has held over twenty sittings to date.

### 34. Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists

Improving law enforcement across the board is a priority for the Government. This was emphasised by the Prime Minister, upon his appointment in January 2020, not least in the title of the newly appointed Home Affairs Minister, which includes 'law enforcement'.

With regard to the murder of the late Daphne Caruana Galizia, the Maltese Government adopted a firm stance in ensuring that both the police investigation and magisterial inquiry show full independence and autonomy in the operations of the competent national authorities, whilst ensuring access to all the necessary resources and expertise. The Government also ensured, from the investigation's earliest moments, the active and full involvement of European

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<sup>18</sup> Art 22 provides: 'No court or tribunal established by law shall require an editor, author, publisher or operator of a website to disclose the source of information contained in a newspaper or broadcast or website for which he is responsible unless it is established to the satisfaction of the court or tribunal that such disclosure is necessary in a democratic society in the interests of national security, territorial integrity, public safety, or for the prevention of disorder or crime or for the protection of the interests of justice'

and international investigative and law enforcement entities such as Europol, the Netherlands Forensic Institute, Interpol and the United States' Federal Bureau of Investigations (FBI).

Together, these decisions enabled the competent authorities to make several breakthroughs in the investigation leading to the arrest and arraignment of various persons for various involvement in the Daphne Caruana Galizia murder, including the suspected mastermind who commissioned the murder. These persons are currently the subjects of judicial proceedings. That said, investigations into the murder remain active and ongoing.

### 35. Access to information and public documents

An assessment on the way forward in eliminating the narrow interpretation given to public interest disclosure is currently underway. This is in line with the GRECO recommendations made in its Fifth Round Evaluation Report.

### 36. Other

The terminology 'Access Cards for Government Events' was coined and implemented in 2019. All previous accreditation cards issued by the Department of Information during the past years had Press Cards which was a misnomer. The Department is not a regulatory organisation and it was more appropriate that a more accurate term should be used. Correspondingly, it is not the Department which determines who is (and who is not) media personnel. Access Cards are invariably issued once a media organisation's Editor or Head of News authenticates the individual application. This became more emphatically clear during 2019.

Government communiques and Government Events are sent via email to all registered media organisations. The Department is very much aware that there are online portals who are not legally obliged to register with the Press Registrar. Given this reality the Department, as from late 2019, started to upload an exact replica of the Government Events schedule (sent to the registered media organisations) on the gov.mt portal. It is thus open source and accessible to both the public and non-registered media organisations.

The same applies to communiques (press releases) which apart from being disseminated to registered media organisations, are also uploaded on the gov.mt portal in real time under the revamped operating protocol which came into effect in 2019.

### Anti-Strategic Lawsuits Against Public Participation (SLAPP) Legislation

On 26 February 2020, the Opposition tabled an Anti-SLAPP Bill. The Bill comprises proposals to amend the Code of Organisation and Civil Procedure, and the Media and Defamation Act.

The Government is also aware of the following:

- Subject to the principle of conferral to harmonise substantive defamation laws and address SLAPP lawsuits, Member States are free to introduce such legislation at national level;
- announcements made by the European Commission in 2018 that it is actively pursuing anti-SLAPP legislation, as well as more recent pronouncements by Vice-President Jourova;
- appeals by the European Parliament as well as various organisations for Anti-SLAPP measures at EU level, including legislation;
- Academic papers addressing the matter, such as, the study on EU competence to adopt anti-SLAPP legislation and prospects for reform by Dr Justin Borg Barthet, Centre for Private International Law, University of Aberdeen.

# IV. Other institutional issues related to checks and balances

## IV.I The process for preparing and enacting laws

### Overview of the legal and institutional framework

The Constitution of Malta is the primary source of Maltese Constitutional law. There are two main types of legislation that emanate from Parliament: a) primary; and b) subsidiary (or delegated) legislation. Primary legislation consists of Acts of Parliament which can be amended by a simple majority of its members. A valid law must have the assent of Parliament – meaning, the House of Representatives and the President of Malta.

The Statute Law Revision Act, 1980 provides for Malta's Law Commission, which is made up of a Commissioner, or a body of Commissioners consisting of such number of Commissioners as may for the time being be in office. Amongst other powers, the Commissioner may alter the 'form and method' of legislation, consolidate various pieces of legislation, alter the order of articles and so on. Amendments to substance are only possible by Parliament.

Laws are often initiated within government ministries, department or statutory bodies, and then passed to the Office of the State Advocate for legal vetting. After this, it is the responsibility of the Minister primarily responsible for the subject-matter in question to present the bill to Cabinet. Once approved, the text is presented in Parliament as a bill. The actual presentation of a bill may be preceded by consultations, debates or White papers. Once presented in Parliament, the bill passes through several stages culminating in the President's assent (who may sign or resign). Apart from government bills or public bills, there are also the so-called 'private members' bills.

The legal supremacy of Parliament allows it to grant to some other person or body the authority to make subsidiary legislation, such as regulations, or orders which also have the force of law. Many laws therefore contain provisions empowering the Minister to make regulations under the authority of the parent Act. Such regulations are normally published as Legal Notices. Subsidiary Legislation is presented and approved by Cabinet prior to its publication. Following publication, the respective Minister is obliged to table the subsidiary legislation in Parliament, whereby any Member of the House – can file a motion requesting the annulment or amendment of the said legislation. Generally, the deadline for such motion to be filed is that of 28 days, however, the parent Act may provide for a longer period... Draft Legal Notices are accompanied by a checklist which indicate, e.g. whether a consultation has taken place, whether an impact assessment was carried out, and whether the regulations transpose EU legislation. The extension of this form to Bills is being considered.

Moreover, bills are published in the government gazette prior to their consideration by Parliament. When a bill goes through all its stages and becomes an Act of Parliament, it is again published in the government gazette with the indication of the date of entering into force. There are instances when the text of the proposed bill is published at an earlier stage as a white paper, including on the Internet, and civil society is invited to provide feedback.

### Social partners

The Malta Council for Economic and Social Development (MCESD) is an advisory council that issues opinions and recommendations to the Maltese government on matters of economic and social relevance. Essentially discussions that take place are very much influenced by what the Social Partners experience on a day-to-day basis. Thus, the topics up for discussion are determined by the external environment. Since the Government forms part of the Council, it too puts forward subjects for discussion upon which National Policy is often formulated.

### Public consultations

#### Consultations portal

In the spirit of openness and transparency, the Government through an online platform, encourages the general public, civil society organisations, trade unions, business organisations, political parties, governmental institutions and all others that would like to contribute, to participate in the process of online public consultation.

#### Consultations on EU matters

The Malta-EU Steering and Action Committee (MEUSAC) is an agency as per the Public Administration Act (Chapter 595 of the Laws of Malta).

MEUSAC's functions are:

- Promoting dialogue on European ideals, values and actions;
- Communicating EU-related rights, policies and funding opportunities, and their impact on citizens;
- Facilitating a structured consultation process on EU policy and legislation with stakeholders;
- Assisting national and local government and civil society organisations to apply for EU-funded projects.

In terms of MEUSAC's consultative process, its role is to facilitate discussion between Government and civil society on draft EU legislation and policies, as well as on the transposition of EU directives.

This process is facilitated via a number of instruments, namely:

- **Core Group:** The Core Group brings together representatives of Government, the National Parliament, constituted bodies, civil society representatives and EU-related entities.
- **Consultation Sessions:** serve as a forum for stakeholders to participate in the formulation of Malta's position (which is negotiated in the Council of the EU) on proposed EU legislation.
- **Policy Tracker:** This tool is aimed at assisting stakeholders and interested parties in following-up on those EU policies which are of interest to them. It gives an overview of which stage particular policies are at and provides information on what discussions are currently focusing on. Stakeholders and interested parties are invited to provide any feedback they might have on specific policies through this tool.
- MEUSAC's consultative wing is also in the process of preparing a number of papers on EU matters having national implications. These papers will be published throughout 2020.

### Emergency and fast track Procedures

Article 4(2)(d) of the Emergency Powers Act ([Chapter 178 of the Laws of Malta](#)) states that the President of Malta, acting in accordance with the advice of the Prime Minister, may, subject to the provisions of the Constitution of Malta, provide for amending any law, for suspending the operation of any law and for applying any law with or without modification. Amid the COVID-19 crisis, the Act was amended ([Act X of 2020](#)) to provide for public health situations.

Moreover, Article 27 of the [Public Health Act \(Chapter 465 of the Laws of Malta\)](#) vests the Superintendent of Public Health with the power to make, vary or revoke orders in cases of epidemics and infectious diseases. This provision is being used in light of the COVID-19 pandemic.

### Constitutional review of laws

Constitutional cases are heard by the Constitutional Court of Malta (Malta's highest court). Article 95 of the Constitution of Malta provides that the Constitutional Court shall be made up of the Chief Justice and two other judges from the Courts of Appeal.

Article 6 sets out the supremacy of the Maltese Constitution and states that:

“... if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.”

In furtherance, Article 116 of the Constitution provides a right of action for a declaration that any law is invalid on any grounds other than inconsistency with Fundamental Rights and Freedoms of the Individual (Articles 33 to 45 of this Constitution) to all persons without distinction, and a person bringing such an action shall not be required to show any personal interest in support of his action.

### Significant developments

[37. Stakeholders'/public consultations , transparency of the legislative process, rules and use of fast-track procedures and emergency procedures \(for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions\).](#)

#### eParticipation and eDemocracy

The [Strategic Plan for the Digital Transformation of the Public Administration 2019 – 2021](#), sets out the Government's plans on eParticipation and introduces eDemocracy. According to this plan, the Government will be conducting a scoping study to determine how the implementation of an eParticipation platform, and associated best practices and tools, could further promote development of public policy, boost public trust and help persuade citizens and businesses to collaborate effectively with Government. The study will map research findings and case scenarios to see how they would fit in a local context and present recommendations regarding the way forward. Additionally, the [konsultazzjoni.gov.mt](#) website will be redesigned to include new templates and user-friendly forms. It will direct citizens to the public consultations of various Ministries, based on topic and workflows, and client access will be improved. Open consultations will include topics easily understood by diverse target groups, using questionnaires and surveys to facilitate data collation, analysis and reporting. The portal will allow citizens to view responses from the public for all closed consultations with features such as subscriptions, push notifications and blogs to debate proposals. Government responses will also be visible. The introduction of eDemocracy will promote social innovation, online public engagement in policy making decisions and clustering of ideas and trends.

### Constitutional committee

Many laws are currently being discussed in Parliament following recommendations of the Constitutional Reform Committee. It was towards the end of 2018 when the Committee for Constitutional Reform was set up, comprising of representatives nominated by the two main political Parties. The President of the Republic presides over this Committee and is working so that this process is carried out with due diligence. This process is not the exclusive realm of politicians or political parties, but it also needs to involve civil society, voluntary organizations, and interested

individuals. To this end, this [electronic site](#) was launched to serve as a platform so that all those who have a suggestion or proposal may pass it on for consideration. This has been done as part of a public consultation that lasted for around three months.

### Emergency and Fast Track procedures

As explained above, the Emergency Powers Act ([Chapter 178](#)) was amended ([Act X of 2020](#)) to provide for public health situations; however, this provision has not yet been used. Article 27 of the [Public Health Act \(Cap. 465\)](#) has been used [over 26 times to address the ongoing pandemic](#).

### 38. Regime for constitutional review of laws

The Government has taken note of the Venice Commission Opinion on the effects of judgments of the Constitutional Court and in particular of paragraphs 78 and 79 of the Commission's Opinion of December 2018.

The Government however considers that enshrining the principle of 'erga omnes' application of judgments of the Constitutional Court in the Constitution of Malta would go against established principles of the Maltese legal system.

It is relevant in this regard to note that the principles of 'binding judicial precedent' or 'stare decisis' are not part of the Maltese judicial system. This allows the Courts to treat every case on its own merits without being bound to follow a previous decision when deciding subsequent cases with similar issues or facts. In this context, it is considered that the introduction of a system whereby a judgment of the Constitutional Court, given on a particular set of facts, claims and defences, would be applicable 'erga omnes' insofar as it finds a law to be incompatible with the Constitution would itself give rise to further legal contestation and to possible legal uncertainty as to the precise meaning of such 'erga omnes' application.

Every endeavour is made to bring Malta's legislation in conformity with the decisions of our Constitutional Courts, where these have consistently ruled on the constitutional inconsistency of a particular legislation and this is proving effective.

### Other: Parliamentary reforms

The Government electoral programme of 2017, set out various proposals on Parliamentary related reforms, some of which have been implemented as in the case of extending the right to vote from the age of 16 in General and European elections ([Act IV of 2018](#)); while other reforms are ongoing or being discussed.

A public consultation document on the "under-represented sex" was first launched back in [March 2019](#) and ran till June 2019, and put forward a number of proposed changes aimed at promoting gender equality in politics and beyond. The first reading of the reform took place on 12 March 2020. The plan is for the measure to come into force in time for the next general election so that through this corrective measure, equality in politics could be achieved and, in this regard,, the under-represented sex occupies 40% of parliamentary seats. The proposed reform will see parliament grow by as much as 12 seats as a 'corrective measure'

Another example is the proposal to discuss whether Members of Parliament should be given the choice between working full-time or part-time would take place. This discussion will be taken forward within the broader picture of constitutional reform.



## IV.II Independent authorities

### Overview of the legal and institutional framework

The Constitution establishes a number of independent authorities pertinent to this section,<sup>19</sup> such as, the Office of the Ombudsman, and the Auditor General, and the Broadcasting Authority. Other Authorities are established by virtue of primary legislation enacted by Parliament, namely the Standards of Public Life Act (Chapter 570 of the Laws of Malta).

#### Office of the Ombudsman

The Ombudsman is an independent Officer of Parliament appointed by the President of the Republic acting in accordance with a resolution of the House of Representatives, approved by the votes of not less than two thirds of all Members of the House. The Ombudsman institution was set up by the Ombudsman Act (Act No XXI of 1995), which was assented to by the President of the Republic on 25 July 1995. Twelve years later almost to the day, the House of Representatives unanimously approved the Constitution of Malta (Amendment (2)) Bill incorporating the Ombudsman institution in the Constitution. The Act was given the Presidential assent on 24 July 2007, recognised the Ombudsman as a constitutional authority by means of an entrenched clause that can only be amended by a resolution supported by not less than two thirds of all Members of the House.

In 2010, the Ombudsman Act (Chapter 385 of the Laws of Malta) was amended by Act XVII of 2010 to provide for the appointment of Commissioners for Administrative Investigations in specialised areas of the public administration. The amendment guarantees full independence and autonomy of the Commissioners, in the exercise of their respective powers and functions, in the areas falling under their jurisdiction. The Act requires them to follow the same investigative processes and procedures that the Ombudsman is bound to follow. The Act also includes other provisions that further regulate the work of the Parliamentary Ombudsman and the Commissioners, to ensure a more homogeneous and uniform investigative process. These Commissioners are also Officers of Parliament.

In line with Freedom of Information, the Ombudsman has his own website, where one can submit a complaint, read the latest publications or request an appointment.

The Ombudsman type remedy, of its very nature, does not produce a binding recommendation, however, his opinion has political power. The spirit of the remedy is to give guidance which puts moral pressure on the administration. The Ombudsman type of review is generally referred to as external review (as in judicial review) since it is outside the ambit of Government, as it is not carried out by a person within the administration itself.

As further explained below, further reforms are underway.

#### Auditor General

Article 108 of the Constitution of Malta provides for an Auditor General whose office shall be a public office and who shall be an officer of the House of Representatives. The Auditor General shall be appointed by the President acting in accordance with a resolution of the House of Representatives supported by the votes of not less than two-thirds of all the members in the House, provided that when a person who is not a member of the House of Representatives is elected to be the Speaker of the House of Representatives, he shall not be treated as a member of the House for the purpose of establishing the majority required.

The Auditor General shall hold office for a period of five years from the date of his appointment and shall be eligible for reappointment for one further period of five years.

The accounts of all departments and offices of the Government of Malta, including the office of the Public Service Commission, and the office of the Clerk of the House of Representatives and of all Superior and Inferior Courts of Malta; and of such other public authorities or other bodies administering, holding, or using funds belonging directly or indirectly to the Government of Malta as may be prescribed by or under any law, shall be audited and reported upon annually by the Auditor General to the House of Representatives and for that purpose the Auditor General or any person authorised by him in that behalf shall have access to all books, records, returns and other documents relating to those accounts.

There shall be paid to the Auditor General such salary and such allowances as may from time to time be prescribed or allowed for a Judge of the Superior Courts. Such salary and allowances shall be a charge on the Consolidated Fund and the provisions of sub-article (3) of article 107 of the Constitution<sup>20</sup> shall apply.

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<sup>19</sup> Concerns human rights institutions, ombudsman institutions and equality bodies.

<sup>20</sup> Article 107 (3) The salary payable to the holder of any office to which this article applies and his terms of office, other than allowances, shall not be altered to his disadvantage after his appointment, and for the purposes of this sub-article, in so far as the

## Human Rights

The Human Rights Directorate (HRD) falls within the remit of Ministry for Justice, Equality and Governance.

One can find information on Malta's National human rights organisations on this platform called [Platform of Human Rights Organisations in Malta \(PHROM\)](#). PHROM provides a national forum for human rights organisations in Malta, to develop, promote and advocate for the values of human dignity and equality.

## Equality Bodies

Malta established a National Commission for the Promotion of Equality (NCPE). The Commission works to ensure that Maltese society is a society free from any form of discrimination based on:

- i. sex/gender and family responsibilities, sexual orientation, age, religion or belief, racial or ethnic origin, and gender identity, gender expression or sex characteristics in employment; banks and financial institutions, as well as education;
- ii. racial / ethnic origin and gender in the provision of goods and services and their supply; and
- iii. freedom of movement for workers in the EU.

The Commissioner may initiate investigations on:

- i. any matter involving an act or omission that is allegedly unlawful;
- ii. the receipt of a complaint in writing by persons who claim to be the victims of discrimination.

Each case presented for investigation is handled with confidentiality. The NCPE can only act upon complaints made in writing and the relevant form is found [online](#).

## Commissioner for Standards in Public Life

As an independent authority, Malta has recently, in November 2018, appointed a Commissioner for Standards in Public Life who investigates breaches of ethical standards by ministers, members of Parliament and persons of trust, and contributes to the improvement of standards of behaviour in public life. The Commissioner for Standards in Public Life is appointed by the President of Malta based on a resolution of Parliament that must be supported by at least two-thirds of all members of Parliament. The role of the Commissioner is defined by the [Standards in Public Life Act](#) (Chapter 570 of the Laws of Malta). More information on this role can be found [here](#).

## Significant developments

### 39. independence, capacity and powers of national human rights institutions, ombudsman institutions and equality bodies

#### Ombudsman

The Public Administration has taken action to strengthen its internal structures to better facilitate and support Ombudsman investigations. For the first time, in November 2018, the public administration has issued a publication with its answers to the Ombudsman's Annual Report. The Ombudsman stated that this is further proof that the public administration is strengthening its governance, accountability and transparency.

This publication was the first Governance Action Report which was adopted in November 2018 in relation to the Parliamentary Ombudsman's Annual Report 2017 ([link to the report](#)). The following are some key takeaways:

- Throughout 2017 the Ombudsman's Office investigated 322 cases. These cases have to be taken in context of thousands of administrative public transactions and processes that affect citizens.
- 85% of the recommendations made by the Ombudsmen in his 2017 Annual Report have been implemented.

In terms of legislative amendments, Section B of Part IV of the Venice Commission Opinion deals with the office of the Ombudsman wherein at paragraph 101 the Venice Commission recommends the raising of the rules on appointment and dismissal of the Ombudsman as well as the powers of the Ombudsman to the constitutional level, and that Parliament should be obliged to debate reports addressed to it by the Ombudsman. In order to implement these recommendations, legal amendments are being proposed whereby the provisions dealing with the appointment, removal and suspension of the Ombudsman will be included in the Constitution. The proposed amendments also provide for the mandatory obligation for Parliament to debate the annual report prepared by the Ombudsman.

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salary or the terms of service of any person depend upon the option of that person, the salary or terms for which he opts shall be deemed to be more advantageous to him than any others for which he might have opted.

## Auditor General

In October 2018, the National Audit Office published its 2019-2023 Strategy on Improving Governance and Performance across the Public Sector.

On 30 March 2020, the Auditor General, presented the latest publication by the National Audit Office (NAO), titled 'A review of the ethical framework guiding public employees' to the Speaker of the House of Representatives.

Within the context of the public consultation process launched by the Office of the President in connection with the reform of the Constitution, on 14 February 2020, the Auditor General presented the President with various proposals for amendments intended to strengthen the National Audit Office. The proposed Constitutional amendments are deemed necessary in order to render the National Audit Office more effective in its address of emerging issues and challenges, as well as in view of the office's role in contributing to good governance across the public sector.

## Upcoming Human Rights and Equality Commission

The upcoming Commission for Human Rights and Equality will be replacing the existing national human rights and equality structures – in other words the National Commission for the Promotion of Equality (NCPE) and the Human Rights Directorate (HRD).

The legislative proposal setting up this Commission is currently at an advanced stage before Parliament. The setting up of the Human Rights and Equality Commission will mean that for the first time, Malta will have an independent national human rights and equality institution, in line with the United Nations Paris Principles. Adequate resources will be put in place to implement its wide mandate. Through its internal Equality Board - with the mandate to investigate alleged breaches of the rights of equality and non-discrimination - excluded or discriminated individuals and groups will be empowered to regain control of their lives.

## Commissioner for Standards in Public Life

As stated above, the Commissioner for Standards in Public Life was established in November 2018.

## IV.III Accessibility and judicial review of administrative decisions

### Overview of the legal and institutional framework

#### Judicial Review

Under our law "administrative act" includes the issuing by a public authority of any order, licence, permit, warrant, decision, or a refusal to any demand of a claimant, but does not include any measure intended for internal organisation or administration within the said authority.

Article 469A of the Code of Organisation and Civil Procedure (Chapter 12) provides a form of judicial review by the Civil Court, First Hall, or appeal, by the Court of Appeal in certain specified cases. The courts of civil jurisdiction may enquire into the validity of any administrative act or declare such act null, invalid or without effect, in the following cases:

- a. where the administrative act is in violation of the Constitution;
- b. when the administrative act is ultra vires on any of the following grounds: (i) when such act emanates from a public authority that is not authorised to perform it; or (ii) when a public authority has failed to observe the principles of natural justice or mandatory procedural requirements in performing the administrative act or in its prior deliberations thereon; or (iii) when the administrative act constitutes an abuse of the public authority's power in that it is done for improper purposes or on the basis of irrelevant considerations; or (iv) when the administrative act is otherwise contrary to law.

#### Statutory tribunals

Throughout the years, specialised statutory tribunals were created to deal with specific issues concerning the administration. Today, every self-respecting area of the administration has its very own special tribunal set up by law to cater for its needs. Examples: tax tribunals, licencing tribunals, planning tribunals, social security tribunals, the Boards of Special Commissioners in fiscal legislation, the Planning Boards of Appeal in planning law, the umpire in social security law, and the agricultural leases board in rural lease law.

With a court-like function, these tribunals have a specialised jurisdiction and determine disputes most of the times concerning particular types of administrative acts.

It is important to make reference to the Administrative Justice Act (Chapter 490 of the Laws of Malta), which came into force on 1 January 2009 by way of a Commencement Notice. The Act was intended to bring order in the field, introduce principles of good administrative behaviour, and set up an administrative review tribunal with the ultimate aim of achieving coherence in the system. The Administrative Review Tribunal is an independent and impartial tribunal. The Administrative acts reviewed by the tribunal include the issuing by the public administration i.e. the government of Malta including its Ministries and departments, local authorities and anybody corporate established by law, of any order, licence, permit, warrant, authorization, concession, decision or refusal to any demand of a member of the public. Any party to the proceedings before the Tribunal who feels aggrieved by a decision of the said Tribunal may appeal to the Court of Appeal.

#### Freedom of Information

The Freedom of Information (FOI) Act (Chapter 496 of the Laws of Malta) grants the right to the general public to access information held by public authorities in order to promote added transparency and accountability in government as was explained further above in section B of the Anti-Corruption Framework.

Information is given as is necessary whilst respecting certain limitations as are found in the Data Protection Act (Chapter 586 of the Laws of Malta) which is also in line with the General Data Protection Regulation.

However, individual tribunals always give access to information to the person concerned. For instance, Article 3 (2) (d) of the Administrative Justice Act (Chapter 490 of the Laws of Malta) entitled 'General provision applicable to administrative tribunals' states that an administrative tribunal shall ensure that the public administration makes available the documents and information relevant to the case and that the other party or parties to the proceedings have access to these documents and information.

#### Implementation of final court decisions

Article 20 (2) of Administration Justice Act provides that the enforcement of the decisions of the Administrative Review Tribunal in the manner provided for in the Code of Organization and Civil Procedure shall vest in the Administrative Review Tribunal itself. (This is explained above under 'Enforcement of Judgements').

#### Significant developments

##### 40. modalities of publication of administrative decisions and scope of judicial review

No significant developments to report.

#### 41. implementation by the public administration and State institutions of final court decisions

The Government has taken note of the Venice Commission Opinion on the effects of judgments of the Constitutional Court and in particular of paragraphs 78 and 79 of the Commission's opinion of December 2018.

The Government however considers that enshrining the principle of 'erga omnes' application of judgments of the Constitutional Court in the Constitution of Malta would go against established principles of the Maltese legal system.

## IV.IV The enabling framework for civil society

### Overview of the legal and institutional framework

The main law regulating the framework for Civil Society is the Voluntary Organisations Act ([Chapter 492 of the Laws of Malta](#)). Article 3 of this law provides that a voluntary organisation is an organisation which is created or established:

- a) for any social purpose including that which qualifies as a public purpose or for public benefit;
- b) as non-profit making; and
- c) is voluntary whether it is registered or registerable as a legal person or not in terms of the Second Schedule to the Civil Code and whether it is or may be enrolled under this Act or not.

For the purposes of this law the above requirements shall be of a continuing nature and shall apply throughout the existence of the voluntary organisation.

Furthermore, the Voluntary Organisations Act (Chapter 492 of the Laws of Malta):

- i. provides that voluntary organisations are independent and autonomous of the Government and such organisations shall have their status respected by the Government at all times. The administrators of a voluntary organisation are bound to act autonomously and independently in seeking to fulfil the express purposes of such organisation and must not be subject to the control of any other person or authority nor bound in any manner, directly or indirectly, to act under the direction or in the interest of any other person.
- ii. established a Commissioner for Voluntary Organisations who shall be appointed by the responsible Minister (currently the Minister for Education and Employment), after consultation with the Social Affairs Committee of the House of Representatives or any other committee substituting the same. Moreover, this Act provides for a Register of Voluntary Organisations which shall be maintained by the Commissioner and shall contain important information about the Voluntary Organisations, supported by documentation.

On 6 November, 2018, the Voluntary Organisations (Amendment) Act was promulgated to amend the Voluntary Organisations Act and to make consequential and other amendments to the Civil Code and to the Second Schedule to the Civil Code, the Public Collections Act, the Notarial Profession and Notarial Archives Act, the Arbitration Act and the Companies Act.

The amendments introduced categories of voluntary organisations ("VOs") that cannot enrol, namely, government organisations, religious organisations and political organisations. It also incorporates new definitions for lawful purpose, market levels and market conditions and permissible private benefit.

New rules were introduced vesting the Commissioner for VO's (the "Commissioner") and the Malta Council for the Voluntary Sector with legal personality. The concept of mandatory enrolment has been introduced. VO's may be obliged to enrol with the Office of the Commissioner if they have a public purpose or is for public benefit, whilst all other VO's are obliged to notify the Commissioner of their existence.

The amending Act also:

- a. incorporated the MONEYVAL Regulations, introducing provisions which combat money laundering and financing of terrorism and which give the Commissioner powers to investigate such matters.
- b. establishes that minors who attain the age of 16 years may now establish VO's and may vote in Annual General Meetings of such organisations.
- c. introduced new provisions to regulate VO's and foundations involved in cryptocurrencies.
- d. eliminated the concept of private interest in VO's and regulates permissible private benefits, the principles of remuneration, the principles regarding shares and other interests and fiduciary obligations.
- e. included amendments have also been made to the provisions regulating public benefits and private foundations.

The Government has embarked on many procedures to ensure that clarity and transparency in the sector is maintained while appreciating the vulnerability of the sector itself. To date, investigation and monitoring officers, in-house counsel and personnel effecting due-diligence procedures have been recruited to enhance efficiency and effectiveness.

### Significant developments

#### 42. Measures regarding the framework for civil society organisations

Major amendments to the Voluntary Organisations Act (Chapter 492 of the Laws of Malta) have already been enacted and are in force. It is notable to mention the wide-ranging powers of the Commissioner, including investigative powers. These developments are already explained above.

Further amendments to the VO Act are being finalised by the Government. Once finalised, the amendments will be tabled in Parliament.

The Government is committed to amending various pieces of legislation to ensure that the vulnerability of Voluntary Organisations is addressed holistically. Without effective regulation, Voluntary Organisations may be subject to abuse leading to a harmful environment for the VO's to operate. Subsidiary legislation amending the Voluntary Organisations (Annual Returns and Annual Accounts) Regulations is finalised and will be adopted shortly following the necessary approvals. Moreover, amendments to subsidiary legislation under the VO Act, including the Voluntary Organisations (Public Collections) Regulations, and the Voluntary Organisations (Tax Exemption) Regulations are also being finalised.

Assessments on already enrolled organisations are being made with constant monitoring. The process is being re-visited from the start and evaluations of the due diligence procedures made are under way.

A consultation process will be launched by the Legal office on the operation and better regulation of Charity Shops.

A risk assessment conducted by MONEYVAL highlighted the enrolment of voluntary organisations and compliance. Hence a media monitor has been employed that continuously sifts through all media so that every VO referred to is checked for compliance and enrolment.

Besides due diligence procedures on administrators on enrolment, this is also being done on existing organisations. Furthermore, a Memorandum of Understanding (MOU) was signed with the FIAU for improved co-ordination while other MOUs have been finalised with the Malta Business Registry, the Malta Financial Services Authority, the Police and the Sanctions Monitoring Board. Staff is also being trained on due diligence procedures, anti-money laundering and counter-terrorist financing.

Staff compliment has increased and will continue to increase to regulate and so the office will be able to be at service to VOs in an improved, prompt and effective manner.

#### 43. Other - please specify

No further issues.



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