

# 2024 Rule of Law Report - targeted stakeholder consultation

Fields marked with \* are mandatory.

## Introduction

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The annual Rule of Law Report lies at the centre of the Annual Rule of Law Cycle, which acts as a preventive tool, deepening multilateral dialogue and joint awareness of rule of law issues. So far, four editions of the Rule of Law Report have been published in 2020, 2021, 2022 and 2023.

The Commission would like to invite stakeholders to provide contributions to the 2024 Rule of Law Report. This survey provides information on the type of information and topics that will be covered in the 2024 Rule of Law Report, in order to allow stakeholders to provide input. More targeted input may be requested at a later stage of preparation of the 2024 Rule of Law Report, including in the context of country visits, or bilateral contacts.

The 2024 Rule of Law Report will continue to deepen the assessment under the existing four pillars, and will also follow-up on the implementation of the recommendations to Member States, that were issued as part of the 2023 Rule of Law Report. The contribution to be provided should include **(1) information on measures taken to implement the recommendations addressed to the Member State in the 2023 Rule of Law report, as well as developments with regard to the points raised in the respective country chapter and (2) any other significant developments since January 2023<sup>[1]</sup> falling under the ‘type of information’ outlined in section II.**

The input should consist of a short summary, if possible in English, covering the areas referred to below. Legislation or other documents may be referenced with a link. Contributions should focus on significant developments since the last Rule of Law Report both as regards the legal framework and its implementation in practice.

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

## Type of information

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

### **A) Legislative developments**

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

### **B) Policy developments**

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

### **C) Developments related to the judiciary / independent authorities**

- Important case law by national courts
- Important decision/opinions from independent bodies/authorities
- State of play on terms, nominations and expired mandates for high-level positions (e.g. Supreme Court, Constitutional Court, Council for the Judiciary, heads of independent authorities included in the scope of the questionnaire[2])

### **D) Any other relevant developments**

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

Please also indicate whether the developments reported are linked to the implementation of reforms and investments under the RRP, where applicable.

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

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

## **About you**

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\* I am giving my contribution as

- ☐ Academic/research institution
- ☐ Business association
- ☒ Civil society organisation/NGO

- ☐ International organisation
- ☐ Judicial association or network
- ☐ Media organisation or association
- ☐ Public authority or network of public authorities
- ☐ Other

\* Organisation name

*250 character(s) maximum*

Repubblika

Main Areas of Work

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

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

*500 character(s) maximum*

repubblika.org

Transparency register number

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

\* Country of origin

Please add the country of origin of your organisation

- ☐ Afghanistan
- ☐ Albania
- ☐ Algeria
- ☐ Andorra
- ☐ Angola
- ☐ Antigua and Barbuda
- ☐ Argentina
- ☐ Armenia
- ☐ Australia
- ☐ Austria
- ☐ Azerbaijan
- ☐ Bahamas
- ☐ Bahrain
- ☐ Bangladesh
- ☐ Barbados

- ☐ Belarus
- ☐ Belgium
- ☐ Belize
- ☐ Benin
- ☐ Bhutan
- ☐ Bolivia
- ☐ Bosnia and Herzegovina
- ☐ Botswana
- ☐ Brazil
- ☐ Brunei Darussalam
- ☐ Bulgaria
- ☐ Burkina Faso
- ☐ Burundi
- ☐ Cabo Verde
- ☐ Cambodia
- ☐ Cameroon
- ☐ Canada
- ☐ Central African Republic
- ☐ Chad
- ☐ Chile
- ☐ China
- ☐ Colombia
- ☐ Comoros
- ☐ Congo
- ☐ Costa Rica
- ☐ Côte D'Ivoire
- ☐ Croatia
- ☐ Cuba
- ☐ Cyprus
- ☐ Czechia
- ☐ Democratic Republic of the Congo
- ☐ Denmark
- ☐ Djibouti
- ☐ Dominica
- ☐ Dominican Republic
- ☐ Ecuador
- ☐ Egypt
- ☐ El Salvador
- ☐ Equatorial Guinea
- ☐ Eritrea
- ☐ Estonia
- ☐ Eswatini
- ☐ Ethiopia
- ☐ Fiji
- ☐ Finland
- ☐ France
- ☐ Gabon

- ☐ Gambia
- ☐ Georgia
- ☐ Germany
- ☐ Ghana
- ☐ Greece
- ☐ Grenada
- ☐ Guatemala
- ☐ Guinea
- ☐ Guinea Bissau
- ☐ Guyana
- ☐ Haiti
- ☐ Honduras
- ☐ Hungary
- ☐ Iceland
- ☐ India
- ☐ Indonesia
- ☐ Iran
- ☐ Iraq
- ☐ Ireland
- ☐ Israel
- ☐ Italy
- ☐ Jamaica
- ☐ Japan
- ☐ Jordan
- ☐ Kazakhstan
- ☐ Kenya
- ☐ Kiribati
- ☐ Kuwait
- ☐ Kyrgyzstan
- ☐ Laos
- ☐ Latvia
- ☐ Lebanon
- ☐ Lesotho
- ☐ Liberia
- ☐ Libya
- ☐ Liechtenstein
- ☐ Lithuania
- ☐ Luxembourg
- ☐ Madagascar
- ☐ Malawi
- ☐ Malaysia
- ☐ Maldives
- ☐ Mali
- ☒ Malta
- ☐ Marshall Islands
- ☐ Mauritania
- ☐ Mauritius

- ☐ Mexico
- ☐ Micronesia
- ☐ Monaco
- ☐ Mongolia
- ☐ Montenegro
- ☐ Morocco
- ☐ Mozambique
- ☐ Myanmar
- ☐ Namibia
- ☐ Nauru
- ☐ Nepal
- ☐ Netherlands
- ☐ New Zealand
- ☐ Nicaragua
- ☐ Niger
- ☐ Nigeria
- ☐ North Korea
- ☐ North Macedonia
- ☐ Norway
- ☐ Oman
- ☐ Pakistan
- ☐ Palau
- ☐ Panama
- ☐ Papua New Guinea
- ☐ Paraguay
- ☐ Peru
- ☐ Philippines
- ☐ Poland
- ☐ Portugal
- ☐ Qatar
- ☐ Republic of Moldova
- ☐ Romania
- ☐ Russian Federation
- ☐ Rwanda
- ☐ Saint Kitts and Nevis
- ☐ Saint Lucia
- ☐ Saint Vincent and the Grenadines
- ☐ Samoa
- ☐ San Marino
- ☐ Sao Tome and Principe
- ☐ Saudi Arabia
- ☐ Senegal
- ☐ Serbia
- ☐ Seychelles
- ☐ Sierra Leone
- ☐ Singapore
- ☐ Slovakia

- ☐ Slovenia
- ☐ Solomon Islands
- ☐ Somalia
- ☐ South Africa
- ☐ South Korea
- ☐ South Sudan
- ☐ Spain
- ☐ Sri Lanka
- ☐ Sudan
- ☐ Suriname
- ☐ Sweden
- ☐ Switzerland
- ☐ Syrian Arab Republic
- ☐ Tajikistan
- ☐ Tanzania
- ☐ Thailand
- ☐ Timor-Leste
- ☐ Togo
- ☐ Tonga
- ☐ Trinidad and Tobago
- ☐ Tunisia
- ☐ Turkey
- ☐ Turkmenistan
- ☐ Tuvalu
- ☐ Uganda
- ☐ Ukraine
- ☐ United Arab Emirates
- ☐ United Kingdom
- ☐ United States of America
- ☐ Uruguay
- ☐ Uzbekistan
- ☐ Vanuatu
- ☐ Venezuela
- ☐ Viet Nam
- ☐ Yemen
- ☐ Zambia
- ☐ Zimbabwe

First name

Emanuel

Surname

Delia

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

\* Publication of your contribution and privacy settings

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

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

☒ I agree with the personal data protection provisions.

[Specific privacy statement targeted stakeholder consultation 2024 rule of law report.pdf](#)

## Questions on horizontal developments

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

Overview topics for contribution

[List of topics 2024 RoL Report.pdf](#)

Please provide any relevant information on horizontal developments here

*5000 character(s) maximum*

## Questions for contribution

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The following four pillars (I.-IV.) are sub-divided into topics (A., B., etc.) and sub-topics (1., 2., 3., etc.). For each of the topics and sub-topics, you are invited to provide (1) information on measures taken to implement the recommendations addressed to the Member State in the 2023 Rule of Law report, as well as developments with regard to the points raised in the respective country chapter of the 2023 Rule of Law Report and (2) any other significant developments since January 2023[3]. Please always include a link to and reference relevant legislation/documents (in the national language and/or where available, in English). Significant developments can include challenges, positive developments and best practices, covering both



legislative developments or implementation and practices.

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

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

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

Member State covered in contribution [only one choice possible]

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

- ☐ Austria
- ☐ Belgium
- ☐ Bulgaria
- ☐ Croatia
- ☐ Cyprus
- ☐ Czechia
- ☐ Denmark
- ☐ Estonia
- ☐ Finland
- ☐ France
- ☐ Germany
- ☐ Greece
- ☐ Hungary
- ☐ Ireland
- ☐ Italy
- ☐ Latvia
- ☐ Lithuania
- ☐ Luxembourg
- ☒ Malta
- ☐ Netherlands
- ☐ Poland
- ☐ Portugal
- ☐ Romania
- ☐ Slovak Republic
- ☐ Slovenia
- ☐ Spain
- ☐ Sweden

## I. Justice System

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Please provide information on measures taken to follow-up on the recommendations received in the 2023 Report regarding the justice system (if applicable)

*5000 character(s) maximum*

## A. Independence

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

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

*5000 character(s) maximum*

No steps have been taken in the last year to involve the judiciary in the procedure to appoint the Chief Justice, whose position is filled by a vote in parliament. No public pronouncements from the government were made to suggest a change was being considered.

Prosecutors are appointed through a normal call for applications usually sent out through the Chamber of Advocates, requiring candidates to have one (1) year experience "in the practice of the profession" and therefore not necessarily as courtroom lawyers. This is reflected in the poor quality of prosecution particularly because of the attrition of experienced prosecutors.

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

*5000 character(s) maximum*

No change during period under review. Transfer of judges and allocation of cases is at the absolute discretion of the Chief Justice.

Promotion of judges and prosecutors (incl. judicial review)

*5000 character(s) maximum*

No change during period under review.

Allocation of cases in courts

*5000 character(s) maximum*

No change during period under review.

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

*5000 character(s) maximum*

No change during period under review.

The 2020 changes to the law governing the Commission for the Administration of Justice have limited the right to file a complaint about the conduct of a judge or a magistrate to the Chief Justice and the Minister for Justice. No other person can file a complaint. Before 2020 the right to petition the CAJ was open to everyone. This continues to limit the possibility of commencing review proceedings on judicial misconduct.

In January 2023, a list of the judges' court attorneys – tasked with assisting in drafting judgments – was published for the first time. Such court attorneys are appointed by the specific judge whom they are required to assist, for a definite period of 3 years with no security of tenure. The published list is outdated and has not since been updated.

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

*5000 character(s) maximum*

The Commission for the Administration of Justice, which monitors the conduct of members of the judiciary and supervises the workings of the courts, includes practising lawyers nominated by the political parties. This could give rise to a situation where a judge or magistrate is facing disciplinary proceedings in front of a lawyer who is appearing in a case before the same judge or magistrate in a court of law. A leading criminal lawyer and former commissioner of laws has written to the authorities proposing that those lawyers do not practise in the courts.

Two members of the CAJ are appointed following nominations from the government and the opposition. Both nominees are practicing lawyers who practice their profession in the courtrooms of judges and magistrates that are subject to their disciplinary oversight. Repubblika believes this is a threat to judicial independence. Incidentally both political nominees on the CAJ are part of the defence team of former prime minister Joseph Muscat who is himself challenging the impartiality of Magistrate Doreen Clarke who is conducting an inquiry into the unlawful privatisation of three public hospitals and in which Mr Muscat is believed to be a suspect.

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

*5000 character(s) maximum*

Judges' and Magistrates' salaries were increased by 3%, still making them much lower than most partners in law firms making the posts unattractive to the most capable practitioners.

Independence/autonomy of the prosecution service

*5000 character(s) maximum*

The Opposition party has instituted a court case against the State Advocate for its failure to take legal action against present and past government officials involved in a deal to privatise the operation of three state hospitals in 2015. Earlier in 2023, a court presided by the Chief Justice upheld a previous court's ruling that the deal was unlawful following collusion between government officials and private interests. The Chief Justice declared that senior government officials were complicit in the fraud and said the government had failed in its duty to protect the national interest. The opposition Nationalist Party argues that the State Advocate is empowered by the Constitution to act in defence of the public interest and not be subject to the direction or control of any authority. Yet, the State Advocate has taken no action to secure justice. The opposition's legal action comes after the Advocate General, the Attorney General and the Police Commissioner had already turned down a judicial protest calling upon them to act against those who had defrauded the people in the hospitals deal.

This episode is only the latest of several that attest to the prosecution service's reluctance to secure convictions that might expose corrupt dealings engaged in by senior people in or close to the ruling party. Among the most notable are the Pilatus Bank case, where prosecutions have been limited to a money-laundering reporting officer despite a direction from a magisterial inquiry that six people be prosecuted. The bank's owner, directors and clients have been allowed to go free. Repubblika has revealed that the Attorney General issued an order not to charge these people. Repubblika has challenged that order in court in a case that is ongoing. Moreover, proceedings in this case were largely held behind closed doors due to a request by the government which was upheld by the Court on the premise that this was complying with an order of an international arbitration tribunal, something which was later disproved.

Neither has the prosecution service yet acted following the Panama Papers revelations or on evidence of corruption in the case of procurement of energy (Electrogas, part owned by Yorgen Fenech, charged with ordering the assassination of Daphne Caruana Galizia).

In a more recent case, a former Labour MP has still not been prosecuted despite copious evidence of being behind a scam in which hundreds of people fraudulently received benefit cheques they were not entitled to.

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

*5000 character(s) maximum*

Protracted discussion about a new law regulating the legal profession is still ongoing. Such discussions have been pending for around a decade.

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

*5000 character(s) maximum*

Disgraced ex-Prime Minister Joseph Muscat, and current Prime Minister Robert Abela have made several public remarks about the consequences inquiring magistrate Gabriella Vella will have to face if she puts a foot wrong in the magisterial inquiry investigating the deal to privatise the operation of three state hospitals in 2015. Joseph Muscat has filed constitutional proceedings claiming that Magistrate Gabriella Vella lacks the independence required to carry out the investigation due to comments posted on social media by some of her relatives. His request for an interim measure seeking the removal of said magistrate from the inquiry has been declined, following which the government has recently attempted to introduce a rule whereby all magisterial inquiries commenced after 2018 (as is this inquiry in question) are assigned to four (4) newly appointed magistrates. Anecdotaly, this only did not affect this ongoing inquiry because the Chief Justice objected, and therefore the cut-off date for the inquiries to be assigned to the new magistrates was adjusted accordingly.

This appears to have been a manifest attempt by the executive to abuse its powers to force the transfer of a politically sensitive case to a more amenable member of the judiciary. It would also appear that this attempt was not successful thanks to the intervention of the Chief Justice.

## B. Quality of justice

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

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

*5000 character(s) maximum*

### Resources of the judiciary (human/financial/material)

*(Material resources refer e.g. to court buildings and other facilities. Financial resources include salaries of staff in courts and prosecution offices.)*

*5000 character(s) maximum*

The complement of the judiciary has been strengthened with the addition of four magistrates whom the Chief Justice can assign exclusively to magisterial inquiries. But court resources remain stretched, to say the least. Practitioners argue that increasing members of the judiciary without increasing the allocation of human and physical resources to them exacerbates the problem and is likely to lead to even further delays and errors.

In November, the Association of Judges and Magistrates issued a rare statement complaining about the authorities' persistent failure to provide the tools and resources to enable the courts to serve justice within a reasonable time. They described the current state of play of the judicial system as "on the brink of collapse."

This statement echoed one made by the Chief Justice himself at the beginning of the forensic year: that the justice system would collapse were it not for the input of judges, magistrates, and court staff. As a result, the justice system continues to be plagued by delays, with judgments pronouncing a breach of human rights for failure to try cases within a reasonable time becoming increasingly common.

Moreover, although the complement of the judiciary has increased, the number of courtrooms has not. Currently each judge/magistrate does not have a specifically assigned court-room due to lack of space and usually shares the court room with one or two other judges/magistrates. This means that judges/magistrates are not able to hold sittings every day. Works are underway to add new courtrooms to the main court building, but other surrounding buildings owned by the Government have not yet been utilised to solve this problem.

Many judges/magistrates are assisted by part-time judicial assistants tasked with collecting evidence. The part-time nature of the appointment of said judicial assistants means that such persons are practicing lawyers which limits the time in which such persons can carry out their tasks as judicial assistants and raises doubts about their independence.

#### Training of justice professionals (including judges, prosecutors, lawyers, court staff, clerks/trainees)

*5000 character(s) maximum*

Malta provides no specialist training for judges and prosecutors beyond the formal law program given to all lawyers. This lack of specialisation in these specific career paths has an impact on the quality of performance.

#### Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, procedural rules, access to judgments online)

*5000 character(s) maximum*

The authorities have made several statements about intended progress in this regard but the experience on the ground has not improved in any way during the year under review.

Deputy registrars waste a lot of their time chasing lawyers for soft copies of judicial acts filed in court since online filing of acts is not possible.

There is only one courtroom equipped with a document scanner, such that important documents and or images being referenced throughout proceedings can be shown on screen to the judge and/or witnesses testifying about the same.

Currently, witnesses outside of the country can only be heard virtually on acceptance of both parties since the law does not envisage such a scenario. What's more, lawyers are not automatically allowed to attend virtually even in cases of obvious need, and time is wasted on lawyers making formal requests to attend virtually, even when sittings are intended only for the administrative purposes.

It is still not possible to notify parties or their legal counsel with any judicial acts or court decrees by electronic means. This means that court decrees given in camera are simply not delivered to legal counsel who is expected to attend either in the court registry or the judge's chambers to regularly check whether a decree has been given or otherwise. Not being able to notify lawyers or parties electronically of minor requests throughout proceedings leads to considerable delay in such proceedings, even when it is clear to the judge that all parties were notified electronically – this is still not deemed as a formal notification at law, and more expenses and time is wasted going through the process of formal notification. This notwithstanding, judges are, at times, practical and allow proceedings to continue considering the obvious knowledge of all parties of all judicial acts filed in the case. This is in the judge's absolute discretion.

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

*5000 character(s) maximum*

No change during period under review.

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

*5000 character(s) maximum*

No specific energy is allocated to fraud and corruption. In the criminal courts there is the ongoing prosecution of the case of John Dalli (over alleged solicitation of bribes while serving as EU Commissioner) and the prosecution of Pilatus Bank (for systemic money laundering). Both cases are extremely slow and independent observers are increasingly sceptical of the possibility of convictions.

The case against Keith Schembri, former chief of staff of the prime minister exposed by the Panama Papers, for private sector corruption from the time preceding his entry into politics, is also slow and is now plagued by controversy after the court appears to have temporarily mislaid his seized mobile phone that raises questions about the integrity of the evidence against him.

Towards the end of the period under review the government tabled in Parliament a change in the law which shifts the burden of proof on the illicit nature of laundered proceeds of crime from the accused to the prosecution. This effectively removes temporary asset freezes for people charged with money laundering. This is also arguably a direct consequence of and intended to affect the outcome of the constitutional case filed by Keith Schembri on such a freezing order enforced against him (in which case the court file also went missing for a while and was later recovered). Repubblika is of the view that this severely undermines the ability of the state (should it wish to exercise it) to combat organised crime and grand corruption. It is also our view that the law is intended to spare Joseph Muscat of a freezing order of a material consequence should he be charged with bribery and money laundering in connection with the hospitals privatisation.

## C. Efficiency of the justice system

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

*2)*

### Length of proceedings

*5000 character(s) maximum*



The government has moved a bill that would drastically shorten pre-trial proceedings by limiting the stage known as compilation of evidence to a year. This stage currently takes as long as 10 years to complete. If approved, the bill will also remove a bureaucratic process known as the referrals procedure, under which a case shifts from the court to the Attorney General's office in six-week intervals.

Repubblika has argued that the one-year deadline for the compilation of evidence without any improvement in the resourcing of the judiciary to hear the evidence needed for an eventual trial within the deadline is likely to undercut prosecutor's ability to secure convictions at the final stage. Repubblika has argued for abolishing the compilation of evidence stage altogether.

The government's bill contains several other provisions that attempt to shorten judicial proceedings. For example, a magistrate could do away with compilation of evidence completely. The accused will have the incentive of a shorter sentence if they file an early admission of guilt.

In the absence of formal direction from the Chief Justice or from legislative guidelines, individual judges are attempting to bring in their own measures within (and sometimes stretching) the parameters of current legislation in their attempt to shorten proceedings. For example, whereas the first hearing of a case is generally a preliminary one (as specified in the law) in which nothing much takes place except for ensuring that all parties are notified and fixing of a new date for the beginning of production of evidence; Judge Vella Cuschieri, on noting that all parties are notified with the case before the appointment of the first hearing, is requiring the plaintiff to bring evidence at the first hearing. Likewise, newly appointed Judge Henri Mizzi is looking to do away with time wasting through the adoption of new procedural rules, within the existing framework of procedural law – a presentation on his envisaged way forward was delivered to practitioners last week.

Other - please specify

*5000 character(s) maximum*

## II. Anti-Corruption Framework

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

Please provide information on measures taken to follow-up on the recommendations received in the 2023 Report regarding the anti-corruption framework (if applicable)

*5000 character(s) maximum*

The government has so far ignored all the recommendations made by the Daphne Caruana Galizia Public Inquiry on reforming Malta's anti-corruption legal framework. Public sector appointments based on trust rather than on a competitive basis -- identified by GRECO and the Commissioner for Standards in Public Life as gravely problematic -- continue without any change in policy. Malta continues to sell passports/citizenship despite European Commission's legal action.

There has been no progress to involve the judiciary in the procedure for appointment of the Chief Justice.

The appointment regime for members of specialised tribunals continues to raise concerns. Members of tribunals do not enjoy security of tenure, operate on a part-time basis, are frequently conflicted with their other professional commitments, and hear cases brought by or against the same government at whose pleasure they serve.

Although the number of judges has been increased, the level of resources, including the limited number of clerical staff, remains a concern, and this besides the lack of courtrooms outlined earlier.

The level of corruption in the public sector remains relatively high. There have been more journalistic exposes evidencing corruption in high office but none of these investigations led to prosecutions, let alone convictions, underlining the impunity enjoyed by persons in or close to political office.

There has been no progress on establishing a robust track record of final judgments. No such convictions have been secured. The Permanent Commission's 32-year history has not yielded a single conviction.

The government has not repealed its legal notice on "the right to be forgotten" which envisages the complete public erasure of judgments - both criminal and civil on the request of any person.

Despite concerns the government proceeded to appoint a Commissioner for Standards in Public Life whose nomination was rejected by the Parliamentary Opposition. This reduces the credibility of the office and its perceived independence.

OECD recommendations (in a program funded by the EU Commission) on ethics rules for high officials were published by the Commissioner in October 2023. The government has made no commitment to adopt these recommendations.

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

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

*5000 character(s) maximum*

A several-months long vacancy of Commissioner for Standards in Public Life, who investigates breaches of ethical standards by ministers, MPs, and persons of trust, has been filled by a person of the government's choice rather than by agreement with the opposition party. This followed a highly controversial change in the law enabling the commissioner to be appointed by a simple majority in parliament instead by of a two-thirds majority. Government control over the parliamentary committee that decides on breaches of ethical standards renders the commissioner relatively toothless in many cases anyway. While the person filling the post is a former chief justice, this can be seen as yet another instance of government seizing control of bodies and entities responsible for exercising checks and balances: government MPs have long ago abandoned their role of serving the people's interests above all others, while it is widely perceived that the heads of police and state prosecution service do the bidding of the ruling party in significant cases that might embarrass it.

Meanwhile, recommendations to empower the National Audit Office have not been implemented. It is little wonder. While it does not have executive power, this office has a crucial role to play in bringing suspected corruption to light, as one the very few institutions left in Malta with any real power to reveal bad governance and that seems to have managed to retain its independence from government in practice. For example, its reports into the hospital deal were instrumental in the 'fraud' judgment reached in court and it recently found that the appointment of a former Labour MP to a consultancy job with the state Institute for Tourism Studies to have been fraudulent and irregular. The demise of this office as a robust watchdog over government spending decisions would be a serious blow to democracy and the rule of law in Malta. It is already hampered by the failure of concerned entities to provide information needed in its investigations, as it has several times declared. Its only recourse in these cases is to refer these failures to the Parliamentary Accounts Committee, to which it reports. That is not an effective remedy to lack of cooperation with the national auditor in his investigations.

The Permanent Commission Against Corruption remains ill-resourced and still has failed to secure a single conviction in over 30 years.

The Financial Intelligence Agency Unit (FIAU) still has not been given any teeth, in that it has no power to prosecute or arrest, and their reports – when not ignored by the police – cannot be used as evidence in court and only seek to inform, whereafter the police are expected to repeat the investigation carried out by the FIAU in order to secure the evidence required before a case can proceed to prosecution.

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

*5000 character(s) maximum*

There has been a reversal of safeguards in the case of the Commissioner for Standards in Public Life. No other developments during the period under review.

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

*5000 character(s) maximum*

There have been no discernible developments in this regard.

## B. Prevention

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

*5000 character(s) maximum*

Recommendations made by the former Commissioner for Standards in Public Life in this regard have been totally ignored by the government. The Prime Minister recently went one step further in disdain for integrity standards when he justified a corrupt scheme to have applicants for a driving licence jump the queue with the involvement of ministers, their canvassers and customer care officials working at his office. There has so far only been one prosecution in this affair. But rather than condemning the abuse and vowing to eradicate it, the prime minister said that ministers “were just going their job”. Despite it being a relatively minor case of corruption, the prime minister’s statement only serves to further entrench the culture of favouritism and disregard for ethical standards which lies at the root of institutionalised corruption that allows far more serious breaches to take place. The Daphne Caruana Galizia inquiry famously identified the tentacles of corruption reaching out from Castille (the office of the prime minister), a picture that remains accurate to this day, as seen in this driving licence affair and in the prime minister’s response to it.

Another example of the culture of impunity being encouraged from the very top, thereby undermining any attempt to enhance integrity in the public sector, was the prime minister’s reaction to the national auditor’s finding that a sitting MP, formerly a Labour MP, had been awarded a fake consultancy job with a government agency. The people who gave the MP her job were just following orders, he said. There is no indication that anyone will be subject to an administrative, let alone criminal, investigation, over this act of fraud.

The government has not reacted to recommendations made by the OECD in a project funded by the European Commission. There appears to be no commitment to consider implementing the same.

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

*5000 character(s) maximum*

The case of the death, late last year, of a young man in a building collapse has raised concerns over an inherent conflict of interest in government decisions regarding whether to appoint a public inquiry into such matters. The building that collapsed was built on government land leased to a government official. The prime minister resisted appointing a public inquiry, even forcing his MPs to vote against it in parliament, only to perform a U-turn a few days later as the pressure to do so became untenable. The problem that has been highlighted by this case is that the government is the one to decide on whether a public inquiry should be held at the risk of exposing its own wrongdoings. Not only is the decision not transparently made but it gives rise to a blatant conflict of interest.

The government has not reacted to recommendations made by the OECD in a project funded by the European Commission. There appears to be no commitment to consider implementing the same.

Rules and measures to prevent and address conflicts of interest in the public sector. Please specify the features and scope of their application (e.g. categories of officials concerned, types of checks and corrective measures depending on the category of officials concerned)

*5000 character(s) maximum*

The government has not reacted to recommendations made by the OECD in a project funded by the European Commission. There appears to be no commitment to consider implementing the same.

We are aware of the following cases:

1. NAO report which found that a consultancy position with a government office granted to a government MP in 2019 was fraudulent and she was paid for doing no work. The MP concerned as well as the people she was contracted by have not faced consequences.
2. In 2020 the Police interrogated a former MP named repeatedly by people charged or convicted for unlawfully claiming severe disability benefits for having supplied them with forged medical certificates. The MP resigned his seat in Parliament and was immediately hired as a consultant to the prime minister, an office he no longer holds. The MP concerned has faced no further consequences.
3. The Parliamentary Speaker ruled that a government minister behaved “incorrectly” when he sent a witness due to appear at a hearing of Parliament’s Public Accounts Committee advanced copies of the questions he would be asked. The Minister concerned has faced no further consequences.
4. Officials of the transport regulator testifying in the case against them provided evidence that staffers for the then transport minister instructed them to give undue advantage to identified candidates for a driving license. The Minister concerned has faced no further consequences.
5. Press reports showed that a person charged with unlawful kidnapping and other crimes that suggest membership in a mafia-type criminal organisation had exchanged payments with Prime Minister Robert Abela and his wife Mrs Abela when Mr Abela was still an MP. No further investigation by the authorities in the matter is known to have occurred.
6. Press reports showed that the spouse of a government minister has secured ERDF funding for the restructuring of a private property on which unlawful construction was conducted over the past 20 years. No further investigation by the authorities in the matter is known to have occurred.
7. The Court of Appeal (civil jurisdiction) has struck down the privatisation of three public hospitals on the grounds that it found “collusion between government officials” and the acquirers of the hospitals. A criminal inquiry started on the initiative of NGO Repubblika in 2019 is believed to be still ongoing. The Commissioner of Police has made public statements in the sense that while the police are assisting the magisterial inquiry no further action on their side is required.
8. The Commissioner of Standards in Public Life has concluded 5 investigations during the period under review concerning minor complaints of wrongdoing which the Commissioner deemed close following apologies by the persons concerned. No further action is known to have been taken.

If available to you, for the three preceding questions, you are also invited to provide figures on their application, such as number of detected breaches/irregularities of the various rules in place and the follow-up given (investigations, sanctions, etc.).

Measures in place to ensure whistleblower protection and encourage reporting of corruption, including the number of reports received and the follow-up given

*5000 character(s) maximum*

No known use has been made of the Protection of Whistleblowers Act which remains a dead letter in the law. Decisions on whether to grant whistleblower status in public sector cases remain with officials appointed by ministers that are likely themselves to be the subject of the evidence given. Decisions on whether to grant whistleblower status in private sector cases remain with the ombudsman who refuses to consider the applications on the grounds that their competence is limited to the public sector by the constitution.

Repeated calls by Repubblika for discussions to revise the law continue to be ignored.

Sectors with high-risks of corruption in your Member State:

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

*5000 character(s) maximum*

No known preventive measures are taken. Existing structures (NAO, and the public procurement appeals process) are reactive.

The authorities have not implemented the recommendation of the Daphne Caruana Galizia inquiry to adopt an anti-mafia law that would address the infiltration of organised crime in democratic and administrative structures.

The following remain prominent vulnerabilities:

1. There is no state funding of political parties. Political parties depend on private funding which is believed to come disproportionately from unlawful funding from specialised economic sectors, particularly construction or otherwise as advertising on their television stations. The funds are covered up whether absorbed in cash-based telethons which political parties organise periodically or through the issuing of invoices for fake services provided by limited liability companies owned by political parties. Oversight of party funding is entrusted to the Electoral Commission, which is composed of nominees of the parties themselves, thereby ensuring inactivity.
2. Political parties spend hundreds of thousands annually in running their television stations, leaving them perpetually running at a loss and vulnerable to receiving donations from specialised economic sectors, particularly construction.
3. The political parties' dependence on funding from the construction lobby ensures very poor enforcement of planning, development, and health and safety regulations. The construction sector is responsible for rapid environmental degradation and excessive exploitation of land. It is also responsible for an abysmal health and safety record and the exploitation of trafficked human beings.
4. Poor enforcement and suspected collusion by the authorities means that Malta's harbours and the seas that are ostensibly in Malta's oversight responsibility are exposed to unlawful trading and trafficking of fuel, drugs, and other commodities.
5. Weak oversight structures as well as the inability or unwillingness of the police to enforce the law in cases involving persons with political influence means that public procurement remains extremely vulnerable to kickbacks and other unlawful practices. This is also particularly the case in matters of disposal of public land and the awarding of concessions for the privatised management of public goods – this was highlighted through the public inquiry into the death of young man on a construction site in December 2022 – where government officials could not explain the concession of land to individuals even though their proposal didn't seem to make any mathematical, economic or practical sense.

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

*5000 character(s) maximum*

No developments during the period under review.

## C. Repressive measures

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

*5000 character(s) maximum*

Repubblika argues that changes to the laws criminalising money laundering are reducing the effectiveness of law enforcement in respect of these crimes and diluting the capacity of the state to combat organised crime and grand corruption. Temporary freezing orders are all but being abolished.

The National Anti-Fraud and Corruption Strategy of 2021 is far from being implemented.

Data on the number of investigations, prosecutions, final judgments and application of sanctions for corruption offences (differentiated by corruption offence if possible) including for legal persons and high level and complex corruption cases) and their transparency, including as regards to the implementation of EU funds

*5000 character(s) maximum*

No such data is known to exist. However, Malta retains its zero-conviction rate in matters of grand corruption that have been publicly known for most of the past 10 years.

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

*5000 character(s) maximum*

The police have the power and obligation to independently investigate and prosecute cases on any suspicion of criminal law breaking they may have. Yet, they frequently hold back from doing so on the pretext that a magisterial inquiry, which seeks to preserve evidence, into the case is underway. This is the reason they have cited for their failure to prosecute in the case of the hospitals deal which has been pronounced by the courts as fraudulent with the collusion of high government officials. The opposition party held a meeting with the police commissioner, who is reported to have told its representatives that he will not open a police investigation until the completion of a magisterial inquiry triggered by Repubblika. This despite copious evidence in the public domain of corrupt dealings.

Delays in police investigations are generally inexplicable. Consider that leaked internal police documents show that in December 2012 the senior staff of the police had decided it held enough evidence to prosecute John Dalli for soliciting bribes while serving as EU Commissioner. However, prosecution on the back of that evidence was launched 9 years later.

The John Dalli case is exceptional in that no other high-profile case of corruption has been launched despite documentary evidence such as the publication of the Panama Papers in 2016.

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

*5000 character(s) maximum*



The Asset Recovery Bureau reported a €20 million increase in seizures from 2021, to €51.5 in 2022. Most of it, €47 million, was in immovable property. This is believed to be a very small fraction of illicit profits most of which are not challenged by the authorities.

Drug-related and money-laundering cases were the most prevalent sources of seizures, the bureau reported. Questions must be asked, however, over the government's real motive for this apparent increase in asset recovery: are these figures intended to impress the Financial Action Task Force by focusing on relatively minor cases, when the major cases of alleged corruption remain untouched by the authorities? Cases in point are the hospitals deal, from which former prime minister Joseph Muscat is suspected of profiting, and the Electrogas power station, whose former CEO is facing trial for ordering the murder of Daphne Caruana Galizia, who exposed the corruption in that case. The former CEO is part owner of the Electrogas consortium and continues to profit for its public contract.

Meanwhile, the government is rushing new legislation through parliament that will see freezing orders imposed by the courts limited to the amount suspected to have been defrauded. Under current laws, people accused of a financial crime may have most of their property and assets frozen by the courts. The government argues this breaks fundamental human rights of the accused, with several court judgments urging a revision of the law.

Repubblika argues that calls for the revision of the law are because perennial court delays lead to temporary freezing orders lasting decade before the case is finally concluded. Instead of reducing court time frames the government is effectively abolishing temporary freezing orders. This is likely to have a considerable impact on the data reported by the Asset Recovery Bureau.

Other - please specify

*5000 character(s) maximum*

Nothing to add.

### III. Media pluralism and media freedom

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Please provide information on measures taken to follow-up on the recommendations received in the 2023 Report regarding media pluralism and media freedom (if applicable)

*5000 character(s) maximum*

More than two years after the public inquiry into the assassination of Daphne Caruana Galizia made far-reaching recommendations on the strengthening of press freedom and protection of journalists, the government continues to drag out the process of reform so that changes have yet to be made. Along with all other Daphne Caruana Galizia public inquiry recommendations, all recommendations concerning media reform have so far been ignored by the Maltese authorities.

Political parties remain dominating owners of the media landscape reducing journalistic independence and increasing polarisation and risks of disinformation. There is no formal framework on state spending in advertising (or ex gratia subsidies paid to media houses without any form of transparency), and government spending remains a tool of influence and control on the media.

The implementation of the Freedom of Information Act remains poor despite the government habitually losing cases brought against it with the data commission review process after rejecting requests for FOI publications.

There has been no progress on enhancing the independent governance and editorial independence of public service media. Public service journalists operate in an environment which effectively prevents them from doing any work that may be interpreted as inconvenient to the authorities.

Journalists continue to face challenges in the exercise of their profession. The fact that the authorities have not implemented even one of the recommendations of the Daphne Caruana Galizia public inquiry signals to all journalists that the causes that have been documented as the context in which her assassination was made possible all persist with the aggravating consideration that the present context persists despite the experience of the assassination.

No legal or administrative reforms to protect journalists from SLAPP and from systemic and punitive exclusion from information held by the government have been adopted.

It is fair to say that it is now harder than ever to be a journalist in Malta.

There is no formalised process for public participation in the legislative process and no commitment to introduce one.

During the year under review the authorities have ignored renewed calls by civil society for the setting up of a Human Rights Commission.

Plans for a Constitutional Convention announced in 2019 appears to have been abandoned after President George Vella announced he had been prevented from calling the first meeting after disagreement on who would lead the Convention.

After several stops and starts, the prime minister promised last October to issue a White Paper with proposed media reform laws. That White Paper has yet to see the light of day at the time of writing. The long and winding road to reach this point – still far from the required legislation – reflects the government's reluctance to effect real reform that would bolster the media and its power to hold it to account. The prime minister's White Paper pledge came in response to demands from journalists and media experts for broader consultation on a set of media laws proposed by the government. These proposed laws had in turn come in response to a report drafted by a committee of media experts appointed following the Daphne inquiry. However, the government kept that report to itself for several months and only published it under pressure from the journalism community, on the same day the prime minister made his White Paper pledge. Among others, the government proposes enshrining freedom of the press and the media's role as a public watchdog in Malta's constitution as the fourth pillar of democracy, as well as including protection of journalists' sources within the constitution – this appears to be intended to pull wool over the public's eyes in that journalistic sources are already protected through Chapter 319 of the laws of Malta which makes the ECHR enforceable in Malta. Crimes committed against journalists due to their work would carry higher sentences.

Much has been found wanting in these proposed laws however, now frozen to pave the way for the promised White Paper. The committee of experts, for example, had proposed the creation of a system of transparent public funding for media houses and the binding of public authorities to provide information to journalists within a reasonable time. These elements are missing from the government's proposals. One press law expert and campaigner for press freedom called the government's proposed laws "empty words" which would change nothing in practice, would not oblige the government to provide information to journalists, would not protect journalists from harassment and would not have saved Daphne's life.

## A. Media authorities and bodies

(Cf. Article 30 of Directive 2018/1808)

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

*5000 character(s) maximum*

None. Recommendations to reform the country's Broadcasting Authority have not been implemented. Meanwhile, the authority's failure to ensure impartiality was confirmed by a court in two cases instituted by the opposition party. The court found that the authority had failed to monitor the fulfilment of its orders by the public broadcaster, in breach of its constitutional obligations.

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

*5000 character(s) maximum*

No progress during the year in review.

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

*5000 character(s) maximum*

There are none. The Istitut tal-Ġurnalisti Maltin is a voluntary organisation set up to represent the interests of members of the profession. It has no staff and no financial resources to speak of and depends on a few working journalists allocating whatever spare time they have.

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

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

*5000 character(s) maximum*

There are no enforceable rules governing state advertising and funding of media organisations according to objective criteria such as fairness or audience reach. This allows the government to reward sympathetic media organisations including the media organisations that the ruling party owns, and to punish critical news organisations by withholding advertising expenditure.

The Commissioner for Standards in Public Life wrote to parliament's standards committee in July requesting that guidelines issued by his office about paid government adverts be recast as rules and incorporated in the ministerial code of ethics. This, he said, would give the guidelines a legal basis and eliminate any doubts about their legality. His letter came after the committee had ignored two reports which found ministers guilty of ethical breaches concerning advertising two years earlier.

The government has shown no interest in adopting this recommendation.

Safeguards against state / political interference, in particular:

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

*5000 character(s) maximum*

In theory, the public broadcasting station operates under an obligation to give space to all voices in society and to promote democratic debate, including a balance of political expression. In practice, the Public Broadcasting Service favours the party in power in its treatment of news, under an artificial veneer of balance that it uses to hide its sins of omission: its failure to undertake proper investigative journalism and hold the governing party to account, its stifling of meaningful debate, and its propagandistic approach to news that provides a totally distorted picture of political reality. By many accounts, this situation is worse than it has ever been.

There have been no attempts to discourage editorial interference by the ruling party – it is still common practice that the entire editorial board hands in their resignation on the holding of an election – even though this is not mandated by law.

The other two major broadcasting stations are owned by the two main political parties. Their news and current affairs coverage serves the agenda of their political masters, leaving the Maltese public with no independent news outlet to speak of in the TV space, the most important source of news for the public. The political monopoly of television continues to present a grave threat to democracy and rule of law in the country.

The printed media (including online news) is in a somewhat healthier position. Times of Malta, the leading outlet by far, is fiercely independent, even regarding internal safeguards in terms of a strict firewall between its editorial and management teams. Still, without the existence of formal safeguards against unwarranted political influence, this independence is precarious in that it depends largely on the personal decisions of the people running such organisations to protect their autonomy. The lack of funding provisions to ensure the sustainability of private media only adds to the precariousness of independent media organisations.

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

*5000 character(s) maximum*

Though there are no specific rules about transparency of ownership beyond rules about transparency of ownership of any limited liability company, the identity of media owners is widely known.

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

Rules and practices guaranteeing journalists' independence and safety, including as regards protection of journalistic sources and communications, referring also, if applicable, to follow-up given to alerts lodged with the Council of Europe's Platform to promote the protection of journalism and safety of journalists

*5000 character(s) maximum*

Journalists involved in investigating serious wrongdoing involving government or private interests continue to feel vulnerable following the assassination of Daphne Caruana Galizia. There is no official framework in place that seeks to ensure their safety apart from an officer appointed by the police to act as liaison. Newsrooms are constrained to take individual action to secure protection, often via informal channels, if a perceived threat exists.

A French news agency recently revealed that Malta is among seven EU member states pushing for a new EU media law to include a clause authorising the surveillance of journalists in the name of national security. This without safeguards against abuse. Such a clause is perceived by parts of the press freedom community in Malta as a go-ahead to spy on journalists and breach the protection of sources. This would deter sources from assisting journalists, undermining the role of the press as a watchdog and provider of reliable information. As things stand, ministers already have the power to approve warrants for the interception of citizens' communications without judicial approval or oversight.

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

*5000 character(s) maximum*

The Police claim they have a unit responsible for monitoring journalists' safety. There is no way to assess the effectiveness of this unit. Physical assaults on journalists are rare. However, complaints by journalists to the police are regularly investigated and prosecuted.

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

*5000 character(s) maximum*

Journalists and NGOs find that the government tends to be secretive by default, including in instances where the information is of manifest public interest. This means journalists, NGOs and other interested parties are constrained to go through the time-consuming and often costly process of seeking replies via the Freedom of Information Act, which is entirely dysfunctional. The FOI request is frequently denied citing a long list of exceptions in the law. This despite a landmark court judgment a few years ago saying that confidentiality should be the exception rather than the rule when information about public projects is sought.

When called to review, the Data Protection and Information Commissioner can be expected to apply the law appropriately and order the release of the requested information. Often, that decision is then be appealed by the government to a special tribunal. The special tribunal is headed by a government appointee without security of tenure and is usually a practicing lawyer. Even if the government appointee orders the disclosure of information, the government has a further appeal to the Court of Appeal (in its inferior jurisdiction) – one which is often utilised in a bid to dissuade the request for information. By the time the requested information is released, it risks becoming redundant.

A notable judgment by the Constitutional Court in December, in a case instituted by journalist and Republika executive officer Emanuel Delia, has made it clear that the state is obliged to provide journalists with access to places of detention. Delia brought the case after he was denied reasonable access to living conditions in prisons and detention centres following reports of ill-treatment of detainees. The court's decision has been hailed as a resounding victory for the public's right to know. The government has appealed that judgment, including in its appeal, an appeal from a preliminary decision given by the court on a preliminary plea in 2021.

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

*5000 character(s) maximum*

No measures were taken during the period under review to prevent SLAPPs or to provide any safeguard against manifestly unfounded and abusive lawsuits.

During the period under review The Shift News was forced to fight 40 lawsuits brought by the government to overturn regulatory orders to grant it information requested under the Freedom of Information Act. Though the government has lost all lawsuits they have pursued each one in a manifest attempt to discourage reporters from pursuing FOIs. The government continues to file such appeals before the Court of Appeal, following judgment in favour of the Shift News by the specialised tribunal, and this even though the Court of appeal has already pronounced itself on some fifteen (15) cases - showing that the intention of the government is simply to drain the media outlet's resources and distract it from its daily work.

Other - please specify

*5000 character(s) maximum*

Nothing to add.

## IV. Other institutional issues related to checks and balances

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Please provide information on measures taken to follow-up on the recommendations received in the 2023 Report regarding the system of checks and balances (if applicable)

*5000 character(s) maximum*

The public or civil society is given very little possibility of participating in the drawing up of new legislation, and the government almost never publishes draft laws before debate on them has already started in parliament.

A long-promised constitutional convention has fallen by the wayside, despite behind-the-scenes work on laying the groundwork that involved both political parties. The President of the Republic, who was steering the process, has been forced to express displeasure at this failure. In a December speech, he said a great deal of work was done to collect suggestions from the public and constituted bodies, but he was prevented from convening the convention due to lack of willingness to agree on who should lead it.

Meanwhile, several amendments to the constitution continue to be adopted piecemeal by Parliament. There has been no indication that the government is considering the universal application of findings of the constitutional court, which forces property owners unable to enjoy their property due to government abuse to have to obtain decisions by the court identical to several other decisions taken in identical cases. The European Court of Human Rights has time and again upheld Maltese property owners' requests for fuller relief, in judgments highly critical of Malta's old rent laws.

The Constitutional Court continues to abdicate on its duty to give effective remedies even though it has been called out on this practice in several judgments of the European Court of Human Rights (ECtHR).

## A. The process for preparing and enacting laws

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

[1] This includes also the consultation of social partners

*5000 character(s) maximum*

Anecdotal calls for public consultation are on the increase though they remain entirely at the discretion of ministers. Key laws on matters of justice and law and order are rarely released for public consultation before their adoption by legal notice or as published bills. There is no standing process of consultation with civil society about legislative changes.

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)

*5000 character(s) maximum*

The bulk of law making in Malta is issued by decree through Legal Notices published on the strength of the minister's signature. Ex-post Legal Notices can be challenged by an MP in Parliament though that invariably leads to its confirmation.

The government is unrestricted in setting Parliament's agenda and in fast tracking legislative initiative it wishes to rush through Parliament. MPs have no resources to assess bills and often complain of not having had time to read laws before they're asked to vote on them.

## Rules and application of states of emergency (or analogous regimes), including judicial review and parliamentary oversight

*5000 character(s) maximum*

There are no specific oversight requirements which is an issue raised by the experience of Covid when the government's declaration of a state of (medical) emergency led to an order to close Malta's harbours even to the rescue of migrants at sea.

There is no current debate on the possibility of considering revisions to this.

## Regime for constitutional review of laws

*5000 character(s) maximum*

Most of the constitution requires cross-party consensus.

A long-promised constitutional convention has fallen by the wayside, despite behind-the-scenes work on laying the groundwork that involved both political parties. The President of the Republic, who was steering the process, has been forced to express displeasure at this failure. In a December speech, he said a great deal of work was done to collect suggestions from the public and constituted bodies, but he was prevented from convening the convention due to lack of willingness to agree on who should lead it.

## B. Independent authorities

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

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

*5000 character(s) maximum*

Calls for the setting up of a national human rights agency continue to be ignored. This is perhaps due to the government's policy to reject the notion of erga omnes application of decisions of the Constitutional Court and the ECtHR. ECtHR judgments are often ignored, and Constitutional Court judgments given in direct conflict with leading case-law of the ECtHR. Moreover Chapter 319, which transposes the Convention into Maltese law, besides not having been updated to include all the Convention's protocols, contains a provision (Article 6A) which renders the effective enforcement of judgments given by the ECtHR wholly dependent on the will of the Prime Minister. Therefore, laws and or policies found to be in violation of the Convention, remain on the statute books notwithstanding repeated judgments of the ECtHR on the matter.

The ombudsman's office is autonomous and reasonably well resourced. However, the adoption of the ombudsman's recommendation is contingent on the government's discretion. The ombudsman has the power to report to Parliament the government's rejection of their recommendations and this happens regularly without a favourable outcome for the complainant.

The National Audit Office is also an effective organisation and though under-resourced considering the demand for its services is efficient and reliably objective in its assessments. The Public Accounts Committee of Parliament which reviews the NAO's work is, like all other functions of Parliament, a part-time institution which means that the backlog of follow-up of the NAO's work is impractical.



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

5000 character(s) maximum

## C. Accessibility and judicial review of administrative decisions

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

5000 character(s) maximum

Article 469A provides for judicial review of administrative decisions – it includes a time limit of 6 months from the decision – or presumed refusal – of the public authority. Despite several calls for this 6-month period to be suspended throughout an investigation by the Ombudsman – most notably by a paper presented to the government by law students, the government has not heeded this advice. Instead, individuals seeking redress thought the Ombudsman, are told, once the Ombudsman's recommendations are ignored by the authorities, that they cannot now have recourse to judicial review since the 6-month period would have passed.

Article 469B of the Code of Civil and Organisational Procedure grants the right to ask for judicial review of decisions by the prosecutor not to prosecute. The right is limited to persons with a legal standing in the case which is generally interpreted by the courts to restrict access to this right to direct victims of a crime. 469B was introduced following findings by the Venice Commission in 2018 that Maltese prosecutors appeared to shelf indefinitely cases against people with political influence suspected of corruption. However, the narrow understanding of legal standing and the difficulty in identifying victims of corruption in the conventional sense mean that the clause has had little to no meaningful effect.

Furthermore, despite a 6-month deadline for these cases to be opened from the time the decision not to prosecute is taken, decisions not to prosecute are often secret and undocumented. This is particularly the case when magisterial inquiries (themselves a secret process) conclude with a direction to the prosecutor to commence prosecution. The prosecutor has discretion on whether to act on the direction given by the magistrate and a decision not to prosecute is not formally announced or communicated to the victim.

This makes 469B effectively a dead letter.

The government has not reacted to a bill in Parliament put forward by the opposition to update the law.

Judicial review of administrative decisions:

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

5000 character(s) maximum

Rules and practices related to the application by all courts, including constitutional jurisdictions, of the preliminary ruling procedure (Art. 267 TFEU)

*5000 character(s) maximum*

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

*5000 character(s) maximum*

Broadly speaking the authorities comply with court rulings – but only insofar as the payment of compensation is concerned. As discussed previously, the effective enforcement of a judgment by the ECtHR is wholly dependent on two things (Article 6 and Article 6A of Chapter 319 of the Laws of Malta). Firstly, the applicant, having received a favourable judgment in Strasbourg, must file another application before the Constitutional Court requesting the enforcement of the judgment (Article 6) and secondly, the Prime Minister may, within the period of six months from the date that the judgment becomes final and to the extent necessary in his opinion.

to remove the inconsistency, make regulations deleting any such instrument or provision found to be inconsistent with the ECHR (Article 6A). This means that often, the impugned legislation remains on the statute books and persons suffering similar violations are forced to file constitutional proceedings anew complaining of the same violation/s already established by previous case-law.

This is especially the case following repeated rulings by the Constitutional Court and the ECtHR over systemic breaches of the right to the enjoyment of property due to antiquated rent laws and laws government the requisition by the state of private property. Despite repeated rulings against the government, the authorities have not adopted an erga omnes policy in these or any other circumstances – and despite the fact that the ECtHR has pointed out the Constitutional Court on several occasions that it is perfectly within its current powers according to the Constitution and Chapter 319 of the Laws of Malta, to declare a law null and void and to provide an effective remedy – such as eviction in the case of the controlled rent laws.

## D. The enabling framework for civil society

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

*5000 character(s) maximum*

There has been no change in this regard in the year under review. The existing rules are proportionate and not an inhibition to the ordinary formation and retention of civil society organisations.

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

*5000 character(s) maximum*

During the period under review the police have for a long time ignored credible threats of physical violence on Robert Aquilina, President of Repubblika, and his family. Following a determined public and international

campaign and following the conviction of a few offenders for stalking or threatening Mr Aquilina, the police agreed to provide him with limited protection at his family home during the night.

No measures were taken to protect civil society activists from SLAPPs.

The media owned by the ruling party were systemically used to identify civil society activists and organisations and identify them for negative narratives intended to discredit them with the public. In testimony given in a particular libel case against a former Economy Minister, he freely admitted that when he was a Minister, he had Ministry personnel identify activists of rule of law NGOs to be able to smear their reputation.

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

*5000 character(s) maximum*

Funding for civil society organisations working in philanthropic activity is discretionary and given and withdrawn unilaterally by ministers. Activists and volunteers in this sector have reported retaliation by ministers using threats or actively withdrawing funding for organisations that express any form of dissent or policy disagreement. There is no national or local funding whatsoever for organisations against in human rights or anti-corruption activities.

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

*5000 character(s) maximum*

Completely absent.

## E. Initiatives to foster a rule of law culture

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

*5000 character(s) maximum*

Completely absent.

Other - please specify

*5000 character(s) maximum*

## Contact

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

