



DAPHNE
CARUANA
GALIZIA
FOUNDATION

2023 Rule of Law Report

—

Joint Submission

aditus foundation

&

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Contents

Horizontal developments	5
Horizontal Development of Anti-Corruption Framework.....	5
Horizontal Development of Media Freedom and Pluralism.....	5
I. Justice System.....	6
Follow-up on the recommendations in the 2022 Report	6
Appointment of Chief Justice:	6
Efficiency in Justice:.....	6
A. Independence	7
Appointment and selection of judges and prosecutors	7
Irremovability of judges and prosecutors	7
Allocation of Cases	8
Independence and powers of Commission for the Administration Of Justice	9
Remuneration & bonuses for judges and prosecutors.....	9
Independence of the prosecution service.....	10
Independence of the Bar	10
Significant developments capable of affecting the perception of independence.....	10
B. Quality of justice	11
Accessibility of courts.....	11
Digitalisation.....	12
Use of assessment tools & standards.....	12
Geographical distribution of courts.....	13
C. Efficiency of the justice system	13
Length of proceedings.....	13
Other	13
II. Anti-Corruption Framework	14
Follow-up on the recommendations in the 2022 Report	14
A. The institutional framework capacity to fight against corruption	15
Prevention detection, investigation and prosecution.....	15
Safeguards for the independence of the authorities	16
Implementation of measures in the strategic anti-corruption framework	16
B. Prevention.....	17
Measures to enhance integrity in the public sector.....	17
General transparency of public decision-making	18
Rules to prevent conflict of interests in public sector.....	19

Whistleblower protection and reporting of corruption	20
Sectors with high-risks of corruption and preventive measures	21
Other measures to prevent corruption in public & private sector	21
C. Repressive measures	21
Criminalisation of corruption & related offences	21
Data on investigation and application of sanctions for corruption offences	22
Obstacles to investigation & prosecution of high-level and complex corruption cases	23
Effectiveness of non-criminal measures and sanctions on public and private offenders	24
III. Media	26
Follow-up on the recommendations in the 2022 Report	26
A. Media authorities and bodies	27
Independence, enforcement powers and resources of media regulatory authorities	27
Appointment and dismissal of members of media regulatory authorities and bodies	28
Existence and functions of media councils	28
B. Safeguards against government or political interference, transparency & concentration of media ownership	29
Measures to ensure fair and transparent allocation of state advertising	29
Safeguards against state & political interference	30
Transparency of media ownership and public availability of media ownership	30
C. Framework for journalists' protection, transparency & access to documents	31
Rules and practices guaranteeing journalist's independence and safety	31
Law enforcement capacity to ensure journalists' safety and to investigate attacks	32
Access to information and public documents	32
Lawsuits against journalists and measures taken to safeguard against abusive lawsuits	33
IV. Other institutional issues related to checks and balances	35
Follow-up on the recommendations in the 2022 Report	35
A. The process for preparing and enacting laws	35
Use of impact assessments and evidence based policy-making	35
Regime for constitutional review of laws	36
B. Independent authorities	36
Independence, resources, capacity and powers of national human rights institutions	36
Statistics/reports concerning the follow-up of recommendations	37
C. Accessibility and judicial review of administrative decisions	37
Transparency of administrative decisions and sanctions	37
Judicial review of administrative decisions	37
Follow-up by the public administration and State institutions to final court decisions	38

D. The enabling framework for civil society	38
Measures regarding framework for CS)s and human rights defenders	38
Rules and practices having an impact on the effective of CSOs and human rights defenders.....	38
Organisation of financial support for CSOs and human rights defenders	38
Rules on the participation of CSOs and human rights defenders in decision-making.....	39
E. Initiatives to foster a rule of law culture	40
Measures to foster a rule of law culture	40
Other - please specify.....	40

Horizontal developments

Horizontal Development of Anti-Corruption Framework

Horizontal change has been insignificant. Some low-level prosecutions started in 2022. Some 100 financial crimes cases are pending. The depletion of FCID resources, the delayed appointment of Commissioner for Standards in Public Life and a Parliamentary Ombudsman are of concern as are lack of cooperation between EPPO, the Police, and relevant authorities, and under-capacity in the Police and the Attorney General's office. Promised actions cannot be assessed on the basis of public domain information. OECD recommendations to strengthen the role of the Standards Commissioner and to regulate integrity of public officers remain unimplemented.

The Whistleblower law is ineffective. Since 2013 only 1 person was granted protection. The legal structures do not encourage sufficient trust, particularly given the culture of impunity. Obstacles include: political impunity, investigative delays, lack of prosecution, lack of capacity in the Police, failure to take responsibility for ethics breaches, failure to follow up investigative media reports, political disrespect for public authorities, unreformed authorities, police reliance on magisterial inquiries, lack of prosecution & investigation of FIAU reports, and resignations in the financial crimes sector.

Horizontal Development of Media Freedom and Pluralism

Government refuses to legislate against abuse of power and corruption as recommended by the Public Inquiry Board. It appointed a Committee of Experts in January 2022 to review government's own proposals and to make recommendations. The legislative Bills government presented in parliament do not comply with international standards. It is organising a public consultation in February.

The Broadcasting Authority is composed of a politically appointed board. The operational, administrative and editorial independence of the public service media remains weak. There is no regulation of state advertising nor any clear policy and criteria for state finances granted to media.

The beneficial ownership registry is closed to journalists. Government routinely refuses to provide information requested in terms of the FOI Act. Service contracts between public authorities and the owner of an 'independent' media company are not transparent.

I. Justice System

Follow-up on the recommendations in the 2022 Report

In terms of follow-up to the 2022 Report recommendations relating to the justice system, we note the following:

Appointment of Chief Justice:

There has been no action to address the need for the involvement of the judiciary in the appointment of the Chief Justice. Article 96 of the Constitution requiring the appointment of the Chief Justice in accordance with a 2/3 majority in Parliament remains unchanged. The anti-deadlock mechanism remains problematic, and could potentially lead to a similar situation that is being faced in the appointment of the Ombudsman and in the appointment of the Commissioner for Standards in Public Life. A new Ombudsman should have been appointed in 2021, however such appointment is still pending almost two years on and a new Commissioner for Standards in Public Life is yet to be appointed. The Government has proposed amendments to introduce an anti-deadlock mechanism for the latter, as outlined further on.

Efficiency in Justice:

(i) Digitalisation

The 2022 – 2027 [Digital Justice Malta](#) was published by the previous administration in 2022. The Strategy does not contain any timelines by which specific plans or goals should be achieved and therefore it is difficult to comment on progress. However, in relation to Strategic Goal 1: there has been no progress relating to the digitalisation of the register of legal professionals, nor the digitalisation of civil courts and tribunals. We are unaware of any case management system being implemented. The same can be said of Strategic Goal 2 for which we have seen no developments on any of the goals.

[ACT No. V of 2022](#) which amended the Criminal Code made provision for copies of judgements, inquiry, exhibits and depositions of the cases to be sent or transmitted to, or accessed by the Attorney General via electronic means through scanned documents. Access to defence lawyers is still under development. During the Committee Stage of the Bill on 24th January 2022, it was clear that it was not known how the electronic operating platform and the case management system would work, nor how the electronic receipts would work in relation to the calculation of legal time limits. In fact, [L.N. 310 of 2022](#) Criminal Code (Amendment No. 2) Act, 2022(Act No. V of 2022)- Commencement Notice extended the date of coming into force of the provisions of Articles 4, 5, 6, 7 and 8 of Act No. V to 28th February 2023.

(iii) Judiciary

In 2022 the Government appointed 2 judges from the already existing pool of magistrates. There are currently 26 judges and 21 magistrates. Malta has one of the lowest numbers of judges per capita, with some of the longest timeframes for the resolution of cases. This has been highlighted [a number of times](#).

A. Independence

Appointment and selection of judges and prosecutors

Appointment of Judges and Magistrates to the Courts:

Although the system has improved it should be noted that the Venice Commission, together with aditus foundation, has called on the government to strengthen the appointment system by making shortlisted candidates public before appointment by the President. It should also be noted that out of the current 47 members of the judiciary, only 2 judges and 4 magistrates were appointed through the new system.

Furthermore, there is need to depoliticise the appointment of the Chief Justice by involving the judiciary in the appointment and by requiring that the appointment be made from among senior judges. There also needs to be an effective anti-deadlock mechanism in the appointment of the Chief Justice.

Appointment of adjudicators on specialised boards:

As already noted in previous submissions, board members of specialised tribunals are appointed by the responsible Minister under the Act. Although aware that Milestone 6.3 and 6.4 of Malta's Recovery and Resilience Plan focus a review of the system, the deadline of the implementation is in 2026 which is 3 years from now. In the meantime, the boards are deciding on crucial issues relating to detention, refoulement and asylum amongst others, which have clear implication on fundamental rights in the implementation of European Union law. We bring the Commission's attention to [S.H. V Malta](#), in which the ECtHR found that the International Protection Appeals Tribunal (IPAT) was not an effective remedy and that in 2021 it had carried out a total of 482 reviews (during accelerated procedures appeals) and confirmed 478 of them. Furthermore, in communicated case [A.D. v Malta](#) the ECtHR will be examining the question of whether or not the Immigration Appeals Board is an effective remedy due to the lack of independence and impartiality, in a case relating to an unaccompanied minor. The independence of the tribunals, specifically of the IPAT was also raised in pending Commission Complaint CHAP(2021)02127 - Systematic breach of EU law in accelerated procedures, breach of Charter (Asylum Unit).

It is simply not enough that Malta has committed to an unknown review of these tribunals in 2026, whilst citizens' and residents' fundamental rights are being breached due to lack of independence and impartiality of the adjudicating bodies.

It should be noted that the Maltese legal system is largely built around these Tribunals, others include: Environment and Planning Review Tribunal, the Consumer Claims Tribunal, the Competition and Consumer Appeals Tribunal, the Industrial Tribunal, the Information and Data Protection Appeals Tribunal, the Mental Health Review Tribunal, the Patent Tribunal, the Police Licences Appeals Tribunal, the Panels of Administrative Review Tribunals and the Prison Appeals Tribunal.

Irremovability of judges and prosecutors

Removal of Judges:

The 2020 Constitutional amendment removes Parliamentary control over the procedure of dismissal of judges and magistrates. In practice, this means that the disciplinary role has been shifted onto the Commission for the Administration of Justice (CAJ). Disciplinary procedures are carried out by the

Committee for Judges and Magistrates which is composed of members of the judiciary. However, this procedure can only be initiated by the Chief Justice or the Minister responsible for justice.

However, it should be noted that removal of members of tribunals or quasi-judicial bodies is usually the prerogative of the President acting on the advice of the Prime Minister. Under the International Protection Act and the Immigration Act, the grounds of removal are gross negligence, incompetence, or acts, omissions or conduct unbecoming. However, under Article 24 of the Data Protection Act (DPA), the members of the Information and Data Protection Appeals Tribunal can be removed on grounds of proved inability to perform the functions of their office, whether arising from infirmity of body or mind or any other cause, or proved misbehaviour. The DPA does not prescribe who can remove these members. There is no right of appeal from removal nor any oversight from the Chief Justice or the Committee for Judges and Magistrates.

The Attorney General is removed from office by President, supported by two-thirds majority in Parliament on the grounds of proved inability to perform the functions of office, whether arising from infirmity of body or mind or any other cause or proved misbehaviour. Parliament may regulate the procedure for the presentation of an address and for the and for the investigation and proof of the inability or misbehaviour.

Assignment of duties/Transfers:

Article 101A(13) of the Constitution grants the President, on advice of the Chief Justice, the power to decide on the subrogation of judges and magistrates and to the assignment of duties of judges and magistrates. If the Chief Justice fails to make recommendations, then the President acts on the advice of the Minister responsible for Justice. This article is supplemented by Article 11 of the [COCP](#) which lays down that the President assigns duties to judges by assigning them to a court or the chamber of the court in which they are to sit. The President may transfer a judge from one court or chamber or section of a court to another.

Retirement:

The Constitution provides that the retirement age of judges is 65, however, should any judge wish to remain in office until the age of 68, he or she can inform the Chief Justice and the President of the intention to remain before reaching 65.

Members of tribunals or quasi-judicial bodies are usually appointed for a period of three years which can be renewed for an indefinite amount of times.

The Attorney General retires on turning 65.

Allocation of Cases

The Chief Justice decides on the distribution of duties in general between judges, and the Court registrar assigns cases to the judges as directed by the Chief Justice (Article 11(3) COCP). If any dispute arises as to whether a case or other judicial act is to be assigned to one judge or to another judge sitting in the same court or in the same chamber or section of a court, or when a dispute arises as to which chamber or section of a court is to deal with a particular case or a particular judicial act, the matter is referred to the

Chief Justice who shall, in camera, determine the judge or chamber or section to which the case or judicial act shall be assigned (Article 11(9) COCP).

With regards to the Tribunal and quasi-judicial tribunals, there is no standard procedure and generally the boards regulate themselves as to the procedure to be adopted, including allocation of cases. In most cases, these rules and procedures are not public.

Independence and powers of Commission for the Administration Of Justice

The Commission for the Administration Of Justice (CAJ) is composed of the President, the Chief Justice who shall be Deputy Chairman and (b) 2 members elected for 4 years by the judges from among themselves; (c) 2 members elected for a period of 4 years by the magistrates from among themselves; (d) 2 members appointed for a period of 4 years: 1 by the Prime Minister and the other by the Leader of the Opposition; and (e) the President of the Chamber of Advocates. The Commission has jurisdiction over the workings of the courts and the behaviour of judges, magistrates, lawyers and legal procurators. It has no jurisdiction over adjudicators who sit on Tribunals, Commissioners for Justice, mediators, and arbitrators. (Article 101A of the Constitution)

The Committee for Judges and Magistrates is a sub-committee of the CAJ tasked with judicial discipline. It consists of 3 members of the judiciary who are not members of the CAJ and who shall be elected from amongst judges and magistrates. In disciplinary proceedings against a magistrate 2 of the 3 members shall be magistrates and in the case of disciplinary proceedings against a judge 2 of the 3 members shall be judges.

Disciplinary proceedings against a judge or a magistrate can only start on a written complaint or breach of the provisions of the Code of Ethics for Members of the Judiciary that contains definite charges made to the Committee by the Chief Justice or by the Minister responsible for justice. (Article 101B of the Constitution). Therefore, proceedings can only start with the Chief Justice or the Minister's action, which is problematic in itself, as it rests solely on the discretion of one person one an elected politician and the other appointed by an elected politician.

It is not understood why there are two representatives appointed by the Prime Minister and the Opposition as this leads to unnecessary politicisation of Commission. In fact, there have been calls to remove Dr. Pawlu Lia, appointed by the previous Prime Minister who had to step down after the 2020 protests.

Furthermore, the names of the elected members of the judiciary who sit on the Commission are not listed on the [webpage](#). The only information about complaints to the CAJ is found on the Chamber of Advocates [website](#) which states that in order to make a complaint against a lawyer one has to direct their complaint to "The Commission for the Administration of Justice, The Grandmaster's Palace, St George's Square, Valletta".

There is no publicly available information on whether a citizen or group of citizens can complain to the CAJ for an alleged breach of ethics by a member of the judiciary. If so, there is no information on how this can be done.

The budget of the Commission falls under the vote of the President, and is currently €45,000 for 2023.

Remuneration & bonuses for judges and prosecutors

Salaries for Chief Justice, the judiciary, the Attorney General and the State Advocate are prescribed by law.

This is a fixed amount laid down by law and includes a basic pay and a cash payment¹.

Independence of the prosecution service

Appointment and removal of the Attorney General

As regards the procedure for appointment, while safeguards were added following a reform in 2019, in practice the appointment of the Attorney General still remains predominantly under the power of the Prime Minister, which has been raised as an issue.

Furthermore, the removal of the Attorney General by a 2/3 majority in Parliament, as with the State Advocate, was deemed to be inadequate. In fact, the Venice Commission recommends that an expert body should decide on the grounds for removal or that there would be the possibility to appeal the removal to the Constitutional Court.

It should be noted that the transfer of summary cases from the Police to the Attorney General's Office is planned to be finalised by 2026. In this regard it should be pointed out that, besides being relevant in relation to the investigation of serious crime, the method of the appointment of the Police Commissioner leaves room for improvement. Recent changes were made in relation to the method of appointment by which applications are now to be considered by the Public Service Commission who will draw up a shortlist from which the Prime Minister will pick a commissioner. However, these changes prove to be largely cosmetic as it is the Prime Minister who appoints the members of the Public Service Commission, who in turn appoints the Police Commissioner.

Independence of the Bar

The Bar Association is run by private lawyers on a voluntary basis. Their funding comes in the form of money collected through annual membership fees and remuneration from activities and seminars. There is no public funding given for the Bar to function sustainably with fulltime board members and sufficient non administrative employee capacity.

To date Maltese legal professionals remain generally unregulated, bar a few haphazard provisions at law and a code of ethics published by the Chamber of Advocates. The Chamber of Advocates was lobbying for a Lawyers Act for a substantial amount of time, however this seems to have fallen on deaf ears with the Ministry for Justice. In 2022 they [called](#) for "*A serious regulatory structure for our profession is in the public interest more so than it is in the interest of legal professionals themselves*".

Significant developments capable of affecting the perception of independence

The event relating to the request for the recusal of Magistrate Nadine Lia and her refusal to recuse herself could have dented the public's perception of the independence of the Judiciary. She was asked to recuse herself twice by the NGO Repubblica during a case relating to the Pilatus Bank scandal instituted by the same NGO. Nadine Lia was appointed to the bar prior to the changes to the judicial appointment system².

¹ <https://legislation.mt/eli/cap/175/eng> and <https://legislation.mt/eli/cap/186/eng>.

² <https://www.independent.com.mt/articles/2022-10-10/local-news/Magistrate-Lia-rejects-another-recusalrequest-made-by-Robert-Aquilina-6736246527>; <https://timesofmalta.com/articles/view/ngo-claims-membersjailed-magistrate-hears-pilatus-bank-case.986012>; <https://timesofmalta.com/articles/view/judge-abstainshearing-repubblika-s-recusal-case.997500>.

Nadine Lia is the daughter-in-law of the ex-Prime Minister's lawyer, Pawlu Lia. Dr. Pawlu Lia is also on the Commission for the Administration of Justice, having been appointed by Dr. Joseph Muscat when he was still Prime Minister. He remains on the Commission, even after [calls](#) for his resignation.

Furthermore, the excessive delays dent the confidence that citizens have a right within a system where there is accountability and where the rule of law is upheld.

B. Quality of justice

Accessibility of courts

Legal aid

(i) The income threshold remained that of minimum wage, which is under €10,000 p/a. There is need to increase the minimum wage threshold to take into account increase in the cost of living, especially families.

(ii) There is need to expand the merit test to include legal advice which extends beyond *probabilis causa litigandi*, in order to allow for individuals who do not have sufficient financial means have access to free prelitigation legal advice.

(iii) There is a need to move from the generalised list of legal aid lawyers to a system of specialised lists of legal aid lawyers to cater for the different needs of the client & different expertise of legal professionals.

Legal fees

In January 2023, the Minister for Home Affairs introduced [fees](#), through a legal notice, for the filing of appeals from decisions on the issuance of residence permits (€45), visa (€120) and for matters of carrier liability (€120) for the first time. For many TCNs the fee would not be easy to pay.

Procedural Obligation under Article 460 COCP

Art 460 obliges any person filing a suit against the government, on pain of nullity, to serve a judicial letter to the Government 10 days before in which the party's claims are defined. There are a few exceptions in the law to this general rule, such as in cases relating to breaches of fundamental rights in the Constitution. This rule had been applied rigorously in favour of the Government which had the effect of limiting individual use of all remedies available at law. A Constitutional Court judgement in 2020 held that this provision was unconstitutional due to the nullification of the act if the procedure is not followed. In spite of this, Article 460 is still being utilised as a preliminary plea to quash cases instituted against the state before they even begin. There have been [calls](#) to amend this Article. This also ties up to the non-application of *erga omnes* principle in Malta.

Preliminary References

In almost 20yrs of membership, only 4 preliminary references were sent from Maltese courts to the EU courts. For e.g. aditus has requested preliminary reference to the IPAT (as courts of last resort) in 4 separate cases, 3 in August and 1 in October. These requests are all currently pending without any feedback from the IPAT.

Rightful defendant

Delays in cases relating to actions against the government have been blamed on unclear provisions and case-law on who is the rightful defendant under Maltese law. This has come about with the unclear provisions that regulate the same aspect, namely Art 181B of the COCP and Art 17(5) of Kap 595. It was suggested that only one entity should be sued in all actions against the government³.

Digitalisation

There have been no substantial developments in relation to digitalisation, as per Section 1 above. In line with Malta's Recovery & Resilience plan, the State budget allocated €1million (EU funds) in 2021 and €3,227,000 (EU funds) and €400,000 (own funds) under the heading "Digitisation in the Justice System". However, it is unclear as to where or how the funds were or will be spent.

Legal professionals still cannot file civil cases or submit applications online. In order to file a civil case, lawyers need to physically present their client's application (printed on one-sided paper) in the court registry in Valletta from Monday to Friday between 9am and 3pm in winter and 8am and 12pm during the three months of summer.

Whilst there is the possibility of accessing some electronic files of ongoing and decided cases, this is haphazard and not done in a uniform fashion. Witnesses are called to court through a system of notifications which requires a bailiff to personally go to the place of residence or work of the witness and notify them. This is a process that takes time, and would also require the bailiff to repeat the process multiple times if the person is not found.

Online judgments are accessible to the public, however the search engine is outdated and not user-friendly.

In practice the search function does not work properly if searching for case-law on a specific subject but works if the exact case number, or names of parties to the suit are known. Electronic communication between the actors in a criminal case is limited, and defence lawyers still have difficulty in getting access to the electronic copies of the files, exhibits and records.

Use of assessment tools & standards

During the Parliamentary Committee hearing of Act V referred to in Section I above, there was a discussion of what an ICT case management system would look like. It is therefore assumed that the system is not functional, if present at all, especially due to the legislative ping-ponging of repealing, amending and repealing the date of the coming into force of those provisions of Act V that were discussed during the same parliamentary committee meeting.

Court statistics are not published. We are unaware of any monitoring or evaluation that have taken place in recent years.

We are not aware of any surveys amongst court users or legal professionals to date.

³ See Measure 71: EN: <https://justice.gov.mt/en/justice/krhg/Documents/Translation%20-%20Final>; MT: <https://www.parlament.mt/media/75718/01985.pdf>.

Geographical distribution of courts

Civil and Criminal Court are located in Valletta, Malta and Victoria, Gozo. The Tribunals and boards are distributed around the island without any identifiable trend or plan.

C. Efficiency of the justice system

Length of proceedings

The [judiciary](#) blames lack of capacity, lack of physical space and resources allocated: they called for more judges for civil courts. Furthermore, there is a [pressing need](#) for more magistrates that work on domestic violence cases and money laundering cases: The appointment of 2 judges at the end of 2022 is not deemed to be enough.

Delays in the court system, specifically in relation to criminal cases of domestic violence, came to the forefront in 2022, due to high profile cases relating to murder victims of domestic violence and/or femicide. It transpired that there were 1,429 domestic violence cases pending before the Maltese Courts. [GREVIO](#) found that the Maltese courts have inadequate understanding of the change in paradigm in proving rape, of the role and importance of emergency barring orders and protection orders.

We cannot report any positive developments or initiatives on shorten the length of proceedings, which seriously prejudice the rights to the most vulnerable to access the courts and right wrongs that they may have suffered. This is even more so in relation to cases of asylum and detention where the ECtHR has time and again stated that our Courts cannot be deemed to be an effective remedy.

Other

In order to increase transparency and access to information for the public, it is vital to ensure the publicity of public inquiries commissioned by the authorities. This can be done through amendments to the [Inquiries Act](#).

There is also need to amend the [FOI Act](#) to reduce the instances where a public authority may refuse to provide the requested information.

II. Anti-Corruption Framework

Follow-up on the recommendations in the 2022 Report

Investigations of high-level corruption cases are prolonged and the challenges remain largely unaddressed, despite this being the main recommendation of the 2022 Report. Most magisterial inquiries into high-level corruption have not been concluded and police investigations appear to have stagnated. [Political promises](#) to address court delays, including by appointing magistrates focused on inquiries, have not been implemented. The following cases indicate the ongoing lengthy procedures.

Judgment delivered on 15/12/22 [dismissed](#) all 10-year old corruption charges against a former public company employee. No other high-level corruption cases were concluded. Few prosecutions were started, the facts of which show there are delays in investigation and prosecution of financial crimes.

Former EU commissioner John Dalli was charged on 09/02/22 with trading in influence and attempted bribery. Investigations had started in October 2012.

Malta Gaming Authority's chief technology officer was [charged](#) on 26/05/22 with money laundering, extortion, accepting bribes, fraud, misappropriation, trading in influence, disclosing confidential information and computer misuse after six months of investigations.

On 29/05/22, Iosif Galea, a former compliance officer at the Malta Gaming Authority (MGA) turned gaming consultant, was arrested in Italy while on a group holiday with former PM Joseph Muscat. Galea travelled [freely](#) out of Malta despite 2 European Arrest warrants (German police in 2021 for tax evasion; Malta police for leaked information from MGA). In 2021 the financial services regulator fined Galea for engaging in unauthorised business activity. A police internal inquiry concluded that none of the top officers were aware of the German EAW. Only excerpts from the inquiry report, selected by the Police Commissioner, were published. Galea was sentenced in Germany. It appears no prosecution has been initiated in Malta.

Up to 11/05/22, 97 cases of money laundering were pending, with 127 persons charged.

Meanwhile, in a financial crimes case, one of the accused was found to be offering anti-money laundering [consultancy services](#).

On 23 September 2022, persons including, Schembri (former Chief of Staff to the Prime Minister) and Fenech (charged with masterminding the murder of journalist Caruana Galizia), were [charged](#) with misappropriation over giving the confessed middleman in the same murder a phantom job with the public service.

[Greco's Fifth Evaluation](#) states that Malta has failed to update legislative provisions to guarantee integrity of persons appointed on trust and has also failed to develop and implement an integrity strategy based on proper risk assessments for all pertinent categories of persons entrusted with top executive functions. Consequently, in these cases, a lack of legal basis remains an obstacle to investigation and subsequent prosecution.

A. The institutional framework capacity to fight against corruption

Prevention detection, investigation and prosecution of corruption

Effective cooperation between entities is not evident.

In 2022 the Parliamentary Ombudsman's Office (PO - investigates complaints regarding public administration & secures the right to good administration, including integrity) was attacked by a state entity.

Parliament ignored the Ombudsplan & failed to put it on parliament's agenda according to established practice & in adherence with the PO's recommendations. This excluded the only opportunity for an exchange of views on problems the PO identified in public administration. Public authorities continue to [refuse](#) to cooperate with the PO's [investigations](#).

The PO's term expired in March 2021. No replacement has been appointed. A nominee approved by govt & Opposition has not been appointed as the latter did not approve the govt's nominee for the office of Commissioner for Standards in Public Life⁴. The recent PO has warned this is [demotivating](#) his office.

The Public Standards Commissioner (PSC) left in September 2022 as govt nominated him to the European Court of Auditors. The office will remain vacant until at least March 2023 - a rushed amendment introducing an anti-deadlock mechanism is expected to become law. The PSC is authorised to [investigate](#) ethical breaches but cannot proceed with an investigation if a court holds an inquest or the police commence investigations.

PSC & Police do not cooperate beyond the former referring a matter to the latter. When the PSC suspends his own investigation because of police investigations, he may ask the Police about the progress & expected completion date.

FIAU-tax authorities' cooperation is minimal despite the Tax Commissioner being tasked with monitoring asset and interest declarations of MPs. This raised issues when the tax Commissioner investigated an MP's allegedly undeclared income and gifts.

[EPPO](#) (2021 Annual Report) received 2 reports from national authorities, 2 from private persons and 1 ex officio. As at December 2021, 3 were pending a decision on competence & 2 dismissed. No judicial activity is reported. EPPO relies on police to summon and question persons who may have evidence but cooperation on evidence sharing is strained. In April 2022 [Kovesi](#) said that it is difficult to identify the authority responsible for detecting crime.

FCID: a call for applications to head the unit was [cancelled](#) by Public Service Commission. When the call was reissued no one applied for the post. The Inspector who [led](#) a search at former PM Muscat's home resigned from the force (June), an FCID superintendent moved into private practice partnering with a lawyer who had been investigated by the police, and the unit's head quit. It is uncertain whether DC Mamo [resigned](#), is on long leave or gave notice of retirement. It is not known whether Supt. Tabone has resigned or is merely on leave to allow him experience in private practice. Meanwhile disciplinary action against the former unit head was [still pending by](#) May 2022.

⁴ <https://timesofmalta.com/articles/view/two-exjudges-officially-nominatedombudsman-standards-commissioner.995655>

Safeguards for the independence of the authorities

The office of the attorney general's independence is constitutionally protected but came under fire in 2022 over a series of prosecutorial mistakes denounced by the courts and over the AG's decision not to issue charges related to money laundering despite a magistrate's inquiry recommendation. Prosecutorial mistakes were denounced by the courts in proceedings which dealt with charges of money laundering, attempted bribery, illegal employment & violation of Libya sanctions.

2 lawyers were [cleared](#) of attempting to bribe a journalist, because of a [mistake](#) attributed to the prosecution by the AG's office. The lawyers represent [Yorgen Fenech](#) who is accused of masterminding the assassination of Daphne Caruana Galizia. The alleged bribe was in connection with the murder case.

In 2017, Daphne Caruana Galizia & other journalists reported on alleged money laundering at Pilatus Bank. Despite a magisterial inquiry recommending the prosecution of senior bank officials, the AG has not charged them. During the 2-year inquiry, the magistrate also signed off arrest warrants which were not executed. It appears that the Police Commissioner had also urged the AG to prosecute. It has since transpired that the AG had sought testimony from two bank officials in exchange for [immunity](#) from prosecution. Some of the officials against whom charges were not issued were known to be close to former PM Muscat and his chief of staff Keith Schembri. Civil society NGO Repubblika [instituted](#) proceedings asking the court to review the AG's decisions in this regard. The AG sought to avoid testifying. The court [refused her request](#). A constitutional court [found](#) that the unilateral powers granted to the AG gave rise to delay and stalling of court cases. Her [resignation](#) was [demanded](#) by civil society in protests in 2022.

Parliamentary Assembly's resolution on The honouring of membership obligations to the Council of Europe by Malta (adopted 24/05/22) expressed concern that the PM holds considerable power over the civil service in a manner capable of undermining its independence from political forces (Paragraph 7). This concern was also expressed by the Ombudsman (Annual Report 2021 – Published May 2022), who called for reform to discourage the “culture of clientelism, tribalism and cronyism” & to strengthen good governance in public administration through the modification of public authorities, including in procedures for recruitment in the public sector.

The functional independence of the Police is questionable. The Commissioner claimed there is no interference from the Office of the Prime Minister. The absence of prosecution of high-level corruption supports this hypothesis. Changes were made to the internal policies but there does not seem to be any objective external assessment of whether this has effectively addressed personal connections of officers with business, politicians and others who may impinge on the image of integrity for the force.

Implementation of measures in the strategic anti-corruption framework

A National Anti-Fraud and Corruption Strategy document (May 2021) tabled in parliament sets 4 objectives: capacity building, communications strategy, maximisation of national co-operation and of EU & International Co-operation. An action plan intended to carry ‘forward the work of the 2008 Strategy’ was included. GRECO's Fifth Evaluation Round Compliance Report (May 2022) found that Malta failed to implement a previously recommended integrity strategy and that the “actual work on the development of the national anti-corruption integrity strategy... had not yet been initiated...Malta

needs an over-arching anti-corruption strategy, which would serve as key policy guidance towards improving action against corruption.” The strategy objective to inform the public is unfulfilled though the action plan says it was to be ‘devised’ by May 2022.

Another National AML, CFT and TFS Strategy and Action Plan for 2021-2023 is published by the National Coordinating Committee on Combating Money Laundering and Funding of Terrorism. The two strategies overlap, e.g., in their goal to strengthen collaboration between relevant authorities. Kovesi’s exchange with MEPs in April 2022 shows that this goal has not been reached.

Other GRECO conclusions worth noting here:

An anti-corruption strategy for the Police was prepared and an Internal Audit Office was to be in operation by February 2022. It however recommended that further action was to be taken to ensure a risk assessment-based strategy, merit-based career systems, sufficient operational independence & political neutrality, & increased awareness & gender balance in the Police (Recommendation xvii. para. 83-88). In October 2022, 2 officers were suspended pending investigations into abuse of extra duties. Investigations in this case are carried out by the government’s Internal Audit and Investigations Directorate, rather than by an Internal Audit Office of the Police.

The Commissioner for Standards in Public Life is not yet vested with power to impose sanctions for violations identified in his investigations, and the function to provide confidential advice was not disassociated from the Commissioner’s competencies (Conclusions para.120). The office remains vacant (see above). Bill 34/2022 published on 27 December 2022 introduces an anti-deadlock mechanism that could see the government’s nominee elected to the post. It is foreseen that the new law will come in effect and allow for the appointment of a new Commissioner by March 2023.

Transparency of legislative process require improvement in securing meaningful public consultations. Structured transparent public consultation processes on legislative proposals are rare. There is lack of procedures managing situations of conflicts of interest for top executive officials including the ad hoc disclosure thereof. Plans to set up an Integrity Unit supporting office holders to address ethical issues have not materialised.

B. Prevention

Measures to enhance integrity in the public sector

The Standards in Public Life Act regulates measures to enhance public integrity for elected & appointed officials, including MPs, Cabinet members, & persons of trust. It includes codes of ethics. The Commissioner for Standards in Public Life (PSC) reviews & investigates compliance with these codes and is entrusted with reviewing declarations of assets & interests submitted by MPs.

The PSC does not have the power to issue sanctions where a breach is found. His investigation report is presented to a Parliamentary Committee with the power to decide whether to adopt it or not, to determine whether to issue a sanction, and what type of sanction. The process of investigation & review has proved to be ineffective at no fault of the PSC’s office.

Once the PSC concludes an investigation, the first task of the parliamentary committee is to decide whether to publish the report. The committee is made up of 2 representatives from government, 2 from opposition and the Speaker as a chair. Decisions on publication and adoption of the report & whether to issue sanctions almost always reflect the bi-partisan composition of the committee,

leading to stagnation of proceedings. This has been compounded by the Chair's decision to abstain instead of a vote in favour or against when there's a tie. When and if issued, sanctions do not go beyond an admonition.

In 2022, PSC decided on 4 cases which dealt with inappropriate communication between the PM & Commissioner for Revenue on tax affairs of the Leader of the Opposition, failure by an MP to adhere with VAT rules, a minister's use of public funds for an advert conveying personal greetings, & cabinet members' use of public funds for partisan adverts. In 2022 (after the March general election) the committee met 3 times to discuss the case related to use of public funds for political adverts.

In a joint project with OECD, the Commissioner's Office undertook a review of the law, systems & processes currently in force & made several proposals to strengthen the integrity framework for elected and appointed officials. So far, none have been implemented.

Every cabinet member is bound to present an asset and interest declaration end-March, but several don't. The of the declarations raise several issues. The current PM failed to meet the deadline & simply declared his earnings as being "those declared in the tax return" presented to the Commissioner for Revenue. There is no single format, detail or extent of the information to be provided.

The Commissioner has asked for more detailed information from all MPs but not all MPs have complied. Meanwhile, questions have also arisen as to whether MPs were making truthful declarations.

Persons elected or appointed to local authorities or government boards do not fall within the scope of the Act and consequently are outside the remit of the Commissioner's Office. The Public Administration Act provides to some extent an integrity framework for public employees.

General transparency of public decision-making

There is no regulation of lobbying. The Commissioner for Standards in Public Life had first recommended regulation in April 2020 and again in July 2022. No legislative proposal has been tabled before parliament.

Evidence for its need is also found in the reports of the National Audit Office which often indicate that several meetings take place without any record or minutes thereof, that the circumstances surrounding some public contracts tend to indicate agreements being reached before the public call for expression/tender, and that often public procurement is bypassed with the frequent use of direct orders. Meanwhile the Ombudsman had decried clientelism and the Public Inquiry into the Assassination of Daphne Caruana Galizia denounced the network of politicians, business and criminals.

Though asset disclosure rules for elected and appointed officials are established in law and codes of ethics there have been numerous occasions of appointment to public positions of persons whose professional life seems in conflict with or is of risk to the execution of public duties. In early 2022 the European Commission was also expected to carry out site checks in Malta to verify shortcomings in the management and control systems related to EU funds. This was the result of concerns on possible conflict of interest and abuse leading to the concentration of disbursement of EU funds to a few recipients.

Chapter 544, Laws of Malta regulates political party financing obliging parties to keep accounting records with 'sufficient detail to identify all sources of income received' and the 'details of entities including commercial' ones related directly or indirectly to the party. They are also obliged to have

audited annual statements of account. It is only the audited statements of accounts that are to be sent to the Electoral Commission and may be inspected by the public. The Act also controls donations and donation reports must be presented to the Commission tri-annually.

The audited accounts and donation reports presented to the Commission are published on its website at <https://electoral.gov.mt/finance2019-en>. These documents show that the last documents published are for 2019, except that the Labour Party's last published audited statement is for 2018. Moreover, the donation reports indicate no donations in amounts for which the parties are legally obliged to indicate the donor and details obtained through a due diligence process, thereby undermining the scope for these reports.

Funds obtained from companies connected with the parties are also excluded from this exercise. A September 2022 publication by the Standards Commissioner on Spending by Candidates in General Election Campaigns recognises the risks involved in leaving the financing of candidates' campaigns largely unregulated and calls for the introduction of regulation.

Rules to prevent conflict of interests in public sector

The following are limited in scope & their effectiveness is undermined by a culture of impunity. OECD published recommendations for amendments in September 2022.

Compliance is monitored by the Standards Commissioner for MPs, Cabinet members, and persons of trust. Public employees are regulated by the Public Service Commission.

The Code of Ethics in the Public Administration Act, First Schedule, regulates public employees, chairpersons, members of standing boards/commissions within the public administration and of state entity governing boards.

Rule 10 obliges them to ensure that no conflict, real or apparent, arises between their official duties & occupations/activities/interests they or their close relations may have. A conflict is defined as referring to then the "ability to faithfully discharge their duties is, or can reasonably be, called into question on account of such other occupation" including when "placed in a position to be biased or seen as potentially being biased."

Rule 12 prohibits public employees' entering a profit relationship with any private or non-government body with which they dealt in an official capacity for up to 5 years immediately prior to leaving public employment.

Rule 21 obliges public employees & board members to ensure decisions are made on objective criteria, without personal bias or conflict. Non-compliance can lead to disciplinary proceedings for public employees, termination of appointment or the imposition of conditions on one's board membership, or criminal proceedings where there is a serious breach of trust. Public employees & board members are expected to refuse "gifts, payment, compensation, privilege or any other form of solicitation" unless the gift is only a token and does not induce or influence the execution of one's public duties. The Revolving Door Policy Governing Board has conducted only one investigation since June 2020, when the rules came into effect.

The MPs' Code of Ethics obliges an annual declaration of assets and interests. Any MP who has a professional interest in legislation must declare that in the House at the first opportunity and before a vote is taken on its 2nd reading. MPs are prohibited from accepting gifts from persons with direct or indirect intent in legislation. When travel outside Malta is financed by a person with a direct interest

in legislation, the MP must declare this to the Speaker, who keeps a public register for the purpose. MPs are to report any attempt at corruption, pressure or undue influence to the Speaker or other competent authority.

Ministers & Parliamentary Secretaries (Cabinet Members) have a separate code of conduct. On taking office they must have no conflict. The PM takes the final decision on the matter. Persons appointed within a Ministry's secretariat are to inform the Minister of any conflict of interest. Ministers and their family members cannot accept gifts, donations, hospitality or services that may create obligation

Whistleblower protection and reporting of corruption

The Protection of the Whistleblower Act, 2013 was last amended in 2021 to bring it in line with Directive (EU) 2019/1937. The Act is largely ineffective, establishing bureaucratic and burdensome structures and processes which discourage rather than encourage reporting. Set within a culture of impunity for the network of politicians, business and criminals identified by the Board of Public Inquiry, a culture of clientelism and nepotism within public administration and a system which gives the PM and cabinet strong control over the public administration including through the appointment of persons of trust rather than through a merit based system, the Act does not encourage reporting. Despite this context, the Act for example requires reporting to be done to one's superiors, or provided some criteria are fulfilled to an external structure, being one set up by government and within the public administration.

Since 2013 whistleblower status was only granted once and this in a partisan politically charged case.

Another person claiming to have come aware of information on allegedly corruption within government while he worked at FIAU was refused whistleblower status. He was sacked from FIAU and in December 2022 the court [declared](#) that he had been discriminated against by the police force when he was not reinstated thereto.

While the political and social context within which one is expected to report discourage reporting, the Act also has shortcomings. These include:

Anonymously made disclosures do not amount to protected disclosure;

The Act does not apply to members of the disciplined forces, Security Service and persons employed in the foreign service of the Government. Special regulations enacted by the Minister apply in these cases;

Independence of structures appointed to receive whistleblower reports is not guaranteed;

An employer is excused from action which is of occupational detriment to a whistleblower where that action is 'justifiable for administrative or organizational reasons.'

While the Ombudsman is listed in the Act as an external structure for reporting of wrongdoing in the private sector, the law regulating the Ombudsman only provides the office with the power to review complaints related to the public administration. Furthermore, no resources have been granted to the Ombudsman for this purpose⁵.

Though the police force has incorporated a reporting mechanism in its Malta Police Transformation Strategy 2020-2025 there is no information provided on whether this is effective or on the number of

⁵ https://ombudsman.org.mt/wp-content/uploads/2019/10/Ombudsplan-2020_WEB.pdf

reports it has dealt with. Likewise, no annual reports are published by other public authorities to indicate how many reports were received, investigated and actioned.

Sectors with high-risks of corruption and preventive measures

The [National Anti Fraud and Corruption Strategy](#) refers to the completion by 2022 of an updated national risk assessment. Though it seems that Malta carried out a [risk assessment](#) on commercial partnerships with focus on the concealment of beneficial ownership information, neither are the updated 2022 assessment nor this sectorial assessment publicly accessible. Risk Assessments of tax offences, legal entities and NGOs, virtual financial assets, and terrorism financing appear to have been carried out between 2019 and 2021 but no further risk assessment is published by the National Coordinating Committee on Combating Money Laundering and Funding of Terrorism. [National Risk Assessment](#) published by the Ministry for Finance only listed corruption as a risk for the category of ‘money laundering of domestic proceeds of crime’. In this regard it registered the threat of corruption as medium/high.

Most of the actions aimed at tackling corruption and listed in official documents refer to changes to the institutional and legislative framework. For ex. the [Malta National Reform Programme policy](#) published by the Ministry for Finance and Employment in April 2022 speaks of addressing corruption by changing the system of appointment for members of the judiciary, the creation of a separate prosecution service, the Attorney General, and providing for judicial review of the AG’s decisions not to prosecute. It also refers to the reform of the Permanent Commission against Corruption and updating the 2008 National Anti- Fraud and Corruption Strategy are also indicated as contributing measures. Yet none of the legislative reforms proposed by the Public Inquiry Board with the purpose of reviving the rule of law have been brought into law. Moreover, a bill presented in parliament by the Opposition (Bill 259/2022) [purporting](#) to bring into law the Public Inquiry’s recommendations was voted down by all members of the government.

The citizen investor scheme is still considered a high risk scheme. Its defects were revealed by the Passport Papers, an investigative journalism project carried out in 2021. Though proceedings have been taken against Malta by the Commission, the scheme is still in effect except that applications from Russian and Belarusian nationals were suspended in March 2022. Possible abuse in the disbursement of EU funds has already been brought to the Commission’s attention which, as was reported, was to make site checks to verify if any abuse was taking place.

Other measures to prevent corruption in public & private sector

No relevant preventive measure against corruption in the public and private sector has come to our knowledge for 2022.

C. Repressive measures

Criminalisation of corruption & related offences

The following are main offences related to corruption and related punishment as established in the Criminal Code:

Offences carried out by public officers including members of parliament:

Unlawful extortion, imprisonment from 3 months to 1 year

Unlawful extortion with threats and abuse of authority, imprisonment from 13 months to 3 years

Bribery, depending on the object of the reward imprisonment from 6 months to 8 years. Bribery committed by a minister, parliamentary secretary, member of parliament, mayor or local councillor and involves abuse of office then the offence is not time-barred.

Bribery related to sentencing by court is punished with imprisonment from 18 months to 10 years.

Bribery committed by a member of parliament the object of which was to influence him in his conduct in the House is punished with imprisonment from 1 to 8 years and is also not time-barred. In all the above-mentioned cases, punishment may also include general or perpetual special interdiction.

Offences carried out by private individuals:

Bribing public officers or MPs is considered complicity and the same punishment shall apply. Where there is an attempt at bribing a public officer, the punishment is for 6 months to 3 years. Where the attempt is at bribing an MP, punishment is from 6 months to 4 years.

The above provisions apply also in cases of foreign bribery.

Other relevant offences established in the Criminal Code are:

Trading in influence, punishable with imprisonment from 3 to 6 years.

Accounting offences, punishable with imprisonment from 3 to 18 months in addition to any other punishment prescribed in another law. This could be for ex. in addition to money laundering.

Embezzlement, punishable with imprisonment from 2 to 6 years and to perpetual general interdiction.

The taking by a public officer of a private interest in a matter in respect of which he is entrusted with the issuing of orders, winding up of accounts, making of arrangements or payments of any sort, is punishable with imprisonment from 1 to 6 months and to perpetual interdiction from public office or employment.

The taking by a public officer of a private interest in any adjudication, contract or administration, is punishable with imprisonment from 1 to 6 months and to perpetual interdiction from public office or employment.

Data on investigation and application of sanctions for corruption offences

From a reply to a parliamentary question it seems that no offence of bribery or corruption was registered in the police database from 2019 to September 2022. The table presented in reply indicates 1099 cases of fraud were registered between January and September 2022, and 91 cases of money laundering.

Though this is official information given in reply to a parliamentary question, this may not be fully representative of the situation. In 2021 two lawyers were charged with attempted bribery. The lawyers for Yorgen Fenech, who is charged with masterminding the assassination of Daphne Caruana Galizia, were charged for having in November 2020 attempted to bribe a journalist. Judgment by the

first court was delivered in June 2022 acquitting the accused indicating the Attorney General had referenced the wrong article of the law. These proceedings are understood to be under appeal⁶.

A case for bribery and corruption related to oil procurement initiated in 2013 for alleged corruption happening in 2005 was concluded with the acquittal of one of the accused in December 2022. Another person accused in this case was acquitted in 2015. Other persons accused for their alleged participation in this corruption scandal are still awaiting conclusion of the proceedings⁷.

In August 2022 officials at the Malta Transport Authority were charged with corruption for allegedly assisting candidates to pass their driving test. Those accused are reported to have informed the police that they were pressured to help because of the candidates' connection to a minister. While no Minister was charged, the case against the MTA officials is pending⁸.

In February 2022 ex commissioner John Dalli was charged with attempted bribery and trading in influence for actions occurring in 2012 while he was still EU Commissioner. The case is pending⁹.

In August 2022 a former official at the Foundation for Tomorrow's Schools was acquitted of bribery and corruption charges that had been brought against him in 2017¹⁰.

Statistics on crimes committed do not appear to be available in the public domain. Besides an analysis of parliamentary questions which do not however focus on this issue specifically, though the National Statistics Office indicates that it set up a Crime Statistics Office in 2021, there does not seem to be any statistical report publicly available.

Obstacles to investigation & prosecution of high-level and complex corruption cases

No complex corruption cases involving those occupying high public office since 2013 have been prosecuted, despite years of journalistic investigations into corruption, abuse of power, money laundering and other relevant crimes.

Former OPM Chief of Staff Keith Schembri is being prosecuted for corruption in the private sector, and for the award of a phantom job to the middleman in Daphne Caruana Galizia's murder.

Corruption and abuse of power in public infrastructure contracts and public projects has not been prosecuted. As confirmed by the Public Inquiry report and denounced also by the Ombudsman and the Standards Commissioner in their reports, impunity is not only perceived but is real.

The principle obstacles are an interplay of political impunity, delays in investigations and delays in issuing charges, lack of prosecution despite magisterial inquiries ordering prosecution, lack of capacity within the police force and the Attorney General, failure to shoulder political responsibility for wrongful acts of administration and breach of ethics, failure to investigate allegations of wrongdoing revealed in journalistic publications, a political attitude disrespectful of public authorities and lack of reform proposed by independent and impartial authorities.

⁶ <https://timesofmalta.com/articles/view/yorgen-fenech-s-lawyers-cleared-bribing-journalist.964445>

⁷ <https://timesofmalta.com/articles/view/oil-corruption-case-10-years-on-justice-minister-says-process-ongoing.1001986>

⁸ <https://timesofmalta.com/articles/view/minister-implicatedtransport-malta-theory-test-corruption-case.977315>

⁹ <https://timesofmalta.com/articles/view/john-dalli-taken-to-court-police-commissioner-explains-investigations.933421>

¹⁰ <https://timesofmalta.com/articles/view/ministers-chief-canvasser-to-be-charged-with-corruption-fraud-today.664900%20/>

Some legal procedures are obstacles to the investigation, prosecution & sanctioning of corruption. In criminal investigations, a magisterial inquiry collects evidence of an alleged crime while the police undertake their own investigation. The latter are not bound to wait for the former, but in corruption and financial crime cases, the police tend to rely on the inquiry of the magistrate. A magistrate has access to more independent resources, including the appointment of experts to assist in the inquiry. Delays in magistrates' inquiries occur because inquiring magistrates are not dedicated to inquiry but are also assigned other court cases, leading to bottlenecks and other inefficiencies in the magistrates' courts.

FIAU reports to the police, indicating the likelihood of crime, do not legally oblige the police to investigate or to prosecute. Additionally, the police cannot legally rely on the information received from the FIAU as evidence, unless they obtain the same information directly themselves.

The limited number of officers assigned to the Police Financial Crime Unit, the resignation of two of the investigation officers, and uncertainty about the absence of the head of the FCID are obstacles to the investigation of complex financial crimes. This delays investigations for which those who resigned were responsible, entrenching public perception that investigations into financial crime are not taken seriously.

That one of the investigating officers has taken up employment in the private sector with a law firm in which a partner was the subject of a police investigation has continued to dent the public trust in the FCID.

Effectiveness of non-criminal measures and sanctions on public and private offenders

Administrative measures and sanctions falling under the anti-money laundering law are generally within the purview of the Financial Intelligence Analysis Unit. Its latest published [Annual Report](#) is that for the year 2021 and was published in June 2022. It indicates that in 2021 it responded to over 3,600 requests for assistance and shared 328 disseminations with the Malta Police. Of these 74 were analytical reports and the remainder were either additional intelligence reports or spontaneous intelligence reports. It received 7,218 reports of suspicious transactions which represented a 39% increase over 2020. These were predominantly from the remote gaming companies (4,822), credit institutions (873), and the VFA framework (411). In addition, it received 142 reports from supervisory authorities, 8 from 'competent authorities' and another 105 were generated by FIAU itself. Other reports or information were disseminated by FIAU to foreign counterparts (7295), the Commissioner for Revenue (703) and supervisory authorities (117).

For the majority of these reports, the suspected predicate offence could not be established (57%). Tax crimes was the suspected predicate offence for 16%, forgery for 2%, corruption and bribery for 1% and for trade-based money laundering another 1%. The suspicious transaction reports were spurred by the person refusing to provide information (38%), transaction activity was unexplained or inconsistent with the customer profile (28%), adverse media (20%), unusual or suspicious identification documents (9%), usage of multiple credit/debit cards in the name of third parties (5%).

Another function of FIAU is that of supervision whereby compliance examinations are carried out at relevant subject persons. 152 such compliance examinations were carried out in 2021.

Sanctions that may be issued by FIAU include the imposition of an administrative penalty, directive to take remedial action, written reprimand, publication of administrative measures, termination of particular business relationships and notification to other supervisory authorities. The amount of

administrative penalties imposed by FIAU in 2021 is that of € 12,376,089. Remedial actions were served on financial institutions, credit institutions, gaming operators, TCSPs, notaries and real estate agents.

Some measures of recovery are also carried out by the [Asset Recovery Bureau](#) tasked with tracing of assets, asset management and disposal. The Bureau also compiles and tracks assets included in Freezing Orders issued by the Courts of Criminal Jurisdiction.

III. Media

Follow-up on the recommendations in the 2022 Report

Opposition Bill 259/2022 (08/01/22) proposed legislation to implement the main recommendations of the Public Inquiry. The Bill was defeated on 27/01/22. All govt MPs voted against it. The PM tabled (as documents, not for discussion to become law) his proposals to amend the law solely with respect to freedom of expression and the establishment of a committee for protection of journalists and persons in public life.

PM appointed a Committee of Experts (11/01/22) tasked with reviewing his legislative proposals and with making its own recommendations, expecting feedback by March 2022. The process of setting up this committee, its composition and the procedures it adopted were met with criticism. Govt claims of wide prior consultation are inaccurate.

The committee treated their work as confidential, did not hold any public consultation and did not participate in relevant events. It presented its recommendations to the PM on 1 June 2022 without a public announcement, and govt did not publish the report as per ToR. In August 2022 government said it was analysing the committee's unpublished report. The justice minister unveiled the government's legislative proposals (28/09/22) claiming it is a 'historic reform' and that 87% of committee's proposals were adopted. The omitted 13% are the most significant.

The committee was not aware of nor given a copy of the OSCE analysis of the govt's draft legislation, although govt had received it prior to setting up the committee. The committee's unpublished report shows it sought to integrate the proposals made by the Opposition in Bill 259/2022 with the PM's proposals. At times critical of the latter, the committee presented some valid proposals but, overall, the recommendations do not meet international standards¹¹.

A first reading of Bill 18/2022 and Bill 19/2022 took place on 4 October.

The process leading to these Bills and their content was heavily criticised mainly because there was no public consultation and because proposals failed to meet international standards and were incapable of providing effective protection. See: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10¹².

The Institute of Journalists (a voluntary association, not a legally recognised union), [threatened](#) to pull out of the committee. A meeting with the PM was followed by a letter (13/10/22) in which the informed the committee that he did not object to the committee seeking 'further consultation' and presented an updated report. Government suspended the parliamentary debate on Bills 18 and 19 of 2022.

¹¹ <https://www.euractiv.com/section/politics/news/malta-must-not-row-back-on-media-freedom-says-strasbourg-human-rights-body/>, <https://newsbook.com.mt/en/media-reform-initiative-governments-proposals-strong-in-whitewash-but-weak-in-substance/>; <https://newsbook.com.mt/en/media-freedom-organisations-concerned-by-maltas-media-reform/>;

¹² <https://www.article19.org/resources/malta-comprehensive-reforms-still-needed-to-protect-journalists/>, <https://europeanjournalists.org/blog/2022/09/23/malta-government-must-widen-its-consultation-on-media-law-reform/>, <https://timesofmalta.com/articles/view/council-europe-calls-public-consultation-proposed-media-reforms.985598>; https://www.maltatoday.com.mt/news/national/118965/justice_minister_press_committee_draft_media_laws#.Y8sRnXbMI2x, <https://timesofmalta.com/articles/view/no-reform-consultation-media-group-insists.986330>,

The committee announced (13/01/23) that it is holding a national conference on reforming press laws. Its term has been extended to June 2023.

A. Media authorities and bodies

Independence, enforcement powers and resources of media regulatory authorities

The Broadcasting Authority (BA) is established by the Constitution to ensure impartiality in matters of political, industrial or public policy controversy and to ensure that broadcasting facilities and time are fairly apportioned between persons belonging to different political parties. The Broadcasting Act designates the BA as the regulator and licensing authority for sound and television broadcasting in Malta. The BA [determines](#) third party complaints of lack of compliance by service providers.

The BA follows the rule that party-owned media balance each other out. This means political propaganda is broadcast in news reports. BA decisions are published on its website. Most complaints refer to partial and unfaithful reporting or non-reporting of matters of public interest by the public media service provider (PBS), and imbalance in programme content.

The courts have criticised the BA and PBS for flouting the rule of law but no changes have been made by the entities or by govt. Govt claims of PBS reform, including state aid approval, have not freed PBS from govt influence.

A study (December 2021, Marmara V.) showed that 82% expected PBS to work independently of government and 77.5% said the reporting quality would be better if PBS is independent of government.

A study on the perception of journalists (2021, Vella N.) found that journalists perceive government as using its powers and resources to favour its own partisan agenda, that PBS is politicised, they distrust the way government distributes advertising money, and that the law is suitable on paper but often ineffective in its application. 80% of respondents (editors and journalists) consider that government gives or withholds advertising money to influence the media. 85.2% believe the government uses access to information to influence the media. Respondents described the BA as a 'pawn for political parties', that 'the BA allows political parties do whatever they like with their stations', and that the largest media players appoint the authority members.

Several studies have called for a reform of the BA by strengthening its independence and impartiality, especially by changing the system of appointment of its members, and reform of the PBS, calling for strengthened independence from government by limiting government's influence or perceived influence on PBS's editorial discretion and broadcast content.

The [Malta Communications Authority](#) (MCA) is prohibited from acting in any manner in relation to content published in any medium, but it regulates communication services including the internet and TV distribution services. In this regard it is included as a relevant regulatory authority with powers to investigate and receive complaints.

Appointment and dismissal of members of media regulatory authorities and bodies

Though the Broadcasting Authority establishes that the BA is to be composed of a chair, not fewer than 4 members and no more than 7, and that 1 member must be a person with disability, in practice the BA has historically been composed of a chairman and 4 members appointed by the President of Malta acting on advice of the Prime Minister after consultation with the Leader of the Opposition. This means that 2 members are chosen by government, 2 by opposition, and the chair is chosen by government. They are appointed for a 5-year term and may be reappointed. Appointments to the chair have come under criticism in the last years as this appointment has often taken place without political consensus between government and opposition, or lacked relevant expertise. There have been times when the persons appointed to the BA also retained other appointments by government.

The board of directors of MCA is appointed by the Minister. As happened in 2019, this appointment takes place at the discretion of the Minister with the board of directors having at times been left vacant for months. The administration of the authority is entrusted to a management committee appointed by the CEO. Decisions are to be approved by the Board. Director appointed by government remain in office until their term expires or they are removed. It is not known whether any of those appointed to the MCA board tender their resignation when a general election is held.

Existence and functions of media councils

The Institute of Journalists (IGM) is, in practice, recognised as representing journalists, although membership is voluntary and it is not a union, e.g., the IGM president and secretary were appointed to the committee of experts tasked with making recommendations on media reform. The IGM's website lists its objectives as encouraging journalists to work jointly, the provision of professional services to journalists, implementing measures for self-regulation, working on professional and educational standards and protecting freedom of expression. It also issues a press card for its members. Journalists wishing to participate at government events are, however, expected to register with the Department of Information.

A prospective IGM must show that (i) s/he is a Maltese journalist (including photographer, cameraperson or other media worker) whose main income or substantial part thereof is derived from journalism, or (ii) if in the opinion of the council are bona fide journalists, based on one's contribution to journalism, or (iii) stringers. The number of IGM members is not publicly known.

The IGM is managed through a 9-person Executive Council. All members are voted in at an annual general meeting with the role of president, secretary general and treasurer assigned at this meeting while other roles are assigned at the executive council's first meeting. In the last year there were a number of executive council members who resigned from their post. In 2022, the IGM issued 2 press releases expressing concern on the suspension of an editor and condemning a political billboard featuring a journalist. Its president and vice president were appointed members by the government on its committee for experts on the media.

IGM established a code of ethics for its members and a Press Ethics Commission (PEC) tasked with dealing with complaints for violation of its Code of Ethics by journalists. It is however understood that PEC has not been formally set up for some years and the last complaints (the last one indicated on the website is for 2020) were determined by the executive council.

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

Measures to ensure fair and transparent allocation of state advertising

There are currently no strict rules regulating subsidies to the media nor on the use of public funds for government advertising.

Subsidies were provided to the media during covid pandemic, including to PBS and to party-owned media, as well as to some independently-owned media. The amounts each was to receive were brought to the attention of the relative media representatives during confidential meetings called by the Minister. Following such meetings indications were that PBS and the politically owned media were promised much higher amounts in subsidies than the independent media with the former also being promised financial aid through government advertising. Furthermore, media like The Shift News were not included in the scheme and that there were no clearly established criteria for the calculation or disbursement of the funds.

In May 2022 government announced it would provide newspaper publishers with financial assistance of up to €500,000 to help publishers meet a substantial increase in the price of paper. No details on the criteria for disbursement of these funds are publicly available.

The allocation of government advertising to media remains unregulated. The Commissioner for Standards in Public Life has to date concluded at least 5 investigations into the use of public funds for political advertising. The investigations have concerned the use of public funds on adverts which are of a political nature promoting the politician rather than providing information in the public interest on government projects or services, adverts containing a Minister's greetings, and the use of public funds to promote personal social media pages of cabinet members:

<https://standardscommissioner.com/wp-content/uploads/Commissioner-for-Standards-case-report-K010.pdf>

<https://standardscommissioner.com/wp-content/uploads/Commissioner-for-Standards-case-report-K028.pdf>

<https://standardscommissioner.com/wp-content/uploads/Commissioner-for-Standards-case-report-K037.pdf>

<https://standardscommissioner.com/wp-content/uploads/Commissioner-for-Standards-case-report-K041.pdf>

These investigations have led to the publication by the [Standards Commissioner of Guidelines on Government Advertising and Promotional Material](#) (August 2021). The purpose of the guidelines is to provide an interpretative guide on how the Commissioner would apply certain rules of ethics should complaints related to the use of public funds for adverts or promotional material be presented to his office.

Issues of transparency in respect of ties between the government and media owners has also arisen with respect to the owner of an independent media house who appears to provide services to a number of government ministries. A freedom of information request for disclosure of this service-based relationship was refused by the government. Despite rulings by the relevant authority to provide copies of the contracts to the media house concerned, The Shift News, govt has failed to comply.

Safeguards against state & political interference

Editorial independence from government or state entities is not specifically safeguarded in law though it is a direct obligation from the recognition of freedom of expression in the Constitution, European Convention Act and Charter of Fundamental Rights. The Constitution and the Media and Defamation Act currently provide criteria enabling one to validly act as editor binding this role with residence and age. Though a media register is established, registration is not obligatory.

Public service media is provided through Public Broadcasting Services Limited, a company owned by government who nominates all the members of the board of directors. It also receives public funding from the government to cover its public service obligation. PBS insists that editorial independence is safeguarded through the Editorial Board but its members are also appointed by government.

Newsroom editors are often changed when the government changes. Employees are often recruited without a public call. Public perception is that government interferes in PBS's operational and editorial independence and that the service is biased towards government.

The Nationalist Party [instituted](#) proceedings against the Broadcasting Authority, PBS and the responsible Minister claiming lack of impartiality on matters of political controversy, breach of the Constitution as well as of the right to freedom of expression. The first court found that the BA and PBS had both breached their obligations to ensure impartiality in the broadcast of content related to matters of political controversy. The case is awaiting final judgment by the Constitutional Court.

None of the proposals made so far by government, opposition and the committee of experts relate to safeguarding editorial independence at law, nor at regulating measures which can influence or place pressure on editorial independence.

Clear recognition and safeguarding of editorial independence for the private and public media, a review of the appointment method and processes of administration at PBS, and regulation of disbursement of public funds through subsidies or advertising to media would be a start to securing editorial independence.

Licences are issued by either the BA or MCA. At times, the process requires authorisation from both authorities. A new nationwide TV station (commercial or general interest) can only apply for a licence once it has obtained a new channel from one of two service providers. No frequencies are available for a nationwide radio service as an analogue service. Community radio stations need to be allocated a frequency by the Malta Communications Authority before they can be granted a licence. A digital radio broadcasting license is considered only after a new channel is assigned to an applicant by the recognised service provider. Satellite uplink services are licensed by MCA and, once allocated, a broadcasting licence is required from BA.

Transparency of media ownership and public availability of media ownership

Media companies are registered with the Malta Business Registry. Information is publicly accessible from the online company registry. Details of shareholders and company officers can be viewed without charge. Document can be downloaded at a charge.

Immediately the European Court of Justice issued its judgment in joined cases C-37/20 and C-601/20, the Malta Business Registry closed access to the ultimate beneficial owner register and has not as yet provided access to media companies, their journalists, or to the public. It appears that a policy has now been adopted whereby a journalist and any other person may seek permission to access the register, rather than it being automatically accessible. Members of the press have already expressed

concern that this will limit investigative journalism and are unsure of the extent of information they will be required to disclose to the Registry to obtain authorisation to access the register. Access is currently only available to financial service providers.

There are no rules in force which require media to publish or place on their media platforms information related to their ownership.

Of particular concern is that there is also complete blackout on information on whether media owners provide services to government and public authorities and the extent to which they or related business companies have access to or receive public funding. This makes the publication of information to show the existence and extent of internal processes and structures to secure editorial independence also important. The Shift News' experience has clearly exposed a weakness in media ownership transparency since knowing who the owners are but then not being given information on the extent of government service contracts awarded to those owners undermines ownership transparency.

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

Rules and practices guaranteeing journalist's independence and safety

Protection of journalistic sources is limitedly guaranteed in the Media and Defamation Act. Art. 22 does not guarantee the right for all media actors and it only prohibits courts and tribunals from requiring the disclosure of the source of information contained in a newspaper or broadcast or website. There are instances at law where no court order is needed for authorities to gain access to information that discloses the identity of a source. E.g, the police are authorised to order disclosure of information or documents where they consider a person is in possession of information related to an investigation. The Criminal Code does not exempt journalistic material in this regard, though it excludes the seizure under an arrest warrant of confidential journalistic material.

The Prevention of Money Laundering Act allows an investigation order to target any person who appears to be in possession of material likely to be of substantial value to the investigation or connected with the suspect. Journalistic material and journalists or other media actors are not specifically excluded. The Security Service Act does not exclude the surveillance of journalists or meetings with journalists, nor the interception of communications of journalists. The Act does not establish a procedure for reviewing the use of material protected by the right to protect journalistic sources, once the Service is in possession of information that risks jeopardising source protection.

Journalists who authored investigative reports are called to testify in magisterial inquiries and are asked questions whose answers may jeopardise the confidentiality of a source's identity, and also invited to present material that they may have.

Government has set up a committee responsible for ensuring the protection of journalists and of persons in public life and proposed naming it Committee for the Recommendation of Measures for the Protection of Journalists, Other Media Actors and Persons in Public Life. It is composed of the Commissioner of Police, the Head of Malta Security Service and the Commander of the Armed Forces. Its functions are to respond to any real and immediate risks of violence, decide on how to manage such risk, make threat assessments and provide protection. The Committee is to act as part of the Ministry responsible for security.

The OSCE [analysis](#) welcomes this measure but criticises the fact that it is a high level committee capable of playing a general coordination role, and said that what is needed is designated units and clear protocols capable of offering an early warning and rapid response mechanism. It also said the committee does not incorporate a proper engagement and coordination mechanism with civil society and media organisations.

The committee is unregulated at law, is not subject to scrutiny by civil society, and is composed exclusively of security sources without media training.

Law enforcement capacity to ensure journalists' safety and to investigate attacks

There is no publicly available protocol delineating police action during protests and demonstrations vis-à-vis journalists nor one on the investigation of attacks on journalists. In 2022 there was no report in the public domain exposing physical attacks on journalists. However political rhetoric has continued to be disrespectful especially when faced with information showing unethical or irregular behaviour of politicians. There is no known procedure pending for the prosecution of threats or attacks on journalists. The only prosecution that was pending in 2022 was the case of attempted bribery reported above and that has now been dismissed.

It is understood that the IGM and the Police Force may have been considered collaborating on the provision of training to police officers but it is uncertain whether this has materialised as no information is available in the public domain.

There does not seem to be a designated unit of police officers entrusted with the protection of journalists, or the investigation of crimes against journalists, nor a unit that has received specialised training in this respect. There has however been a charge for making online threats and misusing electronic equipment issued against the owner of a satirical news site for satirical comments that he published on a social media platform.

Access to information and public documents

In a context where questions sent to public authorities by journalists often remain unanswered and are met with silence, journalists are often left with no choice but to submit a formal request for information or attempt to doorstep public officials.

Filing a freedom of information request in terms of the Freedom of Information Act is the start of a long, burdensome and ineffective process which sees the journalist fighting through each layer of the procedure in the hope that, when the Information and Data Protection Commissioner (IDPC), or the Information and Data Protection Appeals Tribunal, or the Court orders the disclosure of the information, then the public authority will comply.

Exceptions allowed under the Freedom of Information Act are abused by public authorities to undermine the right freedom of information. The procedure is unreasonably lengthy allowing public authorities long timeframes to reply, and also for the compulsory use of an internal complaint procedure once the public authority has refused a request. Complaints are presented to the same public authority which originally refused the request. No such internal complaint has ever reversed the original refusal.

At times, journalists abandon the FOI procedure as it is time and resource intensive. The assistance of a lawyer is sometimes necessary even at the first complaint stage and certainly for the stages of appeal

before the IDPC, the Appeals Tribunal and the Court. Legal costs stretch the already strained financial positions of Malta's media houses.

Public authorities follow a practice of secrecy around information requests. Despite several court judgments concluding that employment and services contracts for persons engaged beyond a certain salary scale are to be revealed, authorities institute further appeals to avoid disclosure and, at times, disclose the employment contract while redacting the name of the employee or the service contractor, thereby rendering the disclosure useless and undermining the request for disclosure itself.

The average time from the date of an FOI request to its final refusal is 60-70 working days. An appeal may be presented to the Information and Data Protection Commissioner (IDPC) within another 60 working days. It could take several months before the IDPC issues a decision. Either party may then appeal to the Appeals Tribunal within 20 working days. The Tribunal make take several months to issue a ruling. Either party may then appeal to the Court within 20 days. By the end of the whole process the news value of the information sought is often lost.

Lawsuits against journalists and measures taken to safeguard against abusive lawsuits

By the end of 2022, five years since the assassination of Daphne Caruana Galizia her family are still defending 5 lawsuits of libel, each started by a politically exposed person including the former Prime Minister Joseph Muscat and his wife, and former Minister Konrad Mizzi.

Her son, Matthew Caruana Galizia is facing 3 lawsuits for libel which are pending on appeal, one by the former PM.

Another journalist, Manuel Delia, who runs a blog, has been sued for breach of copyright and for damages after he published the script of a theatre production mocking Daphne Caruana Galizia which was meant to be performed at the national theatre. Delia is seeking a constitutional remedy for having been unjustly refused access to the detention centres to report on alleged inhuman treatment occurring therein. These proceedings are still pending. He has also instituted constitutional proceedings after having been found guilty of libel by the Court of Appeal for having libeled another journalist when in an opinion piece he criticised the position taken by the other journalist in his own publications.

One media house is still facing a lawsuit abroad, while several threats of abusive lawsuits were received by at least two media houses during 2022. In January 2023, the owner of a satirical news site was criminally charged with misusing electronic equipment to make online threats following his publication of satirical comments on a social media platform.

There is currently no legal safeguard against manifestly unfounded and abusive lawsuits and to protect against a chilling effect on public participation for national lawsuits, enforcement of third country judgments in Malta, and for cross-border suits. There are currently no comprehensive measures of protection against SLAPPs. Consequently, defendants have no access to, for example, early dismissal procedures, shorter prescriptive timeframes, access to legal aid or awards of costs.

Analysis reports published by the [OSCE](#) Representative on Freedom of the Media and by [Article 19](#) have both criticised government anti-slapp legislative proposals as including 'confusing and vague criteria', including a defence which 'will only increase the chilling effect intrinsic to a defamation lawsuit in a foreign country as it will force the defendant to face responsibilities and all the burdens associated to any lawsuit in not only one, but two different jurisdiction.', and that the 'analysed provisions do not establish an actual and comprehensive anti-SLAPP regime'.

Meanwhile, the Justice Minister has declared Malta to be committed to the European anti-SLAPP directive, even if the laws tabled in parliament by the government do not meet the minimum criteria established in the proposed Directive.

IV. Other institutional issues related to checks and balances

Follow-up on the recommendations in the 2022 Report

A process which started in 2014, the Equality Bill and Human Rights and Equality Commission Bill were tabled in Parliament during the previous legislature in 2019, however both Bills got stalled after the Second Reading at Committee Stage with the last sitting on the 20th November 2020. The elections in March 2022 spelled the end of the process for these two Bills and to date no new drafts have been submitted to Parliament. The main sticking points being political pressure to include a “conscientious objection” clause and an exception for religious institutions for the application of non-discrimination in employment in the Equality Bill. Furthermore, the proposed composition and structure of the Human Rights and Equality Commission was considered by NGOs to be problematic in the light of the UN Paris Principles.

The adoption of an Equality Act and a Human Rights and Equality Commission Act to effectively tackle intersectional discrimination in all its forms in all spheres of life is mentioned as a planned action to be carried out within the next 5 years in the Gender Equality and Mainstreaming Strategy & Action Plan, published in November 2022.

It is imperative that an Equality Act, without any opt outs on anti-discrimination legislation based on belief, is passed. This should be passed, together with an act that set ups a Human Rights and Equality Commission (or similar NHRI) which contains strong provisions relating to independent and effective decision-making, and an independent and effective remedy to challenge such decisions.

To date we have not seen a draft nor a know of a consultation process for these two crucial laws.

A. The process for preparing and enacting laws

Use of impact assessments and evidence based policy-making

There are no legal provisions relating to the obligation to consult or to notify the public before or during the legislative process in Malta. However, there is a [Directive 6](#) relating to public consultations issued by Principal Permanent Secretary. However, we do not know if this is being adhered to.

A proposed bill must pass through 3 readings in Parliament. After the second reading, the bill is committed to a committee of the whole house or referred to a standing or select committee. During the select committee stage members appointed from the house discuss the contents of the bill and may propose amendments to such bill. This process does not automatically involve the public, however any MP can invite persons the public to discuss particular issues. There is no formal procedure as to how this takes place and the participation of “outsiders” requires the permission of the committee to take part in the debate.

In practice public consultations on draft legislation and policy are carried out by individual ministries on an ad hoc basis, however this is not prescribed by law. There used to be a public consultation website which contained all open and closed consultations, however this fell into disuse.

In the past we had information that when legislative amendments are proposed, in the case of legal notices an impact assessment form has to be filled in whereby the Ministry proposing the legislation has to indicate the impact assessment carried out, including where appropriate reference to the fundamental human rights.

When Bills are drafted a Memorandum highlighting the impact assessment on the effected sectors has to be prepared. However, there was no mention of what type of scrutiny is adopted internally, whether the laws are checked vis-a-vis the Constitution, the ECHR or the Charter of fundamental rights. There is no publicly available information on this matter.

Law making via legal notices reduces transparency and scrutiny of the public. In that, legal notices that amend subsidiary legislation do not have to pass through the parliamentary process.

It should be noted that 2022 showed a dismal track record in transparency and consultations with the public, specifically NGOs during the legislative process. The government tabled the proposed Media Reform Bills to parliament despite widespread criticism from journalists, academics and international press freedom organisations on the lack of public consultation. This was also [criticised](#) by the CoE Commissioner for Human Rights Dunja Mijatović. Another example, in the passing of the International Protection (Amendment Act) the 2nd reading, committee stage and 3rd reading were all carried out on the [same day](#).

Regime for constitutional review of laws

There is no publicly available information on the regime adopted for constitutional review of laws. However, one should note that when the Constitutional Court deems a law to be unconstitutional or breaching the European Convention of Human Rights it has held that this does not apply *erga omnes* and it relies on Parliament to amend, revoke or modify the law in order to bring it in line with the Constitution. The Constitutional Court is obliged to send any such judgement in Parliament, however there is no obligation on Parliament to amend, revoke or modify the law within a stipulated time-frame.

In this regard the Prime Minister may (!), within the period of 6 months from the date that the judgment has become *res judicata* and to the extent necessary in his opinion to remove any inconsistency with the Constitution or with the relevant human right or fundamental freedom, make regulations deleting the relevant instrument or any provision thereof declared to run counter to the Constitution or the European Convention of Human Rights, see Article 242 of the COCP: <https://legislation.mt/eli/cap/12/20220218/eng>.

B. Independent authorities

Independence, resources, capacity and powers of national human rights institutions

The most important step that needs to be carried out is appoint a person as Ombudsman, which decision has been pending since 2021. In proposing names put forward to fill the role, the Government and opposition should be encouraged to take into account gender equality and diversity. The [current situation](#) highlights the importance of having a proper anti-deadlock mechanism inbuilt into the appointment of the Ombudsman.

Besides there being problems with the appointment of the Ombudsman, it was reported that Parliament ignored the results of the 35 Ombudsman investigations that were tabled since 2020. The outgoing Ombudsman stated that this status quo *“manifests parliament’s inability to grasp the reality that through its persistent inaction, aggrieved citizens are being deprived of their right to effective access to parliament. Once the public administration fails to accept the final opinion of the*

Ombudsman or his commissioners and implement their recommendations, the house ultimately has the duty, by law, to consider the complaint referred to it".

Another institution which is seeing an impasse in appointment is the Commissioner for Standards in Public Life, whose appointment procedures also do not contain anti-deadlock mechanisms. Here again, the Opposition was challenging the appointment of the suggested person to the role due to political connections. At the end of 2022, the Government proposed an anti-deadlock Bill for this role, which would allow parliament to appoint a standards commissioner through a simple majority if two votes fail to yield a two-thirds majority. There has been controversy over this procedure as it was deemed to be anti-democratic and "fake". Again, in proposing names put forward to fill the role, the Government and opposition should be encouraged to take into account gender equality and diversity. The [proposed candidates](#) are two male retired judges.

(See comments in Section IV. above re NHRI).

Statistics/reports concerning the follow-up of recommendations

See above re the Ombudsman.

The National Commission for the Promotion of Equality (the current NHRI) only publishes investigative statistics.

National Audit Office: <https://nao.gov.mt/en/press-releases/4/1315/follow-up-reports-2022-vol-ii-issued-bythe-n>.

C. Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions

There is not one general rule that regulates the accessibility and judicial review of administrative decisions and sanctions, with some decisions and sanctions being made public and others not.

Judicial review of administrative decisions

The specific provision relating to judicial review in the Code of Organisation and Civil Procedure (469A) and in the [Administrative Justice Act](#) relate to the judicial review of administrative decisions and actions.

Article 469A of the Code of Organisation and Civil Procedure allows for the review by the Civil Courts of an administrative act which is in violation of the Constitution or which is ultra vires on the following grounds: that the act emanates from a public authority that is not authorised to perform it; when a public authority has failed to observe the principles of natural justice or mandatory procedural requirements; 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 when the administrative act is otherwise contrary to law.

The Administrative Justice Act allows for the Administrative Review Tribunal, which is headed by a magistrate, to review administrative acts in accordance with the same Act or any other law granting jurisdiction to the Tribunal to review specific classes of administrative acts. Article 25 of the

Administrative Justice Act states that the Tribunal has jurisdiction in relation to the persons, bodies and administrative tribunals mentioned in the laws listed in the Third Schedule of the Act. Not all administrative tribunals are listed in the Schedule, for example the IAB and the IPAT are in fact excluded.

Article 460 requires the serving of a judicial letter to the government agency or department that a person wishes to proceed against 10 days before the filing of the judicial proceedings. See the comments in Section B on accessibility of the courts for the problems relating to the use of Article 460.

These procedures cannot halt or interrupt administrative decision-making, unless the applicant requests the issuance of a warrant of prohibitory injunction in accordance with Article 873 of the COCP.

Follow-up by the public administration and State institutions to final court decisions

No publicly available information available on this. The Constitutional Court is obliged to deliver a copy of any judgment that declares any law or provision that runs counter to the Constitution or to any human right to the Speaker of the House of Representatives. The Prime Minister may, within the period of six months from the date that the judgment has become res judicata and to the extent necessary in his opinion to remove any inconsistency (Article 242(1)).

In fact, these cases are laid in Parliament, around 80 such cases were laid in Parliament since the 2022 legislature. However, it is not known if the Prime Minister used any of his prerogative to change these laws or whether there had been any follow-up to any of these judgements.

D. The enabling framework for civil society

Measures regarding framework for CSOs and human rights defenders

No significant developments.

Rules and practices having an impact on the effective of CSOs and human rights defenders.

No significant developments.

Organisation of financial support for CSOs and human rights defenders

Any registered NGO in Malta can apply for government funding and/or locally managed EU funds. There is no core funding provided to NGO, and in most cases funding is granted on a project-basis.

Furthermore, the [Granting of Citizenship for Exceptional Services Regulations](#) lays down that one of the requisites for an application for Citizenship is undertaking to donate, prior to the issue of the certificate of naturalisation, a minimum of €10,000 to a registered philanthropic, cultural, sport, scientific, animal welfare or artistic non-governmental organisation or society, or as otherwise approved by the Agency. We are not aware of the publication of a list of donations given or received in this manner. These do not include NGO working in other fields or human rights defenders.

There is secondary legislation under the Income Tax Act that allows for donations to be claimed as a deduction against income. However, they are allowed for donations to specific NGOs or in specific sectors:

- 1) Donations (National Heritage) Rules: <https://legislation.mt/eli/sl/123.96/eng>
- 2) Donations (Sports and Culture) Rules: <https://legislation.mt/eli/sl/123.102/eng>
- 3) Donations (Sports and Culture) Rules: <https://legislation.mt/eli/sl/123.102/eng>
- 4) Donations (University Research, Innovation and Development Trust) Rules: <https://legislation.mt/eli/sl/123.113/eng>
- 5) Donations (Community Chest Fund) Rules: <https://legislation.mt/eli/sl/123.162/eng/pdf>

There are no such schemes for tax deductions relating to donations given to NGOs that work in human rights, or that are human rights defenders, or for media organisations. Whilst, the above is commendable, the laying down of specific groups or sector is discriminatory and discretionary.

We are not aware of any measures to ensure a fair distribution of funding.

Rules on the participation of CSOs and human rights defenders in decision-making

There are no rules and practices that involve the participation of civil society in any level of the decision-making process. Whilst previous legislatures had the practice of calling for consultation prior to legislating, this has become less popular in recent times: <https://meae.gov.mt/en/Pages/PublicConsultations.aspx>. We would suggest an amendment to Standing Orders of the House of Representatives which would allow for a period of consultation with stakeholders during the legislative process.

There are two consultative councils within the Human Rights Directorate:

- (i) [LGBTIQ Consultative Council](#) that consult on LGBTIQ matters. Its members are appointed by the Minister. They take part on a voluntary basis;
- (ii) [Consultative Council for Women's Rights](#) (CCWR) The members of the Council are appointed from among persons active in organizations working in the field of women's rights but we are unsure as to who appoints them. They take part on a voluntary basis.

Neither of these councils publish annual reports.

As pointed out in previous sections civil society has limited access to decision-making fora (e.g. parliament, ministries). There is no obligation for Parliamentary committees to consult with civil society in the drafting of laws. If NGOs are invited to the Committee Stage, there is very limited time in which to present feedback and suggestions during that meeting. There is no obligation to present the "outsiders" with any new drafts or amendments.

As previously mentioned in other reports, the Constitutional Reform process started in 2018 and had extremely limited civil society participation. The last document to be published through this reform process was in 2020, and the last event held was in 2018, according to the reform website: <https://riformakostituzzjonali.gov.mt/?lang=en>. However, we assume that the process is ongoing as under the Presidential vote in the 2023 budget €100,000 was approved for 2022 and €20,000 for 2023. However, it has been [felt](#) that the government does not seem to be demonstrating the same kind of "enthusiasm" it had shown when passing the 2020 amendments, to consider, let alone, act upon the changes the public would like to see being made to the constitution.

E. Initiatives to foster a rule of law culture

Measures to foster a rule of law culture

aditus foundation: Strengthening Access to Justice for Improved Human Rights Protection has the objective of improving access to justice for individuals wishing to strengthen their human rights protection in those instances when they feel that they have been violated: <https://aditus.org.mt/our-work/projects/strenghtening-access-to-justicefor-improved-human-rights-protection/#.Y8l0V3bMJD9>. SMART Goals To Strengthen Access to Justice for Improved Human Rights Protection: <https://aditus.org.mt/smart-goals-to-strengthen-access-to-justice/#.Y8l0TXbMJD9>.

Other - please specify

2022 brought Malta early general elections on the 26th March 2022 and saw a Labour Party win. The calling of the general election effectively spelt the end of any pending legislative process in Parliament, including for the long drawn out process for the approval of the Equality and the Human Rights and Equality Commission Bills. The 2022 election was the first in which the [Gender Corrective Mechanism](#) was used. This mechanism comes into effect when a gender has less than 40% representation in Parliament, and only applies to the candidates of the parties already represented in Parliament. However, it was deemed to have had the reverse effect on the electorate and only 4 women were directly elected to Parliament before the corrective mechanism was put into effect. In 2021, Prof Cassola, an independent candidate, filed constitutional proceedings against the State for what he deems to be discriminatory electoral practices which go against freedom of association and free and fair elections in the form of Article 52 of the Constitution, which outlines how the parliamentary proportionality mechanism including the gender corrective mechanism. The case is still pending to date (Cassola Arnold vs State Advocate Appl. No. 329/2021/1). Furthermore, after the 2022 election another case was instituted against the State by ADPD, a small party political coalition, (AD + PD vs State Advocate et. Appl. No. 172/2022). ADPD claimed that Article 52 & Article 52A breach the right to fair & free elections and are discriminatory, and that they breach the right to freedom of association as provided for by the European Convention of Human Rights, the Charter of Fundamental Rights and the Constitution.

Whilst the OSCE concluded that the elections were organised efficiently and professionally, it did point out a number of concerns. These concerns related to the finding that transparency was diminished by limited access to Electoral Commission activities, the lack of regulations allowing for election observation and limited oversight of and access to information on party and campaign financing. Concerns identified also include the use of public resources by the governing party. In particular, the [OSCE](#) expressed concern at the government's distribution tax refund and stimulus cheques, accompanied by a personalised letter signed by the Prime Minister and Minister of Finance, both of whom were contesting in the elections. These concerns were also raised by the [Daphne Caruana Galizia Foundation](#), whilst [aditus foundation](#) presented recommendations, including proposals on the strengthening of the rule of law and a more efficient justice system, during the electoral campaign.