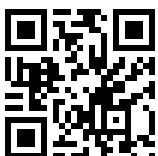


The situation of Article 2 TEU values in Malta

LIBE mission to Malta
23-25 May 2022



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Abstract

This study, written by the Policy Department for Citizens' Rights and Constitutional Affairs, at the request of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs - Democracy, Rule of Law and Fundamental Rights Monitoring Group, examines the situation of Democracy, the Rule of Law and Fundamental Rights in Malta and how Article 2 TEU values are respected and implemented in the country.

This document was requested by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs - Democracy, Rule of Law and Fundamental Rights Monitoring Group.

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Original: EN

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Manuscript completed in May 2022

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LIST OF ABBREVIATIONS

CJEU, EUCJ	Court of Justice of the European Union
CoE	Council of Europe
COM	Commission
DRFMG	Monitoring Group on Democracy, Rule of Law and Fundamental Rights
EP	European Parliament
EPPO	European Public Prosecutor
FRA	Fundamental Rights Agency
GRECO	Group of States against Corruption of the Council of Europe
LIBE	Committee on Civil Liberties, Justice and Home Affairs
MPM	Media Pluralism Monitor
MS	Member State
OLAF	European Anti-Fraud Office
OSCE	Organization for Security and Co-operation in Europe
PACE	Parliamentary Assembly of the Council of Europe
PANA	Committee of Inquiry to investigate alleged contraventions and maladministration in the application of Union law in relation to money laundering, tax avoidance and tax evasion
PM	Prime Minister
RoL	Rule of Law
RRF	Recovery and resilience fund

1. INTRODUCTION

A delegation of the European Parliament's **Committee on Civil Liberties, Justice and Home Affairs** (LIBE) will visit Malta (Valletta) on 23-25 May 2022 upon recommendation of the Committee's **Monitoring Group on Democracy, Rule of Law and Fundamental Rights** (DRFMG). The objective of the mission is to take stock of the latest developments in the country as regards the situation of Article 2 TEU values and notably democracy, rule of law, fundamental rights, the fight against corruption, the justice system, the citizenship for investment scheme, the media and more in general the level of reform achieved, notably in relation to the recommendations made by the Venice Commission, GRECO, Moneyval, FATF, OSCE, the EU Commission and the EP, as well as the recommendations of the Public Inquiry on the murder of Daphne Caruana Galizia.

This briefing aims at providing an overview of the progress achieved in Malta, as well as of the shortcomings and gaps to be filled in, in this regard. It is mainly based on the Commission Rule of Law 2021 report on Malta, media reports, national and international organisations documents, etc. The briefing is **structured** around the main pillars of Article 2 TEU: democracy, rule of law (covering the justice system and anti-corruption policies), fundamental rights (covering media freedom and other fundamental rights and equality), preceded by an introduction on the murder of Daphne Caruana Galizia, the recommendations by the Public Inquiry and the EP follow-up activities on Malta.

1.1. The killing of Daphne Caruana Galizia

On **16 October 2017**, **investigative journalist Daphne Caruana Galizia was killed** in Malta by the explosion of a bomb placed in her car. She had received repeated threats for her inquiries into the connections between the political world, the public administration, businessmen and criminals. Her murder sent shockwaves across Malta, but also across Europe and the world, showing the importance of the work of media and journalists, the courage needed and the risks they run in carrying out their work of watchdog of democracy. The murder also brought national, European and international public attention on the situation in Malta and notably on the serious constitutional, institutional, legal and political shortcomings that created the conditions for this murder to happen, but more largely for the murky deals denounced by Caruana Galizia in her articles to exist, which corroded the State, parties and society from the inside. Her work of bringing light into the darkness made her a target for a high number of defamation cases (SLAPPs) against her, that still persist after her death and that fall on the family and on others. But her work also led to a string of inquiries into corruption and crime in Malta and elsewhere, to a wave of reforms that have been, are and are being implemented and still planned in the country. These reforms will contribute to the strengthening of a culture of legality, needed for democracy to flourish. Her courageous family keeps the flame of Daphne Caruana Galizia alive and continues campaigning for democracy, rule of law, fundamental rights, justice, legality, transparency, which are European and Maltese values. Following her murder:

- **mass demonstrations** took place repeatedly and routinely, to mourn and remember her, to call for an end to corruption and impunity, as well as calling for PM Muscat resignation and pointing at his responsibility and that of persons in his entourage in the government;
- the **inquiry** into the killing led to the **arrest of three suspects** charged with the execution: George Degiorgio, his brother Alfred Degiorgio, and their friend Vince Muscat. Businessman Yorgen Fenech, owner of the Dubai-based company 17 Black, was arrested on 20 November 2019 upon suspicion of being involved and having commissioned the murder. On 23 February 2021, Vince Muscat

was **sentenced** to 15 years in prison after pleading guilty to the murder and stated that Alfred Degiorgio, received information from former Minister Chris Cardona on Caruana Galizia's whereabouts prior to her assassination, and subsequent tip-offs prior to the arrest.

- Daphne Caruana Galizia had revealed information concerning **trusts and companies (and funds transfers)** held by former minister Konrad Mizzi and former Prime Minister Joseph Muscat's chief of staff Keith Schembri in New Zealand and Panama; also Michelle Muscat, wife of Prime Minister, was mentioned.

- in November 2019 (also following national and international pressure), **Keith Schembri, Konrad Mizzi and Chris Cardona resigned; Schembri briefly was arrested** by the police for questioning. **Muscat finally resigned** as PM in January 2020.

- upon initiative of the family and following national and international pressures, a **Public Inquiry** was finally set up and listened to witnesses and experts and produced a more than 400 pages report with a series of recommendations (see further in this briefing).

- a series of **Magisterial inquiries** were opened and are still in process (often focusing on complicated and hidden nets made of politicians, companies, businessman, lawyers, banks, accounts, media, foreign countries - among which New Zealand, Panama, China, Azerbaijan, Montenegro, Italy, France, etc) among which the following: Panama Papers and 17 Black; a Montenegro Wind Farm; Electrogas; Vitals Global Healthcare deal; Cabinet ministers and public funds on Facebook; allegations of Yorgen Fenech's bribe to Adrian Delia; Melvin Theuma's suicide attempt; Pilatus Bank.¹

- on 22 December 2021, the **U.S. Department of State sanctioned with an entry ban Konrad Mizzi and Keith Schembri** due to their involvement in significant corruption.² On 19 January 2022, the **police raided Muscat's home** over €60,000 payments related to consultancy work and Vitals Global Healthcare hospital deal under investigation.

- an impressive number of **reforms** have been introduced by the Abela government,³ which have also been in part supported by the opposition and welcomed by various international organisations, but many more remain to be done, according to NGOs and various international bodies supporting the reform efforts:

- notwithstanding these reforms and although new **appointments** have been made at the top of the law enforcement and judicial bodies, NGOs state that Maltese institutions, the Police Commissioner (**Angelo Gafà**), the Attorney General (Dr **Victoria Buttigieg**), still fail to truly initiate investigations and

¹ <https://lovinmalta.com/opinion/analysis/explained-from-17-black-to-vitals-here-are-the-crucial-magisterial-inquiries-still-underway/>

² https://www.state.gov/public-designation-of-former-maltese-public-officials-konrad-mizzi-and-keith-schembri-due-to-involvement-in-significant-corruption/?fbclid=IwAR2_AQV_GOQuCCDcyTXnw6e0zmBdNfHP5b-0BMrZ4M32uliwpFH6Mkm23dg;

on the various trials and inquiries involving Keith Schembri, see

<https://theshiftnews.com/2022/04/21/keith-schembri-is-back-in-business/>;

on Mizzi's hearings in a parliamentary committee, see

https://www.maltatoday.com.mt/news/national/116846/pn_wants_continuation_of_pac_investigation_into_electrogas_deal#.Yoc67JZBzD4

³ see for instance the Factsheet produced by the government in March 2021
https://www.europarl.europa.eu/cmsdata/234902/Factsheet_.pdf

carry out effective prosecutions on the trails of corruption leading to the murder of Daphne Caruana Galizia, as well as on scandals post her death, alongside ongoing magisterial inquiries.^{4 5}

1.2. Summary of the recommendations by the Public Inquiry Committee

The “**Public Inquiry Report: Daphne Caruana Galizia, A Journalist Assassinated on 16th October 2017**”, presented to the Hon. Prime Minister Dr Robert Abela on 29th July 2021⁶ and signed by the 3 members of the Board of the body - the Chairman, The Hon. Mr Justice Michael Mallia and the Members, His Hon. Chief Justice Emeritus Joseph Said Pullicino, and The Hon. Madam Justice Abigail Lofaro - states that “The state should shoulder responsibility for the assassination [...] It created an atmosphere of **impunity**, generated from the highest echelons of the administration inside **Castille** [the office of the prime minister], the **tentacles** of which then spread to **other institutions**, such as the **police and regulatory authorities, leading to a collapse in the rule of law.**”

The report makes a series of important recommendations for Maltese authorities to follow up. The recommendations are largely based on those by the Venice Commission, GRECO and other European institutions. Also the Council of Europe Commissioner for Human Rights recently called in [the report on her visit to Malta](#) “to **fully implement** the recommendations of the public inquiry report which found the state responsible for her assassination”. The recommendations are summarised below:

- the **investigations** into the murder of Daphne Caruana Galizia shall continue and bring to justice those responsible
- the recommendations by the **Venice Commission, GRECO, the EP and the PACE** are fully shared by the Board
- criminal law shall be amended to **fight impunity**
- **transparency and accountability** shall reign in relations between administration and business
- laws shall be reviewed, notably those on **whistleblowers, party financing, the award of contracts including tenders and direct orders, and lobbying**
- legislation shall fight **financial crime including bribery and corruption** by means of “unexplained wealth orders”
- new crimes shall be introduced for **hindering or attempting to hinder investigations, mafia-style association, abuse of office, obstruction of justice**
- **Attorney General powers and competences shall be strengthen**
- a **code of ethics for public officials** shall be introduced
- **protection for persons at risk** shall be strengthened
- foresee protection for **journalists** through a **special Police unit** for inquiry and protection
- Constitutional amendment to make **freedom of expression and free journalism** pillars of a democratic society, State to protect them.
- Constitutional amendment on the right to receive **information** from the State and public administration, and obligation to provide such information + **revise the Freedom of Information Act**

⁴ <https://www.independent.com.mt/articles/2022-04-23/local-news/Maltese-institutions-failing-to-investigate-prosecute-corruption-cases-Repubblika-says-6736242397>

see also an article on the suspicions, the inquiries and the fate of persons that were “in power” and “their enablers”: <https://theshiftnews.com/2022/04/16/unfinished-business-the-top-10-getting-away-with-murder/>

⁶ see courtesy translation by the Daphne Caruana Galizia Foundation at <https://www.documentcloud.org/documents/21114883-public-inquiry-report-en>, pages 429-447.

- Constitutional amendment to set up an **independent Office of the Ombudsperson or a Commissioner for Journalistic Ethics**
- Constitutional amendment on the **Broadcasting Authority** to ensure impartiality, including in the public service
- **anti-SLAPP** law
- State **advertising** for media to be fair, equal and non-discriminatory
- law to recognise journalists' profession and **self-regulate**, establish ethical standards and disciplinary measures by a **Board** or authority totally independent and autonomous in all aspects
- creation of a **committee of experts** of academics, experts in media law, journalists and Media House owners to issue a study with recommendations for the Parliament, under the auspices of His Excellency the President of Malta.
- **The State should acknowledge its failings**, formally and publicly, in the public administration which surrounded the assassination of Daphne Caruana Galizia, of omission and commission by certain State entities or persons forming part thereof, certainly unique for their seriousness, extension and arrogance; this led to a **de facto impunity which could facilitate the execution of the crime**.
- **The Government and the State should reconcile with the assassinated journalist's family** initiate the healing process the country suffered and is still suffering.

It is not clear if the government thinks that these reforms shall be implemented or if they should be examined in the context of the public consultation and **Constitutional Convention** that was announced to be convened under the auspices of the President of the Republic - but that has been considerably delayed.⁷

1.3. European Parliament follow-up of the situation in Malta

The EP has followed very closely the situation in Malta in recent years:

During the previous term (2014-2019):

- in **February 2017**, the EP sent a **delegation** to Malta in the framework of the Committee of Inquiry to investigate alleged contraventions and maladministration in the application of Union law in relation to money laundering, tax avoidance and tax evasion (the **PANA** Committee),
- a month after the killing of Daphne Caruana Galizia, on **15 November 2017** Parliament adopted a **resolution on the rule of law in Malta**, condemning the killing, calling for inquiries and justice, and recalling the reports on the Pilatus bank scandal and the subsequent resignation of the head of the FIAU and of the Police Commissioner, as well as the politicisation of many appointments of relevance,⁸
- from **30 November to 1 December 2017**, an ad hoc delegation of **LIBE and PANA** visited Malta and issued a report on 11 January 2018,⁹
- on **4 June 2018**, the **Democracy, Rule of Law and Fundamental Rights Monitoring Group** was set up by the Committee on Civil Liberties, Justice and Home Affairs, also as a follow up of the murders of journalists in Europe,

⁷ The Constitutional reform committee met in late May 2019 and the public consultation was concluded in February 2020, with 453 proposals tabled, but stalled since then, see <https://timesofmalta.com/articles/view/elusive-constitutional-reform.954811>

⁸ https://www.europarl.europa.eu/doceo/document/TA-8-2017-0438_EN.html

⁹ https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/LIBE/CR/2018/01-24/1143312EN.pdf

- on **11 July 2018**, LIBE held a hearing on "**Rule of law and Safety of Journalists**".¹⁰

- from **17 to 20 September 2018** an ad hoc LIBE delegation visited Malta and Slovakia and issued a report on 16 November 2018,¹¹

- the EP adopted a **resolution on 28 March 2019 on the situation of the rule of law and the fight against corruption in the EU, specifically in Malta** and Slovakia,¹²

During the current EP term:

- **DRFMG** held five meetings dedicated to Malta, and exchanged a number of letters with the Maltese authorities,¹³ with the last DRFMG meeting devoted to the follow-up to the Public Inquiry into the assassination of Daphne Caruana Galizia taking place on 10 November 2021. At that meeting, the Prime Minister of Malta invited the Parliament to visit the country to witness the recent developments.

- a **LIBE** delegation took place from **2 to 4 December 2019**,¹⁴

- on **18 December 2019**, the EP adopted a **resolution on the rule of law in Malta following the recent revelations surrounding the murder of Daphne Caruana Galizia**, expressing concern on the stalemate on the investigations on Schembri and Mazzi and on the permanence in office of the Prime Minister,¹⁵

- on **16 October 2020**, the EP launched the **Caruana Galizia Prize for Journalism** on the 3rd anniversary of her murder, to distinguish outstanding journalism that reflects the European Union's principles and values, as enshrined in the European Charter of Human Rights,

- on **29 April 2021**, the EP adopted a **resolution on the assassination of Daphne Caruana Galizia and the rule of law in Malta**,¹⁶

The EP has furthermore pushed through parliamentary questions, reports and resolutions to obtain Commission initiatives on the **protection of journalists** (which led to a Commission [recommendation](#) in September 2021), on **SLAPP** (which was [proposed](#) by the Commission on 27 April 2022), as well as to counter **Golden passports / citizens' investment schemes** (upon which the Commission brought Malta to the EUCJ, see further).

¹⁰ <https://www.europarl.europa.eu/committees/en/product/product-details/20180706CHE04662>

¹¹ https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/LIBE/DV/2018/11-19/1169408EN.pdf

¹² https://www.europarl.europa.eu/doceo/document/TA-8-2019-0328_EN.html

¹³ see: <https://www.europarl.europa.eu/committees/en/libe-democracy-rule-of-law-and-fundament/product-details/20190103CDT02662#20190103CDT02662-section-6>

¹⁴ <https://www.europarl.europa.eu/cmsdata/207118/Mission%20to%20Malta%202-4.12.19%20Report.pdf>

¹⁵ https://www.europarl.europa.eu/doceo/document/TA-9-2019-0103_EN.html

¹⁶ https://www.europarl.europa.eu/doceo/document/TA-9-2021-0148_EN.html

2. DEMOCRACY

The Republic of Malta is a parliamentary democracy established as a Republic in 1974. It joined the European Union in 2004.

The Parliament is unicameral - the **House of Representatives** - has 79 Members and has legislative powers. Elections take place every 5 years. The Speaker, since 2013, is Hon. **Anglu Farrugia** (Labour).

The **President** is elected by the Parliament every 5 years. The current President is **George Vella** (Labour).

The **government** is composed of a Cabinet headed by the Prime Minister. The prime minister is since 13 January 2020 **Robert Abela** (Labour), who took over the post after the resignation of former PM Muscat. He retained the post after the elections of 26 March 2022.

The main **parties** represented in the House of Representatives are:

- the **Labour Party**, affiliated to SD, leader Robert Abela;
- the **Nationalist Party**, affiliated to EPP, leader Bernard Grech;
- **Democratic Alternative – Democratic Party**, a green-liberal alliance, was recently formed but has no elected representatives.

The last **elections** took place on 26 March 2022 and saw the Labour Party maintain the majority in Parliament with 44 seats, with the Nationalist party remaining in opposition with 35 seats. Robert Abela continued as PM.

Table on evaluations of Malta's democracy

Organisation	Marking	Ranking or score	Source
Freedom House	Free	89/100	<i>Freedom in the World 2022</i>
V-Dem institute	Electoral democracy	positive improvements in the last years	Democracy Report 2022. ¹⁷
World Justice Rule of Law Index		0.68/1.00	Rule of Law Index 2021

2.1. The President

In July 2020, a **reform** was adopted to make sure that the **President of Malta is elected (and removed) by a two-thirds majority** - instead of the previously required simple majority - of the Parliament, as also suggested by the Venice Commission - although an anti-deadlock mechanism was not introduced.¹⁸ Also, the removal of the President now can only be decided on grounds of proved inability to perform functions of the office or "proved misbehaviour".¹⁹

¹⁷ https://v-dem.net/media/publications/dr_2022.pdf

¹⁸ Venice Commission, CDL-AD(2020)019-e, para. 44.

¹⁹ The Venice Commission also recommended that the President should have a right of appeal to the Constitutional Court against a finding of such misbehaviour, ideally before the final vote in Parliament.

2.2. The Ombudsperson

In June 2020, a **reform** of the rules on appointment, suspension and dismissal of the Ombudsperson was made to insert them in the Constitution. The Venice Commission made also further recommendations to make sure it has stronger powers and independence,²⁰ supported by the Ombudsperson who raised concerns on the lack of follow-up to his recommendations²¹. The mandate of the current Ombudsperson expired on 21 March 2021, but no successor has been nominated yet²².

The proposal to establish a national human rights institution, proposed in 2019, is reportedly still being discussed in Parliament.²³

2.3. Independent Commissions

A **Constitutional reform concerning the appointments** to certain independent commissions was **adopted** in March 2021 and transferred the powers of appointment from the PM to the cabinet. The Venice Commission welcomed the reform but reiterated its recommendation to **strengthen the appointment procedures of the Electoral Commission, the Public Service Commission and the Broadcasting Authority.**

2.4. Executive functions in the public administration

GRECO's - and the Venice Commission's - suggested reforms proposed in 2020 as regards clear rules for the appointment and removal of persons exercising **top executive functions in the public administration** were **adopted** in March 2021 for **persons of trust**, and in May 2021 for permanent secretaries.

2.5. Follow up to Constitutional Court judgments

The **Constitutional Court** is composed of three judges - the Chief Justice is the head of the judiciary and also presides over the Constitutional Court - and has appellate jurisdiction in cases involving alleged violations of human rights, the interpretation of the Constitution and invalidity of laws, and original jurisdiction on matters such as membership and elections of members of the House of Representatives. Its judgments of constitutionality are not *erga omnes*, so their implementation depends on the follow up by the Parliament.

The RoL Commission report on Malta notes that the government does not intend to take initiatives to reform the Constitutional Court powers, or to ensure that laws are modified when the Constitutional Court judges them unconstitutional. The Venice Commission recommended to **introduce an obligation for Parliament to repeal or amend within a limited time-frame unconstitutional provisions.**

²⁰ According to the Venice Commission the Ombudsperson should not only be empowered, but indeed obliged to report corrupt practices to the Attorney General and the right to file a complaint to the Ombudsperson should not be limited to persons who claim to have been victims of any wrongdoing. Furthermore, the Ombudsperson could enjoy the necessary support and cooperation from the Government. See Venice Commission, CDL-AD(2020)019-e, paras. 67, 69, 71.

²¹ Ombudsperson Annual Report of 2019. In this regard, the Venice Commission recommended inscribing the power of the Ombudsperson's right to information in the Constitution.

²² Pending the appointment of a new office holder, the incumbent Ombudsperson continues in office. Following attempts to find a candidate between the government and the opposition parties, on 16 May 2021 media reported that no agreement was reached. Further consultations in that respect are ongoing.

²³ See https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-fundamental-rights-report-2021_en.pdf

2.6. The Parliament

The Venice Commission suggested **strengthening the Parliament** to better scrutinise the Government and recommended full-time work and payment of members. The European Commission also called for a reflection to also ensure that backbenchers are **less dependent** from government posts. The Government announced discussions on whether MPs should be given the choice between working **full-time or part-time**.

2.7. Public consultations

The Commission RoL reports on Malta express persistent concerns in relation to the **limited use of public consultations**, including of direct stakeholders covered by the laws discussed, and of studies of impact. An online platform for consultations is currently available, see https://meae.gov.mt/en/public_consultations/pages/home.aspx

2.8. COVID-19 Measures

Malta was one of the 13 EU Member States that adopted exceptional, emergency and restrictive measures **without declaring a state of emergency** or introducing equivalent legislation during the pandemic.²⁴ During COVID, **parliamentary oversight continued** as Malta's Parliament continued its work as usual, by merely changing some of its procedures.²⁵

The legal basis for adopting restrictive measures was Malta's Public Health Act, which grants to the Superintendent of Public Health the power to declare the state of public health emergency, without defining the time limits,²⁶ and to issue orders to face epidemics and infectious diseases. The state of public health emergency was declared between 16 March 2020 and 1 July 2020 and powers were used more than 50 times, with the Parliament scrutinizing regulations and orders issued.

2.9. Civil society

CIVICUS considers that **civic space is "narrowed"**,²⁷ as civil society organisations express **concerns on the new rules on fundraising activities adopted in September 2020**²⁸ for the additional hurdles and the discretionary powers given to the Commissioner for Voluntary Organisations. Funds were made available to NGOs also during Covid-19. The new Commissioner appointed in 2021, Jesmond Saliba, launched a consultation of NGOs for an overall reform of the sector.²⁹

²⁴ FRA, Fundamental Rights Report 2021, p. 11, <https://fra.europa.eu/en/publication/2021/fundamental-rights-report-2021>

²⁵ [European Commission for Democracy through law \(Venice Commission\)](#), Interim Report on the measures taken in the EU Member States as a result of the COVID-19 crisis and their impact on democracy, the rule of law and fundamental rights, 8-9 October 2020.

²⁶ The state of public health emergency was declared on 16 March 2020 and lifted on 1 July 2020.

²⁷ <https://monitor.civicus.org/country/malta/>

²⁸ The Voluntary Organisations (Public Collections) Regulations (S.L.492.03.) and Voluntary Organisations (Charity Shops) Regulations (S.L.492.04.).

²⁹ <https://newsbook.com.mt/en/voluntary-organisations-commissioner-launches-sector-reform/>

3. RULE OF LAW

3.1. Justice

The Maltese justice system foresees **Superior Courts** - composed of judges: the Civil Court, the Criminal Court, the Court of Appeal, the Court of Criminal Appeal and the Constitutional Court - and **Inferior Courts** - composed of magistrates: the Court of Magistrates (Malta) and the Court of Magistrates (Gozo). Specialised tribunals adjudicate in specific areas.

The **Chief Justice** (currently **Mark Chetcuti**) is the head of the judiciary and is responsible for judicial work and organisation and also presides over the Constitutional Court.

The **Commission for the Administration of Justice** supervises the work of the judiciary.

A separate **Prosecution Service** headed by an **Attorney General** (currently **Dr Victoria Buttigieg**) was set up in 2019.

Malta joined the **European Public Prosecutor's Office** only in 2018 and issues emerged in the selection of the candidates, causing delays for EPPO.³⁰

3.1.1. Independence

The level of perceived judicial independence has **improved** (to fairly/very good). A series of **legislative reforms** were introduced, among which:

- a **new system of judicial appointments** was introduced in July 2020 following Council of Europe's recommendations.³¹ It was welcomed by civil society organisations, by the Chamber of Advocates and by the Venice Commission in its Opinion of October 2020³², including in relation to the new composition of the **Judicial Appointments Committee** ('JAC'), the publication of judicial vacancies, the direct proposals by the JAC of judicial candidates to the President of Malta, the submission of detailed reports on candidates by the JAC and the presentation by the JAC of the three most suitable candidates for appointments. At the same time, **criticism** was expressed on the lack of wider consultation of civil society or a wider public debate. The Venice Commission also called for making public the names of the 3 candidates proposed by the JAC before the President of Malta decides on the appointment.

- a **reform** of the procedure for **dismissal of magistrates and judges** removed the Parliament from it and entrusted the **Commission for the Administration of Justice**, composed in majority of members of the judiciary - a reform considered to be generally in line with existing standards by the Venice Commission.

- the Venice Commission call to **depoliticise the appointment of the Chief Justice** was only partly implemented by introducing a requirement of a two-thirds majority in Parliament for the appointment of the Chief Justice. Still, the Venice Commission called for an anti-deadlock mechanism to be

³⁰ <https://timesofmalta.com/articles/view/malta-delays-the-start-of-eu-office-to-fight-corruption.792608>

³¹ The Court of Justice assessed the compliance of the previous system for judicial appointments, in force between 2016 and 2020, in the context of a preliminary reference procedure (judgment of 20 April 2021 in Case C-896/19, *Repubblika*). Surprisingly, the Court found that Article 19(1) TEU must be interpreted as not precluding national provisions which confer on the Prime Minister of the Member State concerned a decisive power in the process for appointing members of the judiciary, while providing for the involvement, in that process, of an independent body responsible for, inter alia, assessing candidates for judicial office and giving an opinion to that Prime Minister.

³² Venice Commission, CDL-AD(2020)019-e Opinion of 8 October 2020 on Malta - Opinion on ten Acts and bills implementing legislative proposals subject of Opinion CDL-AD(2020)006.

introduced. It also considered that an election of the Chief Justice by the Supreme Court judges would be preferable, as the appointment of the Chief Justice by Parliament, without the involvement of the judiciary, considered together with the possibility that a person from outside the judiciary could be appointed as Chief Justice, and without a requirement of being a senior judge, will need further attention.³³

- The **transfer of certain types of prosecutions from the police to the Attorney General** (specified serious crimes, including corruption³⁴) **is progressively taking place** on the basis of a timeline until 1 October 2024, but there is no timeline for the transfer of the less serious offences (contraventions or crimes punishable with a fine or a maximum of two years' imprisonment or less (summary cases) and it is not clear if these will also be transferred. The European Commission - supporting a Venice Commission's request in this sense - calls this transfer to be done as soon as possible.

- **the procedures for the appointment and removal of the Attorney General** were **reformed** through an amendment to the Constitution of July 2020 and are now carried out by the President of Malta acting upon a recommendation by the Prime Minister following a resolution adopted by a two-thirds majority in Parliament, after his giving due consideration to the recommendations of the Appointment Commission.³⁵ The Venice Commission recommended that an expert body should decide on the grounds for removal, or that an appeal to the Constitutional Court should be possible against a decision of a parliamentary committee, before the plenary of Parliament takes the final decision on the removal. 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.

- a number of **specialised tribunals** are in place and many of them are appointed through a procedure involving the executive power.³⁶ The Venice Commission has raised **concerns** (shared also by stakeholders) on their independence and confirmed a previous recommendation on the matter. The European Commission mentions in its 2021 Rule of Law report on Malta that it is discussing with the Maltese authorities the review of the independence of these specialised tribunals in the context of the Recovery and Resilience Facility.

3.1.2. Quality

The European Commission highlighted in its 2021 Rule of Law report on Malta that there are still **important gaps** in relation to the **digitalisation of the justice** system and mentioned the drafting of

³³ It is noted that the appointment of the Chief Justice by Parliament without involvement of the judiciary retains a strong political element. This issue is of particular importance in view of many roles played by the Chief Justice in the Maltese justice system.

³⁴ Wilful homicide, terrorism, money-laundering, bribery, fraud and misappropriation where the financial loss caused is at least fifty thousand euro (€50,000), as well as evasion of customs duties

³⁵ See Article 91A(5) of the Constitution of Malta. It is noted, however, that modalities applicable to the removal of the State Advocate are not entrenched by the Constitution and can be amended by an absolute majority of Parliament. It is also noted that the removal of the Attorney General and the State Advocate can only be effectuated in case of "proved inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour".

³⁶ Among these: the Refugee Appeals Board, 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.

a digital strategy.³⁷ On 3 December 2021 the Maltese Ministry for Justice and Governance effectively launched a **new Digital Justice Strategy** based on the co-operation project "[Establishing a digital strategy for the Maltese justice sector](#)," drafted with the help of CEPEJ experts, which will be implemented until 2027.³⁸

Malta was also examining the possibility of **empowering administrative authorities** to impose **sanctions for violations currently decided by courts** through amendments to the legislation, which raised **concerns** among stakeholders in relation to the right to fair trial, as well as on the fact that the Constitution should be amended instead. The Venice Commission shared this view in its Urgent Opinion of 1 June 2021 upon consultation of the Maltese authorities, whilst calling for further clarification as regards its relations with Article 6 European Charter of Human Rights.

3.1.3. Efficiency

- "**The length of proceedings remains a serious concern**", states the Commission in the RoL report, as the duration of litigious civil and commercial cases, as well as administrative cases, remained very long, while the length of money laundering cases remained particularly long.

This is confirmed again in the Justice Scoreboard 2022 published on 19 May 2022, with Malta being the slowest MS in money laundering inquiries.³⁹

The government announced amendments to speed up magisterial inquiries and criminal proceedings as well as to reduce the backlog in the Court of Appeal; a new law in the field of civil procedure was enacted to shorten the compilation of evidence.

- **Malta has a relatively low number of judges and magistrates, which affects the efficiency of the justice system.**⁴⁰

³⁷ The Commission mentions: the limited possibility to file and follow a procedure by electronic means, the use of digital technology by courts and prosecution services, the use of electronic communication tools by courts and by the prosecution service, digital solutions to conduct and follow court proceedings in criminal cases.

³⁸ See https://www.coe.int/en/web/cepej/home/-/asset_publisher/CO8SxIjXPeD/content/malta-launches-digital-justice-strategy-co-drafted-by-cepej-experts?inheritRedirect=false&redirect=https%3A%2F%2Fwww.coe.int%2Fweb%2Fcepej%2Fhome%3Fp_id%3D101_INSTANCE_CO8SxIjXPeD%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_count%3D9. See also the Strategy <https://justice.gov.mt/en/justice/Pages/DigitalJusticeStrategy.aspx>. The Commission RoL report also mentions new laws allowing the Minister for Justice to enact regulations on the electronic filing of criminal judicial acts and of notifications, as well as to conduct criminal court proceedings online. The Code of Organization and Civil Procedure was also amended to allow online civil proceedings.

³⁹ <https://timesofmalta.com/articles/view/maltese-courts-slowest-in-eu-when-dealing-with-money-laundering-cases.956443>

⁴⁰ The number of judges per capita is among the lowest in the EU (8,7 judges per 100.000 inhabitants in 2019).

3.2. Corruption

Very recently, during a debate in the European Parliament on 20 April, **EPPO Chief Laura Codruța Kövesi** stated: "I visited Malta. I had meetings with the national authorities and after two days it was very difficult for me to identify the institution that is responsible for detecting crimes...All of them said that 'it's not me. It's them.' And when I visited them, they said 'it's not us'". Also, media report that **Malta is the only participating member that has not opened any investigation with EPPO**.⁴¹

Also **NGOs** like Repubblika expressed repeated concern on the fact that the same problems persist as Maltese institutions, including the Police Commissioner and the Attorney General, have failed to initiate prosecutions in court against people involved in corruption scandals, including in relation to those cases and persons involved with the murder of Daphne Caruana Galizia.

The **grey-listing on Malta by TAFT in 2021** - the only EU Member State included in that list - was also worrying.

In Malta, there are many authorities involved in countering corruption:

Body	Function
Permanent Commission against Corruption	prevention and for administrative investigations into corrupt practices
Commissioner for Standards in Public Life	monitoring the ethics of ministers, parliamentary secretaries and members of Parliament
Police - Financial Crimes Investigation Department	investigation of economic crime, including corruption offences and money laundering
Attorney General	prosecution of economic crime, including corruption offences and money laundering (who is progressively taking over the prosecution of all offences carrying a conviction of more than two years imprisonment)
Financial Intelligence Analysis Unit (FIAU)	Screening financial transactions for money laundering, terrorism, etc
Internal Audit and Investigations Department	internal audits and investigations within all governmental departments and agencies
Ombudsperson	investigations on officers and institutions performing administrative functions

Notwithstanding all these competent bodies, the Commission RoL report 2021 recalls that the "ongoing investigation and separate public inquiry into the assassination of investigative journalist Daphne Caruana Galizia have unveiled deep corruption patterns and raised a strong societal demand for significantly strengthening the capacity to tackle corruption and carrying out wider rule of law reform".

This also emerges from the relatively high level of perception of corruption in the public sector. In the **2021 Corruption Perceptions Index by Transparency International**, Malta scores 54/100 and ranks 49th globally (progressively improving, but still considerably low).⁴²

3.2.1. Grey-listing of Malta by FATF and money laundering inquiries

Against this background, in June 2021 Malta was **placed on the grey list by the Financial Action Task Force** due to strategic deficiencies in its regimes to counter money laundering, terrorist financing, and

⁴¹ <https://euobserver.com/rule-of-law/154754>

⁴² <https://www.transparency.org/en/countries/malta>

proliferation financing - and reportedly for the weak enforcement and investigation policies - and is still on that list, being **the only EU MS**.

The authorities committed to work with the FATF and MONEYVAL to strengthen the effectiveness of its AML/CFT regime notably on (1) keeping accurate beneficial ownership information and on applying sanctions for those that do not comply; (2) enhancing the use of the FIU's financial intelligence to support authorities pursuing criminal tax and related money laundering cases, including by clarifying the roles and responsibilities of the Commissioner for Revenue and the FIU; and (3) increasing the focus of the FIU's analysis on these types of offences, to produce intelligence that helps Maltese law enforcement detect and investigate cases of money laundering risks related to tax evasion.⁴³ A FATF visit was also held.⁴⁴

According to media, the number of **investigations** into money laundering cases **have "skyrocketed"** since the grey-listing and the FIAU has screened financial transactions, with a 200% increase in the detection of suspicious transactions and with more than 300 businesspeople⁴⁵ being investigated by FIAU. Some high profile cases are underway, involving **Keith Schembri, Yorgen Fenech and Adrian Hillman** (former Allied Newspapers managing director). Still, other money laundering cases are stalling, including that of former More supermarket boss Ryan Schembri, extradited to Malta from the UK.⁴⁶

3.2.2. Individual investor programme

Malta's investor programme established in **2014** - whereby citizenship is granted if pre-determined payments and investments are done by a non-EU national, **without any genuine link to the Member State concerned** - has been at the centre of **scandals** and **criticism** for a long time and has been **replaced by a new programme**⁴⁷, which remains anyway controversial in terms of compliance with Maltese law,⁴⁸ leading the European Commission to launch an **infringement procedure** both against the previous and the new investor citizenship programme in relation to compliance with EU law⁴⁹.

On 28 March 2022, the Commission adopted a "**recommendation on immediate steps in the context of the Russian invasion of Ukraine in relation to investor citizenship schemes and investor residence schemes**", where it urged Member States to immediately repeal any existing investor citizenship schemes and to ensure strong checks are in place to address the risks posed by investor residence schemes.

⁴³ <https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-march-2022.html>

⁴⁴ <https://www.internationalinvestment.net/news/4048163/fatf-moneyval-visit-malta-days-ec-golden-passports-warning>

⁴⁵ <https://timesofmalta.com/articles/view/money-laundering-probes-shoot-up-by-200-per-cent.865392>

⁴⁶ <https://timesofmalta.com/articles/view/127-people-face-money-laundering-charges.955828>

⁴⁷ The scheme allowed for the naturalisation of up to 1,800 investors, excluding dependents, in exchange for substantial investments and **without any genuine link to the Member State concerned** (Regulation 12 of the Individual Investor Programme of the Republic of Malta Regulations, 2014). When the scheme came close to **reaching its limit of 1.800 successful** applicants, it was **repealed** by the Maltese Citizenship (Amendment No. 2) Act, 2020 (Act XXXVIII of 2020) and **replaced by the "Maltese Citizenship by Naturalisation for Exceptional Services by Direct Investment"** scheme, established by the Granting of Citizenship for Exceptional Services Regulations, 2020. The new scheme allows for the naturalisation of up to 400 investors annually and 1,500 investors in total, excluding dependents, in exchange for substantial investments.

⁴⁸ See Times of Malta 'Exposed: the great residency sham to obtain a Maltese passport' of 22 April 2021.

⁴⁹ On 20 October 2020, the Commission had decided to send a letter of formal notice to Malta asking to end its investor citizenship scheme and subsequently sent an additional letter of formal notice to Malta on 9 June 2021, following the introduction of a new scheme by Malta at the end of 2020.

Malta **suspended** on 2 March 2022 the new scheme for Russian and Belarusian nationals but **continued to operate the scheme for all other nationals**.

On **6 April 2022** the Commission sent a reasoned opinion ([INFR\(2020\)2301](#)) considering that the granting of EU citizenship in return for pre-determined payments or investments, **without any genuine link to the Member State concerned**, is **in breach of EU law** as it is in breach of the principle of sincere cooperation ([Article 4\(3\) TEU](#)) and infringes the very status of citizenship of the Union as laid down in the Treaties ([Article 20 TFEU](#)).

Malta now has two months to reply to the Commission's reasoned opinion. Shall the reply be not satisfactory, the Commission may bring the matter before the Court of Justice of the European Union.

The EP has repeatedly **criticised** such golden passports schemes, more recently in its resolution of 9 March 2022 with proposals to the Commission on citizenship and residence by investment schemes.⁵⁰

Further allegations of corruption related to the scheme emerged recently and are being investigated by the police.⁵¹

3.2.3. National Anti-Fraud and Corruption Strategy 2021-2024

A National Anti-Fraud and Corruption Strategy 2021-2024 launched in 2021.⁵² focuses on training and education, sharing of information, institutional cooperation (domestically and internationally) and accountability on public financing. The Commission Rule of Law report recalls that the Ombudsperson, the private sector, civil society and non-governmental organisations were not invited or consulted on it.

3.2.4. Length of corruption investigations and results

The Commission RoL report states that “while investigative and prosecution bodies have **improved** their capacity to deal with corruption cases, as shown by an **increase** in the number of cases opened, **investigations continue to be lengthy** depending on their complexity and **a track record of convictions in high-level cases remains to be established**. Since October 2020, the Attorney General has taken over the prosecution of certain serious crimes⁵³, including high-level corruption. A total of 14 prosecutors are dedicated to financial crimes and, since the second quarter of 2020, a task force on complex financial crimes has been in place. The number of financial crimes cases investigated and solved has increased substantially⁵⁴, following the recent increase of resources and capacity of the financial crimes investigations department (FCID) that took place between 2019 and September 2020. However, the investigation and prosecution of corruption remains a **lengthy** process, especially in those cases that require large financial data analysis or that are considered complex. There are currently several high-level corruption cases that remain pending before the court.”

⁵⁰ https://www.europarl.europa.eu/doceo/document/TA-9-2022-0065_EN.html

⁵¹ See, also on past scandals, <https://theshiftnews.com/2022/04/27/police-investigate-fresh-claims-of-corruption-at-identity-malta/>

⁵² <https://parlament.mt/media/112504/06624.pdf>

⁵³ In accordance with the Prosecution of Offences (Transitory Provisions) Regulations, 2020 (L.N. 378 of 2020), this includes terrorism, money laundering, bribery, corruption, fraud and misappropriation, and evasion of customs duty.

⁵⁴ In terms of investigations (about 245% increase), cases solved (about 280% increase), number of cases and persons prosecuted (about 50% and 173% increase, respectively). Input from Malta for the 2021 Rule of Law Report.

3.2.5. Integrity of the police

Measures to improve integrity in the Police were introduced, and notably a Transformation Strategy 2020-2025 strengthening anti-corruption measures; a policy regulating Business Interests and Additional Occupations; the Police Act was amended to allow police officers to make anonymous reports on breach of integrity within the police. The EU Commission underlines in the report that the effectiveness of such measures will depend on actual implementation.

3.2.6. The Permanent Commission against Corruption

The EU Commission RoL report on Malta underlines that the **Permanent Commission against Corruption** (responsible for the prevention of corruption in the public administration and for administrative investigations) has limited resources (no in-house investigators nor data analysts) and there are persisting concerns on its capacity to conduct inquiries. It can request the assistance of the police, but their investigations and assessments are sometimes very lengthy. There is furthermore a lack of detailed information on the workload and very few whistle-blowers have tabled complaints. Extremely few cases were examined and forwarded to the Attorney General.⁵⁵

3.2.7. Internal Audit and Investigations Department

The **Internal Audit and Investigations Department (IAID)** is in charge of auditing public bodies, including state-owned enterprises, verifying financial books and checking conflicts of interest. New provisions allow the Auditor General to notify its findings to the Attorney General.

3.2.8. The Ombudsperson

The Ombudsperson office is entitled to conduct investigations on officers and institutions performing **administrative functions**, including for cases of **corruption**, which are forwarded to the **Attorney General**. The Ombudsperson office has the right to appeal against a decision of the Attorney General not to prosecute a case of corruption. To date, this right has not been exercised. The mandate of the current Ombudsperson expired in March 2021, therefore the current Chair continues to serve until a successor is nominated.

3.2.9. Ethic rules, codes of conduct, lobbying

The Commission RoL 2021 report notes that “the ethics rules for high-ranking officials, members of Parliament and ministers **are in place, including on asset disclosure and lobbying**” and that the **Commissioner for Standards in Public Life** is in charge of monitoring. The regulation on lobbying and codes of ethics for ministers and members of Parliament are under review.

3.2.10. “Persons of trust”

While the rules of ethics applicable to persons of trust have been **amended** in March 2021, **concerns** were expressed by the Commissioner for Standards in Public Life on the feasibility and effectiveness of the control on the ethics of persons of trust, especially for those who work more closely with or under a minister. The Venice Commission and the Group of States against Corruption (GRECO) respectively

⁵⁵ See RoL report on Malta. On the positive side, structural reforms improved the appointment procedure of its three commissioners and extended the competences.

recommended to regulate in the law the maximum number and the duration of such engagements and to limit the number to an absolute **minimum**.⁵⁶

3.2.11. Corruption and Covid

Measures have been taken to counter the risks of corruption in public procurement during Covid 19, notably through the 2020 Procurement of Property Regulations by the **Ministry of Finance**, which includes provisions against corruption and collusion.

3.2.12. Whistleblowers

Pieter Omtzigt, Council of Europe Parliamentary Assembly's General Rapporteur on the protection of whistleblowers, **criticised Malta's reform on whistleblower protection** introduced to comply with the EU directive on the matter, stated that the onus of proof lies disproportionately on the whistleblowers themselves and that the new private and public sector whistleblower units do not provide the necessary guarantees of independence and absence of conflict of interest. He also stated that legislation was "rushed through without meaningful consultation" while ignoring directive requirements for transparency.⁵⁷

⁵⁶ See CDL-AD(2020)019-e of the Venice Commission and GRECO Fifth Evaluation Round On "Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies", 3 April 2019.

⁵⁷ See https://www.maltatoday.com.mt/news/national/113945/pieter_omtzig_t_malta_whistleblower_law_not_fit_for_purpose#.YofSpZZBzD4

4. FUNDAMENTAL RIGHTS

4.1. Media Freedom and Pluralism, Freedom of Expression and Information

4.1.1. General features

Freedom of expression is guaranteed by the Constitution and by the European Convention Act, and legislation was enacted in 2020 to transpose the Audiovisual Media Service Directive into Maltese law.

Malta ranks **78th** out of 180 monitored countries in the 2022 **World Press Freedom Index** of Reporters without Borders, **3 places up** compared to 2021, when it was 81st. It is the **24th** over the 27 EU Member states and the **3rd worst ranked**.⁵⁸

The **Media Pluralism Monitor** for Malta assesses the risks to media pluralism as following⁵⁹:

Areas	Risk percentage	Risk level	High risk indicators	Medium risk indicator
Fundamental protection	35%	medium risk		- Protection of the Right to Information - Journalistic profession, standards and protection
Market plurality	70%	high risk	- News-Media Concentration - Online Platforms Concentration and Competition Enforcement - Media Viability	- Transparency of Media Ownership - Commercial and Owner Influence Over Editorial Content
Political independence	72%	high risk	- Political Independence of Media - Editorial Autonomy - Independence of PSM Governance and Funding	- Audio Visual Media, Online Platforms and Elections - State Regulation of Resources and Support for the Media Sector
Social inclusiveness	60%	medium risk	- Access to Media for Minorities - Access to Media for Women - Media Literacy	- Protection Against illegal and Harmful Speech

The **Council of Europe's Platform to promote the protection and the safety of journalists** has 1 active alert (on "Blogger Manuel Delia Targeted in Electoral Campaign") and 1 case of impunity for murder for 2022 (on the murder of Daphne Caruana Galizia).⁶⁰

⁵⁸ <https://rsf.org/en/country/malta>

⁵⁹ https://cadmus.eui.eu/bitstream/handle/1814/71955/malta_results_mpm_2021_cmpf.pdf?sequence=1&isAllowed=y

⁶⁰ <https://fom.coe.int/en/pays/detail/11709548>

Reporters Sans Frontières states that “In Malta, journalists have to cope with a highly polarised environment under the strong influence of political parties. In 2021, a public inquiry into the assassination of journalist **Daphne Caruana Galizia** was concluded, listing a comprehensive set of reforms the government has been reluctant to implement.” RSF also presents the following information and analysis:

Media landscape: The public broadcaster *PBS* is the most popular television channel, followed by TV stations owned by political parties. Three independent, traditional newspapers (*Times of Malta*, *Malta Independent* and *Malta Today*) are joined by online news portals and blogs.

Political context: The ruling party wields a strong influence over the public broadcaster and uses public advertising to exert pressure on private media. Many politicians select specific journalists for exclusive interviews, while those considered “hostile” are ignored, including within the party media. The government requires an “access card” issued to journalists to cover government events or attend press conferences.

Legal framework: Freedom of the press is guaranteed by the constitution, but the legal and regulatory framework is not conducive to journalists exercising their rights. Independent media are discriminated against in access to information and journalists are targets of Strategic Lawsuits Against Public Participation (SLAPPs). Family members of journalist Daphne Caruana Galizia, who was murdered in 2017, are targeted by posthumous defamation lawsuits.

Economic context: Although it is relatively easy to launch a media outlet, the small market offers limited sources of funding for independent media whose sustainability is undermined by non-transparent and discriminatory distribution of public funds. During the pandemic, subsidies were mostly granted to political parties’ media outlets.

Sociocultural context: On almost every issue of public interest, Maltese society suffers from deep polarization. Reporting on certain topics such as migration or abortion remains unpopular and incites abuse towards journalists covering these topics. Very few journalists from minority groups work for the mainstream media. Investigative reporting is carried out by a handful of journalists, almost exclusively men.

Safety: None of the suspects arrested for the 2017 murder of Daphne Caruana Galizia have been tried and convicted. Although the public inquiry recognized that “the state has to shoulder responsibility for the assassination (of Daphne Caruana Galizia), because it created an atmosphere of impunity”, the recommendations resulting from the inquiry are being implemented too slowly. Law enforcement institutions lack resources to effectively protect journalists who continue to face threats with impunity.”

4.1.2. The Committee of Media Experts on the follow up to the Public Inquiry on media

On 11 January 2022, the government announced the establishment of a **Committee of Experts** tasked with making proposals to **implement the recommendations on media and journalism made by the board of inquiry** (see Annex for a summary of the recommendations). The committee, composed of 8 members and chaired by Judge Michael Mallia (the retired judge who chaired the public inquiry into Daphne Caruana Galizia’s murder) has been invited by the government to work on the following issues:

- 1) **anti-SLAPP** law (also analysed further by the OSCE and now also object of an EU proposal)
- 2) amending the media and **defamation** act to ensure that, if an author or editor facing a defamation suit dies, proceedings cannot continue against his or her heirs (also analysed by the OSCE)
- 3) increasing **punishments** for offences against journalists
- 4) requiring defendants in defamation suits to only pay **court registry fees** if they lose the case

5) amending article 41 of the **Constitution** to ensure that freedom and pluralism of the media and the importance of **journalism** is reflected

6) a **committee** responsible for identifying **risks to journalists and protect** them as needed composed of the police commissioner, the head of the security service and the commander of the armed forces, is already in place, but the Committee shall also examine it.

The Committee had to provide **feedback within two months** to the PM, who would then present it to parliament within 10 days.⁶¹ While no public information can be found on such feedback, opposition MPs stated that the (leaked) documents produced were insufficient.⁶²

4.1.3. The Malta Broadcasting Authority

The composition, appointment and removal procedures and independence of the Broadcasting Authority and main functions are set in the Constitution and the Broadcasting Act, recently **amended** to transpose the Audiovisual Media Service Directive. **Criticism** was raised on the fact that amendments were not tabled to strengthen the independence of the Broadcasting Authority,⁶³ whose five members **are all political appointees** nominated by the President, following the advice of the **Prime Minister** and after consultation with the Leader of the Opposition.

The Media Pluralism Monitor 2021 considered the independence and the effectiveness of the authority at low risk due to the clearly defined responsibilities at law and generally transparent activities.⁶⁴ Still, it also underlined that the line taken by the Authority to *de facto* allow the two main broadcasting outlets - owned by the Labour Party and the Nationalist Party respectively - *"to balance themselves out editorially"* is **problematic**, as it consolidated a **polarised** media landscape.

4.1.4. Political interference and media concentration

The Commission RoL report highlights that "the two main political parties represented in Parliament"⁶⁵ effectively own, control or manage a number of Maltese media outlets and broadcasters, including online news portals. MPM 2021 considers that this state of affairs means that these two parties "actively contribute towards shaping the working environment for journalists" while their media outlets are "a major influence on public discourse"⁶⁶. This leads MPM 2021 to once more consider **political independence of the media** to be **at acute high risk** in the country."

4.1.5. Transparency of media ownership

The MPM 2021 evaluates media ownership transparency at **medium risk** as the Broadcasting Authority collects ownership information of media outlets - but these are not easily accessible to the public -

⁶¹ See <https://www.gov.mt/en/Government/DOI/Press%20Releases/PublishingImages/Pages/2022/01/11/pr220024/pr220024a.pdf>

⁶² The other members are Neil Camilleri, Kevin Dingli, Saviour Formosa, Carmen Sammut, Kurt Sansone, Matthew Xuereb and Saviour Balzan, whose relations with the government are objects of access to documents requests that see The Shift and the Data Protection Commissioner opposing 30 Ministries and government departments and Balzan. See for more information <https://timesofmalta.com/articles/view/judge-michael-mallia-to-lead-daphne-inquiry-media-experts.927100> and <https://theshiftnews.com/2022/03/29/saviour-balzans-attempt-to-discredit-independent-reporting-troubling-rsf/>.

⁶³ Act No. LVI of 2020 amending the Broadcasting Act, Cap. 350.

⁶⁴ 2021 Media Pluralism Monitor, Country Report on Malta pp. 10-11.

⁶⁵ The ruling Partit Laburista (PL) and opposition Partit Nazzjonalista (PN).

⁶⁶ 2021 Media Pluralism Monitor, Country Report on Malta p. 7.

while the Broadcasting Act limits horizontal ownership concentration in the audio-visual media sector, but the **lack of complete data** does not allow for a full assessment.

4.1.6. State advertising

The Commission RoL report 2021 states that “the lack of a legal framework regulating state advertising continues to provide room for abuse both by the Government and by individual politicians” and recalls Malta’s Commissioner for Standards in Public Life’ investigations on the allocation of public funds for alleged political advertising in print media by a minister.⁶⁷ Following the inquiry, **Guidelines on government advertising and promotional material were issued** for the first time by the Commissioner for Standards in Public life.⁶⁸ Media report alleged breaches of these.⁶⁹

4.1.7. Measures to support media during the Covid-19 pandemic

In April 2020, a scheme to support news media providers hit by the Covid-19 pandemic was launched, but was criticised by some for lack of transparency and for benefitting media houses owned by the political parties, while freedom of information requests made on the matter remained unanswered.⁷⁰ For these reasons, MPM 2021 keeps its medium risk score in terms of state regulation of resources and support for the media sector.⁷¹

4.1.8. Access to information

Journalists, NGOs and MPM 2021 report that access to information, foreseen by the Freedom of Information Act, is often **violated by public authorities, as requests are rejected, not answered or only partially answered, or replies are delayed**. During COVID-19, press conferences were broadcasted but journalists’ questions were not. For these reasons, MPM 2021 considers the risk at medium level.

Following GRECO recommendations that included reviewing access to information,⁷² the Government is reported to have started a review of the legal framework through a study. Various access to documents cases have been **brought to the Constitutional Court**, hoping to achieve real change.⁷³

4.1.9. Protection of journalists

The killing of Daphne Caruana Galizia has brought light to the need to strengthen the protection of journalists from threats. Notwithstanding this, journalists still face considerable threats and risks, as confirmed by journalists, NGOs, MPMs⁷⁴ and the Council of Europe Platform to promote the protection of journalism and the safety of journalists. **The public inquiry made important proposals** on this matter, that are being examined and are to be implemented, while the government has set up a **committee** responsible for identifying **risks to journalists and protect** them as needed composed

⁶⁷ Commissioner for Standards in Public Life, Case Report of 17 March 2021, No. K/028.

⁶⁸ <https://standardscommissioner.com/wp-content/uploads/guidelines-government-advertising-promotional-material.pdf>

⁶⁹ <https://timesofmalta.com/articles/view/labour-newspaper-kullhadd-supplement-packed-with-ministry-adverts.928657>

⁷⁰ See 2021 Media Pluralism Monitor, Country Report on Malta, pp. 15-16.

⁷¹ 2021 Media Pluralism Monitor, Country Report, Malta, p. 15.

⁷² GRECO (2019), Fifth Evaluation Round - Evaluation Report.

⁷³ See for instance <https://www.independent.com.mt/articles/2022-05-10/local-news/Freedom-of-Information-Act-challenged-in-Constitutional-court-in-potentially-groundbreaking-case-6736242811> about a secret deal signed by Konrad Mizzi and a company.

⁷⁴ 2021 Media Pluralism Monitor, Country Report, Malta, pp. 9-10.

of the police commissioner, the head of the security service and the commander of the armed forces, as well as the **Committee of Media Experts** (see above).

4.1.10. OSCE Legal analysis on the draft Laws on Malta to implement various measures for the protection of the media and journalists

On the 1st of March 2022, the **OSCE Representative on Freedom of the Media** (RFoM) Teresa Ribeiro presented a legal analysis of **two Maltese draft laws on media**.⁷⁵ The analysis includes an overview of the proposed legislation and focuses on its compliance with international and OSCE freedom of expression standards and makes recommendations for improvement, such as:

1. to **include the right to seek information** as a basic component of the **right to freedom of expression and freedom of information** in the context of the relevant amendments reforming the protection of the right to freedom of expression in the Constitution of Malta,
2. to adjust the language of the **constitutional provision on hate speech** to the terms and criteria used by international law and other relevant international documents in this area,
3. to ensure that reforms in the **Media and Defamation Act** regarding the **liability of editors and publishers in cases of death of the original author**, include a safeguard must to guarantee that proceedings can only be pursued when legal liability can properly and fairly be established and determined in the absence of the said journalist,
4. to ensure that, in case of death of both author and editor, publishers may only be held liable on a subsidiary basis and when the responsibility of the former persons has already been established in a fair trial,
5. **to eliminate provisions regarding the recognition and enforcement of foreign judgements in cases of defamation and replace them with a comprehensive anti-SLAPP legal regime** containing the provisions and safeguards already recommended by international organizations,
6. to adopt of a series of additional legal instruments and measures to **reinforce prevention and prosecution mechanisms** with regards to the **protection of journalists and avoiding impunity**.

The OSCE Representative called Maltese authorities to hold transparent consultations with the Committee of Media Experts, civil society, media and other national and international key actors prior to the discussion and adoption by the Parliament, and stated "It is paramount that the upcoming legal reforms provide better protections to journalists online and offline, pave the way for free access to government-held information and create an environment conducive to safe and independent journalism in Malta."

⁷⁵ The Bill of the Act "to amend the Constitution and various other laws to **strengthen the right to freedom of expression and the right to privacy** and to implement various measures for the **protection of the media and of journalists**" and the Bill of the Act "to provide for the establishment of **structures for the protection** of democratic society, including the protection of **journalists**, other persons with a role in the media and in **non-governmental organisations** and persons in public life, see <https://www.osce.org/representative-on-freedom-of-media/513223>

4.2. Fundamental rights and Equality⁷⁶

4.2.1. Minorities, hate speech, racism

The **Council of Europe European Commission against Racism and Intolerance** (ECRI) had recommended in 2018 to establish a mechanism for **collecting data** on hate crime incidents and hate speech, recording the specific bias motivation and the criminal justice response, and making this data accessible to the public. This recommendation was considered as **fully implemented** in its 2021 Conclusions on the implementations of the recommendations in respect of Malta subject to the interim follow-up.⁷⁷

The **Centre for Media Pluralism and Media Freedom** reported in 2020 a rise of racist and misogynistic hate speech in Malta.⁷⁸

The **FRA 2021 report** discusses some progress in Parliament on the adoption of a new equality law widening the scope of application of equality.⁷⁹

The fifth report of the Council of Europe's Advisory Committee on the Framework Convention for the Protection of National Minorities Council of Europe of October 2020⁸⁰ reported that "the Maltese authorities have maintained their position that there are no national minorities in Malta. They have however pursued their efforts to reinforce their integration policies, in particular by adopting the National Migrant Integration Strategy and its Action Plan."

4.2.2. Antisemitism

FRA, in its overview of anti-semitic incidents recorded in the European Union between 2009 and 2019,⁸¹ notes that the Maltese police did not report any antisemitism case in 2019.

4.2.3. Roma

The EU Commission reports that there is no Roma population in Malta and consequently the country has no specific strategy for Roma integration and does not receive any EU funding in this regard.⁸²

4.2.4. Gender equality and women's rights

The **Council of Europe Commissioner for Human Rights** report of 15 February 2022 on the visit to Malta of October 2021 states that "despite the substantial steps taken in recent years, Malta has failed to implement important reforms which could significantly advance its legal and institutional framework for the promotion of gender equality and women's rights. In particular, the Commissioner

⁷⁶ The main references for the information in this section are the FRA annual fundamental rights report 2021, available at https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-fundamental-rights-report-2021_en.pdf, and the country chapter on Slovenia, available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-slovenia-frr2021_en.pdf

⁷⁷ <https://rm.coe.int/ecri-conclusions-on-the-implementation-of-the-recommendations-in-respe/1680a27d87>

⁷⁸ Centre for Media Pluralism and Media Freedom (2020), Monitoring media pluralism in the digital era: Application of the media pluralism monitor in the European Union, Albania and Turkey in the years 2018–2019, Fiesole, European University Institute.

⁷⁹ Bill no.96, Equality Bill, Parliament of Malta, see <https://parliament.mt/en/13th-leg/bills/bill-no-096-equality/>

⁸⁰ Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC), Fifth Opinion on Malta, adopted on 5 October 2020.

⁸¹ European Union Agency for Fundamental Rights, Antisemitism, Overview of anti-semitic incidents recorded in the European Union, 2009 - 2019, https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-antisemitism-overview-2009-2019_en.pdf

⁸² https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/roma-eu/roma-equality-inclusion-and-participation-eu-country/malta_en

encourages the authorities to adopt, at the earliest opportunity, the **Equality Act and the Human Rights and Equality Commission Act**, in line, *inter alia*, with the guidance provided by the European Commission for Democracy through Law (Venice Commission)."⁸³

The report also emphasizes that, "while Malta's overall gender equality outcomes have improved, **patriarchal attitudes and stereotypes** regarding the roles and responsibilities of women and men in the family and society continue to place women in a **disadvantaged** position in a number of areas, including the labour market and participation in political and public decision-making."

Regarding the **Malta's blanket ban on abortions**, the Commissioner recalls that "**unimpeded access to sexual and reproductive health care is crucial** to preserve women's right to health, as well as other rights including the right to life, the rights to be free from torture and ill-treatment and from discrimination and the right to privacy. **Malta's blanket ban on abortions puts these rights at significant risk.**"

The [FRA 2021 annual report](#) on fundamental rights recalls that the "lockdowns during the COVID-19 pandemic led to an increase in calls to **domestic partner violence** support service and helplines in many countries", Malta being one of these.⁸⁴

The [UN Women's strategy for change on gender data, Women Count](#), reports that "91.7% of legal frameworks that promote, enforce and monitor gender equality under the SDG indicator, with a focus on violence against women, are **in place**. The adolescent birth rate is 12.1 per 1,000 women aged 15–19 as of 2018, down from 12.5 per 1,000 in 2017. However, **work still needs to be done in Malta to achieve gender equality**. As of February 2021, only 13.4% of seats in parliament were held by women. In 2018, 4% of women aged 15–49 years reported that they had been subject to physical and/or sexual violence by a current or former intimate partner in the previous 12 months. Also, women and girls aged 10+ spend 18.8% of their time on unpaid care and domestic work, compared to 7% spent by men."⁸⁵

4.2.5. LGBTIQ+

For the seventh year in a row, Malta continues to top the Rainbow Europe Map, with a score of **92%**.⁸⁶ The Malta LGBTIQ Rights Movement shared its concern that during 2021 the **police response to incidents of hate speech or hate crime remain flawed and insufficient**.^{87 88}

4.2.6. Rights of the Child

In June 2021 was [announced](#)⁸⁹ the creation of the Children's Rights Observatory Malta by the Malta Foundation for the Well-being of Society and the Faculty of Social Well-being at the University of

⁸³ Commissioner for Human Rights of the Council of Europe, Dunja Mijatovic, Report following her visit to Malta from 11 to 16 October 2021, <https://www.coe.int/en/web/commissioner/-/malta-high-time-for-justice-for-daphne-caruana-galizia-and-for-reforms-to-safeguard-media-freedom-and-better-protect-the-rights-of-migrants-and-women>

⁸⁴ European Union Agency for Fundamental Rights, Antisemitism, Overview of antisemitic incidents recorded in the European Union, 2009 – 2019, page 249.

⁸⁵ [The UN Women's strategy for change on gender data, Women Count](#), <https://data.unwomen.org/country/malta>.

⁸⁶ ILGA, Rainbow – Europe 2022, <https://rainbow-europe.org/>

⁸⁷ <https://lovinmalta.com/news/lgbt-hate-crime-reports-arent-taken-seriously-in-malta-gay-rights-lobby-warns/>

⁸⁸ In 2020, MGRM's online survey found that over 50% of LGTBQI respondents felt unsafe in Paceville, Malta's main nightclub hub, and reported being denied entry into clubs or harassment. In July news articles circulated about homophobic bouncers in a club. Civil society called for more targeted action again this year, including training and awareness raising, see ILGA Europe, Annual review of the human rights situation of lesbian, gay, bisexual, trans, and intersex people in Malta covering the period of January to December 2021.

⁸⁹ Times of Malta, Observatory set up to champion children's rights, 24 June 2021.

Malta.⁹⁰ The Observatory aims to act as a watchdog for the promotion of children's rights in Malta and for their promotion in social institutions.⁹¹

4.2.7. Rights of Persons with Disabilities

The [European Semester 2020-2021 country fiche](#)⁹² on disability equality states that "disabled people and their families in Malta and Gozo are still facing **multiple barriers** in every aspect of their life. The **inconsistencies** present in the implementation of inclusive education policies are in turn impacting on young disabled people's possibilities to continue their tertiary education or to access jobs that are meaningful to them. Employment initiatives launched by the government since 2015, including the enforcement of the 2 % quota legislation, seem to be helping in **raising the number of disabled people in employment**. However, the **COVID-19** pandemic has stalled these efforts and many disabled people have lost their jobs. Many have also lost their homes because they are now unable to pay the rent." The Country fiche consequently notes that "although government has introduced various social security schemes to assist employers and disabled people during this time, these are short-term and will only allay the present financial difficulties. It is therefore urgent that any current policies and strategies are implemented with the consequences of the pandemic in mind."

4.2.8. Prisons and detention centers

In August 2021, the government opened an **inquiry into correctional procedures** after a prison inmate died by suicide. **Prisons director Alex Dalli** stepped aside in November after another inmate died by suicide and was formally **dismissed** in December, reports Freedom House.⁹³

In March 2021, the Council of Europe's **Committee for the Prevention of Torture** and Inhuman or Degrading Treatment or Punishment (CPT) has published a report on its ad hoc visit in Malta focusing on detention of immigrants. The report states that "the carceral design of detention centres such as Hermes Block and the Warehouses at Safi Detention Centre remained **totally inappropriate**: large rooms crammed with beds, no privacy, and communication with staff via locked doors. Migrants were generally locked in their accommodation units with little to no access to daily outdoor exercise and no purposeful activities. Other deficiencies included a lack of maintenance of the buildings (especially the sanitary facilities), insufficient personal hygiene products and cleaning materials and an inability to obtain a change of clothes. Moreover, there was also a systematic lack of information provided to detained persons about their situation, compounded by minimal contact with the outside world or even staff."⁹⁴ The report states that "Maltese authorities **must now take decisive steps to address the very serious issues** outlined in this report and **reform their immigration detention system** accordingly. In doing so, they should seek the support of the European Union and the Council of Europe, as appropriate."

[Asylum Information Database](#)⁹⁵ similarly reports that "detainees reported **terrible living conditions with severe overcrowding and unsanitary conditions**, caused by the limited availability of shared toilets and showers. Some buildings are known to have one shower for hundreds of detainees. In some buildings of the detention centres, detainees may enjoy limited time in the open, while in other parts

⁹⁰ Idem.

⁹¹ Idem.

⁹² European Commission, European Semester 2020-2021 country fiche on disability equality, Malta, February 2021.

⁹³ <https://freedomhouse.org/country/malta/freedom-world/2022>

⁹⁴ [Council of Europe portal](#), Council of Europe's anti-torture Committee calls on Malta to improve the treatment of detained migrants, 10 March 2021 and report at <https://rm.coe.int/1680a1b877>

⁹⁵ Aida, Asylum Information Database, Conditions in detention facilities, Malta, update 10.05.2022.

– such as China House – detainees are simply not allowed to go out of the building and have no access to fresh air or sunlight.”

4.2.9. Asylum and migration

The 2021 report of the Council of Europe **Commissioner for Human Rights** on her Malta visit⁹⁶ states that “the decrease in Malta’s search and rescue efforts over the past few years, together with its reported **failure to assist migrants** rescued by NGO ships and its **restrictive disembarkation policies** continue to pose **significant risks to the human rights** – including the right to life – of refugees, asylum seekers and migrants in the Central Mediterranean.” The denial of disembarkation of individual rescued at sea in particular where the rescue is conducted by NGO vessels is also confirmed by [the 2021 report by the European Council on Refugees and Exiles \(ECRE\)](#).⁹⁷

The **CoE Commissioner for Human Rights** also emphasises in her report that “Malta’s continued co-operation with the **Libyan** authorities to curb irregular migration is a matter of grave concern, in so far as it leads to refugees and migrants being **returned** to face extreme suffering in Libya and contributes to other human rights violations [...] **Libya is not a safe place** for disembarkation and urges the Maltese authorities to suspend such co-operation activities with the Libyan Coast Guard and other Libyan authorities until clear guarantees of their human rights compliance are in place.”

The pushbacks are confirmed by [Amnesty International](#), as people were “unlawfully detained for weeks on board private vessels meant for brief pleasure cruises. The Maltese government also signed an agreement with Libyan authorities, likely to make it even harder for refugees and migrants to flee from Libya and reach the Maltese search and rescue (SAR) region.”

The restrictive turn is also demonstrated by statistics by **ECRE** in a [report](#) for 2021. In the same report, in relation to **reception conditions**, ECRE states that living conditions have reportedly marginally improved” thanks to a series of refurbishments.⁹⁸ The **CoE Commissioner** in her report calls authorities to “continue efforts to improve reception conditions and ensure that asylum seekers who are no longer accommodated in reception centres are not exposed to homelessness and destitution.”⁹⁹

⁹⁶ Commissioner for Human Rights of the Council of Europe, Dunja Mijatovic, Report following her visit to Malta from 11 to 16 October 2021.

⁹⁷ Aida, Asylum Information database coordinate by the European Council on refugees and Exiles (ECRE), Country Report: Malta, 2021 update.

⁹⁸ “1,281 first time applications were lodged, and 3,265 applications were still pending at the end of the year. The International Protection Agency (IPA) issued 691 first instance decisions, the vast majority of which (477) were rejected as manifestly unfounded or inadmissible and thus channelled through the accelerated procedure with no possibility to appeal. The Agency issued 170 positive decisions, which puts the recognition rate at first instance at 25%. However, the Agency also issued 1,729 decisions to discontinue applications, 72% of all the total amount of decisions taken in 2021. This therefore brings down the recognition rate at first instance to an historical low 8%. The International Protection Appeals Tribunal (IPAT) issued 765 decisions, including 482 reviews under the accelerated procedure. All of them were rejections.”

⁹⁹ Commissioner for Human Rights of the Council of Europe, Dunja Mijatovic, Report following her visit to Malta from 11 to 16 October 2021, where the Commissioner also recalled that “the authorities should take immediate measures to avoid arbitrary detention of asylum seekers and migrants, invest in alternatives to immigration detention, improve safeguards against the detention of vulnerable persons, and ensure that any detention of children is immediately ended. Any detained migrants must be treated with dignity. The authorities should strengthen the independent monitoring of places of detention and guarantee human rights defenders, including NGOs, wide access to such places to provide support and assistance with respect to the asylum procedure or other matters. Furthermore, adequate safeguards should be put in place to protect detained asylum seekers and migrants from any ill-treatment or abuse.”

This study, written by the Policy Department for Citizens' Rights and Constitutional Affairs, at the request of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs - Democracy, Rule of Law and Fundamental Rights Monitoring Group, examines the situation of Democracy, the Rule of Law and Fundamental Rights in Malta and how Article 2 TEU values are respected and implemented in the country.
